CITY OF DOVER
BOARD OF ADJUSTMENT MINUTES
January 15, 2014

A Regular Meeting of the City of Dover Board of Adjustment was held on Wednesday, January 15, 2014 at 9:00 A.M. with Chairman Sheth presiding. Members present were Mr. Senato, Mr. Hufnal, Colonel Ericson, and Mr. Keller.

Staff members present were Mrs. Townshend, Mrs. Purnell, Mrs. Harvey, City Solicitor Pepper and Mrs. Melson-Williams (portion of the meeting).

APPROVAL OF AGENDA

A letter was submitted from attorney David C. Zerbeto, Esq. requesting that the appeal for V-14-01 128 S. Queen Street be deferred to the February 2014 meeting.

Mr. Senato moved to postpone application V-14-01, 128 South Queen Street, Joe W. Burden until March 19, 2014, seconded by Hufnal and unanimously carried 5-0.

Attorney David C. Zerbeto, Esq. speaking on behalf of Mr. Joe Burden stated that he was in no objection with the motion to postpone application V-14-01 until the March 19, 2014 meeting if it was acceptable to the Board.

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

APPROVAL OF THE REGULAR BOARD OF ADJUSTMENT MEETING MINUTES OF DECEMBER 18, 2013

Mr. Keller moved to approve the meeting minutes of December 18, 2013 with the necessary corrections, seconded by Colonel Ericson and unanimously carried 5-0.

OPENING REMARKS CONCERNING DEVELOPMENT APPLICATIONS

Mrs. Townshend, Director of Planning and Community Development stated that the meeting would be conducted in accordance with the approved agenda. She reviewed the procedure for the meeting. She noted that approved variances expire after one (1) year if the approved project has not commenced; that all public notice for the application on this agenda was completed in accordance with code requirements; and the meeting agenda was posted in accordance with Freedom of Information Act requirements.

OLD BUSINESS

Applicant #V-13-14:

200 North West Street: John 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.

Applicant failed to appear as scheduled on December 18, 2013. Public hearing was held.

The application was tabled at the December 18, 2013 meeting because the applicant failed to appear.

Mr. Senato moved to remove application V-13-14 from the table, seconded by Colonel Ericson and unanimously carried 5-0.

Mrs. Townshend, Director of Planning and Community Development, submitted the following items for the record: staff report, site diagram, photos and applicant response to variance criteria.

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

Representative: Mr. John Bashore, Owner.

Mr. John Bashore was sworn in by Mr. Pepper.

Mr. Bashore testified that the property has been used as a residential property for the past sixty-years. It has not seemed to impact the area in any way for the past sixty-years. The property was recently vandalized while vacant. In order to alleviate that type of situation occurring again he would like to use the property as multi-family. This would eliminate vandalism because the property would always be occupied. The property is too small for anything that he can find dealing with manufacturing. The property would be useless other than what is currently there along with the footprint. He would like to repair and add to the existing property.

Mrs. Townshend stated that it was previously a one-family residence and the request is to reestablish an expired non-conforming use and to increase it to two (2) units instead of one (1).

Chairman Sheth questioned if there were any questions from the board members?

Responding to Mr. Keller's question how long the property had been vacant prior to the vandalism, Mr. Bashore stated that the property has been vacant for about 1 ½ months. The intruder did not have very far to carry the scrap to sell it because there is a company next door.

Mr. Bashore stated that if it was a two-unit facility there would a lesser chance that both units would be vacant at the same time.

Responding to Mr. Keller's question regarding whether the property was tenant occupied and not owner occupied prior to the vandalism, Mr. Bashore stated it was tenant occupied and he has owned the property for roughly twenty (20) years.

Responding to Mr. Keller's question regarding whether the photos were taken by the owner or the department of Planning, Mrs. Townshend stated that the photos were submitted by the property owner.

Responding to Mr. Keller's question how long the windows and doors had been boarded up for the property, Mr. Bashore stated that the photos were recent. The house has been boarded up for about three (3) months.

Responding to Mr. Keller's question of whether the windows and doors were boarded up by the owner, Mr. Bashore stated yes, prior to the damage, but it did not stop the intruder from taking the boards off. The window and doors were boarded up several different times.

Mrs. Townshend stated that on page 4 of the staff report there were two (2) points made, the different standards for a use variance than for an area variance. This being a use variance the standards are higher. There are physical conditions applying to the land or building that are peculiar to the land or building that was not created by the applicant or any predecessor in title. The strict application of the provisions of the ordinance would deprive the applicant of all reasonable use of the land and the granting of the variance is necessary. The variance would be in harmony with the general purpose and intent of the ordinance; it would not represent a radical departure. The ordinance additionally states that for a use variance the variance that is granted must be the minimum variance that would accomplish the purpose. Going from a one-family to a two-family dwelling is not the minimum variance.

Responding to Mr. Hufnal's question about whether the applicant had a conditional use for the property since residences are prohibited in a M (Manufacturing) Zone, Mrs. Townshend stated no, it was legal non-conforming.

Responding to Mr. Hufnal's question whether the legal non-conforming had expired, Mrs. Townshend stated that it was brought to her attention by Code Enforcement and they indicated that the property had been vacant for a year or more, which is different than what was heard from the applicant.

Responding to Mr. Senato's question of how long the property have been vacant since the last tenant, Mr. Bashore stated that it would have been vacant one (1) year in February 2014. The tenants moved out February 15, 2013.

Responding to Mr. Hufnal's question as he referred to the Staff Report he stated that the Comprehensive Plan designates the property as Industrial in land use. The allowance of a new residential use would be contrary to the *Zoning Ordinance* and the Comprehensive Plan, he questioned whether the house was built prior to the zoning, Mrs. Townshend stated yes. There has been a recent court case where a variance granted that was in conflict with the Comprehensive Plan was overturned by the court for being inconsistent with the Comprehensive Plan.

Responding to Chairman Sheth's question whether the applicant was able to continue using the property as a single unit, Mrs. Townshend stated that if it can be documented that it was only vacant for less than a year, then it could continue as a residential use. It would need to be occupied again as a residence by whatever date the residential use ceased. She would need to follow up with Code Enforcement and determine at what point the rental permit expired and the last active utilities.

Mr. Bashore stated that he had not renewed the rental permit for this year. Mrs. Townshend concurred.

Responding to Chairman Sheth's question whether the property was currently boarded up, Mr.

Bashore stated yes.

Responding to Mr. Senato's and Colonel Ericson's question whether there would be enough time to allow the applicant to make repairs to the single unit and put in a tenant by February as it would still be legal non-conforming, Mrs. Townshend stated that if it can be documented the length of time it has been vacant and the applicant could make repairs and have the property occupied within a year of the vacancy, the residential use would be considered legal non-conforming.

Mr. Senato moved to table application V-13-14 until after the last application V-14-02 in order to gather additional information from Code Enforcement Inspector who is responsible for the case. The motion was seconded by Colonel Ericson and unanimously carried 5-0.

NEW BUSINESS

Applicant #V-14-02:

554 East Loockerman Street, 222 South DuPont Highway. Hub Associates LLC and A & G Kramedas Associates have requested a variance from the requirements of Article 5 §4.7 of the *Zoning Ordinance* pertaining to the setback from the right-of-way and exclusion zone for a pylon sign. The subject property is zoned C-4 (Highway Commercial Zone). The Tax Parcels are ED-05-077.06-01-62.00-000, ED-05-077.06-01-63.00-000, ED-05-077.06-01-64.00-000, and ED-05-077.06-01-87.00-000. The owners of record are Hub Associates LLC and A & G Kramedas Associates.

Mrs. Townshend stated that there was a parcel consolidation and two (2) of the four (4) parcels have been combined with parcel # 62.

Mrs. Townshend, Director of Planning and Community Development, submitted the following items for the record: staff report, site diagram, photos and applicant response to variance criteria. The legal notice was published in the Delaware State News on January 5, 2014, and the public was notified in accordance with the regulations. There was an error in the public notice that indicated the property address of 222 North Dupont Highway, because both the Loockerman Street address and DuPont Highway address were both used in the public notice and there is no intersection of East Loockerman Street and North DuPont Highway, in consultation with the City Solicitor and Deputy City Solicitor it was determined that this could be disclosed for the record since all adjacent property owners were notified, and that the application could proceed as scheduled.

Responding to Chairman Sheth's question whether this was correct, City Solicitor Pepper stated yes.

Responding to Mr. Senato's question whether the correct tax parcel numbers was 64 or 62, Mrs. Townshend stated that they are 62, 63, and 64, but 63 and 64 have since been combined with 62 as part of the site plan for the redevelopment.

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

Representative: Mr. Dale McCalister, First State Signs, Representative on behalf of Kramedas Associates.
Mr. Dale McCalister was sworn in by Mr. Pepper.

Mr. McCalister testified that the applicant is requesting a variance to keep the existing location of the roadway and sign. The property is being redeveloped as a shopping center and new hotel. It was developed over fifty (50) years ago as a Comfort Inn. It has had numerous restaurants in front of it. The existing Hub building is now TGIF. It would currently not be able to be that close to the road. The old Quality Inn sign, Comfort Inn/Roadway sign, was once the highest sign in the City around 80ft. A high rise type sign was developed and taken in with the Comprehensive Sign Plan and was told that all the signs needed to be lowered. They agreed with the signs being lowered. However; there is a problem with the current TGIF sign and building because they would need to put the sign between the building and TGIF in order for it to be seen and lowered. Referring to Staff recommendations he stated that this is the best placement for the signs due to the road and existing buildings. Looking at all possible ways to meet the code, this is the minimum variance that they could ask for and still get to redevelop the property. It is the best place, location, proper height, and design criteria that was kept in mind with the Planning Commission.

Responding to Mr. Senato's question whether there would be no design change, but it would be the same height and in the same area, Mr. McCalister stated no. The original sign is over 50ft. and the new sign will be 44ft. in height and in the same location as the existing roadway sign. The existing roadway sign will be on a single pole, wider and taller.

Responding to Chairman Sheth's question as to what the new sign would look like, Mr. McCalister stated a drawing was provided and it is the one with the dimension.

Responding to Mr. Keller's question as he referred to the drawing for proposed free standing signage locations that is noted as F1, F2, and F3, It seems that F1 is the one that the applicant referred to as the present day roadway in sign, Mr. McCalister concurred. He stated that F2 is the existing TGIF sign.

Responding to Mr. Keller's question whether F2 and F3 were going to be changed, Mr. McCalister stated that F2 was going to remain the same and F3 that is not part of the Board of Adjustment member's packet will be a monument sign on brick base for Home2. One of the suggestions to the City was changing the base to a brick base.

Mrs. Townshend stated that the monument did not require a variance because it meets the setback requirements.

Responding to Mr. Keller's question why the Board of Adjustment members did not receive a copy of the depiction was because it did not require a variance, Mrs. Townsend and Mr. McCalister concurred.

Mrs. Townshend stated that the issue of the exclusion zone relates to the distance between F1 and F2 and by code it is required to be 50 ft. The exclusion zone and the setback are two (2) pieces that the Planning Commission does not have the authority to relax and this is the reason it is coming before the Board of Adjustment for the setback and exclusion.

Responding to Colonel Ericson's question whether the sign was going to be 150sq. ft. and that was the reason for the variance and if it was less than 150sq. ft. no variance would be needed, Mrs. Townshend concurred. The sign will be more than 150sq. ft.

Responding to Colonel Ericson's question whether the sign could be 100sq. ft. and no variance would be needed, Mr. McCalister stated that they would still need the exclusion variance because it is on the side. It would need to be moved back and they would not be able to use the same footprint. The current sign is well over 150sq. ft. and just includes the hotel sign; they are proposing a complete shopping center sign including the hotel sign.

Responding to Mr. Keller's question whether the maximum size of the sign that was being indicated by the code citation as 150sq. ft. that the proposal would exceed 350sq. ft. of signed face area, Mr. McCalister concurred. Mrs. Townshend stated that the Planning Commission has the authority to increase the sign area under a Comprehensive Sign Plan and in the Comprehensive Sign Plan they agreed to a larger size area.

Responding to Mr. Keller's question whether this had been addressed and approved by the Planning Commission, Mrs. Townshend stated yes.

Responding to Chairman Sheth's question whether the variance was still needed, Mrs. Townshend stated the variance is needed for the exclusion zone and setbacks. If the variance was not approved the sign would need to be moved to comply with the exclusion zone and setbacks.

Mr. McCalister stated that it would need to be taken back to the Planning Commission because the hardship would be if the sign was left there and they do without it or move it back in the exclusion zone. The sign was originally designed much larger (over 600 sq. ft.) and higher so that it could be seen above the TGIF and meet the exclusions zone, but the sign would need to go so far back (40 ft.) and be large enough in order for it to be seen from the road. This is the best design and the smallest that they can make it with the least offensive. This property is very old and is being redeveloped with a lot of unique challenges. This was the best way that they found to meet the challenges.

Responding to Mr. Keller's question of whether the new structure would be electronic, Mr. McCalister stated yes.

Mr. McCalister also stated that years ago the City developed a Comprehensive Sign Plan and if you have a large unique property that you cannot button hole into the existing sign ordinance, they came up with a designing base to work with Planning Staff, owners, sign companies and professionals to come up with a design base and better looking package.

Colonel Ericson stated that they were concerned about a sign encroaching on the area of another sign and if it would conflict with the owners of the TGIF and they would not agree, but understood it was the same owner, Mr. McCalister concurred.

Chairman Sheth stated that it was a very good project and sign.

Chairman Sheth declared the public hearing open.

There being no one wishing to speak, Chairman Sheth declared the public hearing closed.

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

Mr. Ericson moved to approve application V-14-02 requested variance to allow a pylon sign to encroach into the required setback and within the exclusion zone based on the testimony given and Staff Report. The motion was seconded by Mr. Hufnal and unanimously carried 5-0.

OLD BUSINESS
Applicant #V-13-14:

Continuation

Mr. Senato moved to lift application V-13-14 from the table. The motion was seconded by Colonel Ericson and unanimously carried 5-0.

Mrs. Townshend stated that based on documentation and case number 13-94, the notification to register the building as vacant was sent out on January 11, 2013. Mr. Coburn the vacant building Inspector had notified the property owner of the determined vacant property and that the property needed to be registered as a vacant building. Also, case number 13-1480 was opened in May 2013 documenting the building as dangerous. The building has not moved forward to City Council as a dangerous building at this time. Based on the rental permit records license 14-8550 was renewed in December 2012 for the licensing year that ends on January 31, 2014. There is an active rental license. The documentation was submitted for the record and circulated.

Mr. Ron Coburn was sworn in by Mr. Pepper.

Responding to Chairman Sheth's question of the definition for a dangerous building, Mr. Coburn stated that a dangerous building is defined as a building that meets several of the criteria in the city code. The building is non-habitable, no utility, no water, and several code violations that make it uninhabitable and structurally unsound.

Responding to Chairman Sheth's question whether the codes violations could be resolved if the problems were corrected, Mr. Coburn stated yes they can be corrected.

Mr. Senato stated that a renewal date of December 2012 was given; Mrs. Townshend stated that the date was when the rental permit was renewed for the 2014 permit year. The permit expires this month, but there is no occupancy.

Responding to Mr. Senato's question of what the permit allows, Mrs. Townshend stated that the permit allows the house to be rented if the owner meets the violations of the code. The vacancy case was the other case.

Responding to Mr. Hufnal's question whether the property had not been occupied in a year, Mrs. Townshend deferred to Mr. Coburn. Mr. Coburn stated that according to the utility records the utility was terminated on October 11, 2012. Both the electric and water were terminated at that time. He opened a vacant building case and the building was registered as a vacant building on February 11, 2013. The vacant building fees have been paid.

Responding to Mr. Senato's question of whether there was a due date of February or a year date of October 11, 2013, Mr. Coburn stated that the utility was terminated October 11, 2012 and the property has not been occupied since that date.

Responding to Mr. Senato's question whether the legal non-conforming was valid, Mrs. Townshend stated that based on the documentation she concurred.

Responding to Mr. Keller's question whether the case history report that was being circulated with an established date of January 11, 2013 as the vacant house ordinance violation and whether it was October 11, 2012 or January 11, 2013 both of the dates have been exceeded to a one year period, Mrs. Townshend concurred.

Responding to Chairman Sheth's question that the applicant applied for a variance to allow multi-family use, if the applicant is not approved what are the other choices, Mrs. Townshend stated the variance is to specifically allow a residential use in the M (Manufacturing) zone. Within the scope of the Board of Adjustment authority if a variance is granted it can be specified either as a reestablishment of a one-family or to allow the two-family based on the records, criteria, and codes.

Chairman Sheth stated that it would be the continuation of the non-conforming use of the single use variance if they meet code violations, Mrs. Townshend concurred. The code violations issues does not need to be discussed, it is a given. It needs to be determined if can a residential use be reestablished since the non-conforming period has expired.

Responding to Mrs. Townshend's question whether he concurred with the above information, Mr. Pepper City Solicitor concurred. He stated that the restoration of the lost non-conforming use is within the variance request.

Responding to Mr. Senato's question whether the applicant would have the option to leave it if the expiration of the non-conforming was renewed and he could use it as a single family, Chairman Sheth stated that a motion can be made to restore the non-conforming.

Responding to Mr. Senato's question once that is done then then the topic of the zoning change for the multi-family comes into effect as a separate entity; Chairman Sheth stated that it should be the first decision because that is the request of the applicant.

Chairman Sheth stated that at the last Board of Adjustment public hearing on this case the neighbor opposed a multi-family unit. It was strongly mentioned that it would not solve the problem, but increase a lot of other problems with the City having children next to the Manufacturing zone.

Colonel Ericson asked the question do you really want a residential in a Manufacturing zone. He does not see any reason to approve it, because a residential should not be in the Manufacturing zone area. The applicant is not being denied use of the land. The Staff Report stated that it could be used as research, design and development laboratories; wholesale storage and warehousing; building contractors yards; public utilities uses; and ministorage.

Mr. Keller stated that he was inclined to agree with the ordinance as well as the Comprehensive Plan citing the pitfalls and the prohibition of single family residences within that area and taking into consideration the previous testimony with regards to the activities of the surrounding properties beginning at 4:00 a.m. or 4:30 a.m. does not seem conducive to a suitable residence use. Since it has lost it legal non-conforming status whether to reactivate or expand to a multi-family usage. He does not feel convinced of the testimony and the issues at hand with the various aspects warrant approval.

Responding to Chairman Sheth's question if the applicant met all of the code requirements would the applicant be able to use the property as a non-conforming use, Mrs. Townshend stated not without action from the Board of Adjustment.

Responding to Mr. Keller's question of the most recent visitation to the site, Mr. Coburn stated that typically he visits the vacant building sites once a month to make sure that the property is still secured, no vandalism, and no homeless people living in the property. He last visited the site on December 11, 2013.

Responding to Mr. Keller's question if the property was still under the circumstances of no electric and water, Mr. Coburn concurred, no utilities to the site.

Mr. Bashore commented on questions from the Board of Adjustment members. Responding to Mr. Keller's question that the residential use was in a Manufacturing zone, he stated that the reason he has requested to keep the property residential because it is too small to build any type of commercial building. The setbacks would totally eliminate the building of any type of structure large enough to do any type of work. The existing house is approximately 3ft. from the construction company lot line. He is requesting to use the same footprint of the existing building. He does not plan to increase the footprint of the building in any way, shape or form. In order to turn it into a multi-family dwelling he would possibly make the kitchen that is on the back of the house a two-story in order to have two (2) kitchens. The parking would eliminate having to cut less grass. There is ample parking. There is a city street that runs down the south side of the property to the railroad tracks. There is a residential property including a church right across the street from this property. The scrapyard is located across the City Street from the applicant property. The City Street goes off and straight back to the railroad. Included are a construction company, his property, non-paved City Street, and the scrapyard. Across the street is strictly residential all the way up and down including a large church. The non-paved City Street belongs to the City of Dover. A map was referenced to indicate the properties and City Street. The applicants existing property (house) sits roughly 3ft. from the fence of Teal Construction lot. The entire area consists more of residential than manufacturing. He has not seen much activity from the Teal Construction lot. Most of their activities are at the other end of their lot near their office building.

Responding to Mr. Senato's question of the size of the lot, Mrs. Townshend stated that based on staff estimates from the GIS (Geographical Informational system) the lot is approximately 5,550s.f.

Responding to Colonel Ericson whether there was enough room on the property to put something permitting in the Manufacturing zone, Mrs. Townshend stated that anything that would go on this property would likely need an area variance because the lot is smaller than what is required in the Manufacturing zone. If you were going to subdivide a lot currently in the Manufacturing zone you would not be able to do it because you would need ½ acre. If the lot would need to be created today, it would not be permitted. With any Manufacturing use there would need to be parking provided and due to the size of the lot any use would be limited to some degree.

Chairman Sheth stated that if you restore a non-conforming use it cannot happen again and if you look at the location there is a limited choice.

Mr. Senato stated that even though the applicant procrastinated on keeping the house occupied or rented and if the Board of Adjustment decides to deny the non-conforming then the applicant would lose everything on the property, if the Board of Adjustment decides to approve the non-conforming then the applicant is able to fix the house as a single family. Without the variance, the applicant would be deprived of the use of a piece of property that he owns and has been using for over 20 years regardless of the procrastination on his part of not keeping it up.

Mr. Keller stated that given the subject site proximity to the other industrial manufacturing uses is extremely close. It is an abutting property to on-going active construction contractor yard activities. Even with a denial all reasonable uses of the land would not be deprived to the owner. There are a number of available uses and any possible use would not necessarily require the construction of a structure such as open warehousing, storage and value of the site assembly with the adjoining property as an expansion of the contractor yard and/or recycling center across the street. With the use variance as opposed to what we are typically addressing as area variances there is a greater burden upon the owner to demonstrate what would result from a denial. However, he remains unconvinced that the requirements to demonstrate the approval for a use variance particularly in light of the loss of the non-conforming use has been demonstrated.

Chairman Sheth stated that the applicant would still need to come back for a variance regardless of what they would decide to do.

Mr. Keller stated that they were not certain of that until such time an application is made and whatever the specific use would be.

Mrs. Townshend stated that if there was a structure it would be very difficult to place a structure and meet the setbacks.

Responding to Colonel Ericson's question whether the applicant had spoken with Teal Construction regarding buying the property, Mr. Bashore stated no. He stated that Teal Construction does not use the back part of their lot anyway. There are a few pieces of equipment lying around that has been there for years. There is no activity around the house. He stated that he could ask Teal Construction if they were interested in purchasing his property.

Responding to Mr. Senato's question whether this would be a first option to the applicant before the Board of Adjustment makes a decision, Mr. Bashore stated that there is a possibility that it could be sold to the City of Dover considering they use the property for a storage lot in the last month with drums and barrels. He stated that he had to ask the City to remove the items.

Mr. Senato stated that the applicant has an investment in the property that he has had for 20 years. In his mind he cannot take away a potential income in this day and age from someone who has been earning income over the years. There are other residential properties right across the street from this property within 50ft. of the entire block area including a church that operates on a Sunday. He stated that he was not in favor of the multi-family, but on the other hand on another aspect he is taking a man's potential earnings and property away from him even though the Board of Adjustment may disagree as a whole that the property is in a commercial area and no residential property should be there, but theoretically that cannot be said because there are a dozen houses right across the street in the proximity of the applicant lot.

Responding to Colonel Ericson's question how far does the commercial area extend and is it just Teal Construction, Mrs. Townshend stated that in terms of the area Teal Construction goes up to the next street intersection Mary Street and north of Mary Street there is more industrial property that is on the east side of Pear Street, the Campus Community School and City of Dover Warehouse on the west side of Pear Street. The Campus Community School is zoned IO (Institutional and Office) and the City Warehouse is where we do our vehicle repair and purchasing/receiving area.

Responding to Colonel Ericson's question whether the entire area of Cecil Street and West Street was residential; Mrs. Townshend stated that to the east of West Street is residential and if you go south of West Street there is Industrial uses on the west side. The street itself is the dividing line between the residential and commercial.

Responding to Colonel Ericson's question that the property is buried right in the middle of a commercial zone and there is no way of getting around it, Mrs. Townshend concurred.

Chairman Sheth stated that the property has been vacant for more than a year and the property has to be restored if the applicant would like to continue renting. Suppose the applicant cannot rent the property and the same issue happens again? This is the only chance the applicant has to make it happen or he will not have a non-conforming use in violation of the city codes.

Responding to Colonel Ericson's question whether the application is approved and nothing is done the application will expire in one year, Chairman Sheth concurred.

Mr. Bashore stated that he has been a landlord for almost 30 years in the Dover area. He has had multi-family, single family rentals, and other rental properties. His experience in this particular area is the only thing you can rent and make it equitable is small units that people who live in the area can afford. If a single family residence is put there no one will be able to afford it. It will either sit there empty or he would have to rent it a lot less than the property should be rented for. If the property is turned into two (2) one-bedroom units he will be able to keep both units occupied on a continual basis. He has a house on New Street that he purchased 26 years ago as a

single family home. He added a kitchen and a bathroom on the second floor and it was converted to a two (2) unit house with an upstairs and downstairs one bedroom apartment. That property has virtually never been vacant for the 26 to 30 years that he has owned the property. He has some small apartments at 3 North New Street and those stay rented. He has a difficult time keeping a single family residential house rented on North West Street. At one time it was rented to an elderly couple who stayed there for quite some time.

Chairman Sheth stated it cannot tailor the ordinance according to the people's needs.

Mr. Bashore stated that he wanted the Board of Adjustment to understand his reason for wanting a multi-family unit.

Colonel Ericson stated that Mr. Bashore's information is very important in the fact that it has to be a multi-family unit otherwise it is not feasible to continue renting the space. He is also in a bind and if it is made a single family unit it looks as if it would be an impossible task for the applicant to make the property develop income.

Chairman Sheth stated that the applicant would need to make a decision if he would like to restore or sell the property.

Mrs. Townshend stated that the conversion of a single family to a multi-family in the residential district across the street that comprises the larger downtown area that type of conversion is no longer permitted. If you look at the character of the manufacturing side of the street you have that issue to contend with, but if you look at the character of the residential zone that is nearby and across the street that type of conversion would not be permitted today in the RG-1 zone.

Responding to Mr. Senato's question whether it was permitted on the other site, Mrs. Townshend stated no, residential is not permitted on that side that is the reason the applicant is before the Board of Adjustment.

Responding to Mr. Senato's question that on the other side of West Street if someone else was applying for the same thing as the applicant it would not be approved because it is single family, Mrs. Townshend concurred and stated that the conversion of a single family to a multi-family is not permitted.

Responding to Mr. Senato's question that in the case of the applicant's home it can be either approved or denied from a single family to a multi-family because of the location of the property at the present time, Mrs. Townshend stated that this is the issue before the Board of Adjustment.

Responding to Mr. Senato's question if it was a house on the other side of West Street it would not come before the Board of Adjustment because it could not be converted to multi-family, Mrs. Townshend stated that it would be a different type of use variance.

Colonel Ericson stated that if a multi-family unit was approved on this site and then due to precedent someone on the other side of the street wants to have a multi-family approved and they are denied then they would want to know why it was approved on one side of the street and not on the other side it would put the Board of Adjustment in a bad place.

Responding to Mr. Senato's question whether that would happen in this case, Mrs. Townshend stated that she cannot tell people what they can or cannot apply for.

Responding to Mr. Bashore's question that there was a multi-family across the street that was approved, Mrs. Townshend stated yes and it was converted prior to the prohibition on those types of conversions.

Chairman Sheth stated that it was a grandfather clause. The law was change and multi-family can no longer be done.

Mr. Bashore stated that the property is not in a residential area, but a manufacturing area which has nothing to do with the residential area across the street per say as to what can or cannot be done in the manufacturing zone.

Mr. Hufnal stated that residences are expressly prohibited in the Manufacturing zone and it is impossible for the Board of Adjustment to sit there and allow the applicant to do a multi-family unit in a zone that is already restricted against residences. The question comes down to whether the Board of Adjustment will allow the applicant to continue if he brings the property up to code with the single family home. The Board of Adjustment is aware that he cannot do a multi-family unit.

Mr. Keller stated that testimony has been given as to the extensive repairs necessary to bring the property up to a suitable single family dwelling. If it is uneconomically feasible from a rental aspect, it is a self-defeating activity even to attempt that.

Mrs. Townshend stated that the public notice was completed with the thought that if the Board of Adjustment needed to reopen it could. The Planning Office did re-advertise.

Responding to Chairman Sheth's question whether the motion is passed for restoration and if the applicant chooses not to do it then it will be between the City and the applicant if he does not follow the code violations, Mrs. Townshend stated that if a variance is granted and the use is not reestablished within a year then it expires again.

Responding to Mr. Keller's question whether the variance request is for a multi-family residential in the Manufacturing zone, Mrs. Townshend concurred.

Mr. Keller moved to deny application V-13-14 requested variance based upon the testimony given during the public hearing, based upon the burden of the Board of Adjustment in weighing consideration for a use variance as is the case in this instance. The additional burden placed upon the Board of Adjustment given consideration to use variance request. The Board of Adjustment did not find that the applicant has demonstrated the adherence to the requirements of the ordinance that deprives him of all reasonable use of the land as several types of uses prospectively were provided during questioning and testimony. Additionally based upon the advice of Staff, and the instant of the allowance of a residential use and increased density of usage (multi-family) would be contrary to the Zoning Ordinance and the Comprehensive Plan and additionally in that the granting of approval of the variance would have conceivable impact

on the abutting neighboring Manufacturing and Industrial type usages. Agreeing with the Staff Report in that the issues of such incompatibility represents the reason that residential uses are expressly prohibited in this zone. The motion was seconded by Colonel Ericson.

Chairman Sheth questioned if there were any questions regarding the motion?

Responding to Mr. Senato whether the application is denied does the house revert back to a single family home, Mrs. Townshend stated not under the current motion.

Colonel Ericson stated that the motion could be amended to restore the single family home to legal non-conforming.

Mr. Senato moved to amend the previous motion to restore the single family home to legal non-conforming. The motion was seconded by Mr. Hufnal. Motion amended vote 3-Yes and 2-No. (Keller and Ericson opposed)

Mr. Hufnal stated that the reason for the motion amendment is to not deny the applicant total usage of the property and to allow the applicant the option to comply with rules of restoration to get the property back into conforming use of a single family rental. The amended motion was approved by a vote of 3-Yes and 2-No. (Keller and Ericson opposed)

Mrs. Townshend explained to the applicant that the Board of Adjustment denied the variance request for a multi-family residential use in the Manufacturing zone, but approved a variance that would allow the restoration of a one family use at the property; the applicant will need to work with the Building Code and Code Enforcement Staff to provide the documents and obtain the permits to do the restoration. There is a period of one (1) year to have the property occupied. All of the violations will need to be corrected.

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

Meeting adjourned at 10:53 A.M.

Sincerely,

Maretta Savage-Purnell
Secretary