CONSTRUCTION CODE APPEALS COMMITTEE

A G E N D A

NOVEMBER 6, 2013 - 3:00 P.M.

CITY HALL COUNCIL CHAMBERS
15 LOOCKERMAN PLAZA
DOVER, DELAWARE

Construction Code Appeals Committee Members
Councilman Adam M. Perza, Chair
Councilman Sean M. Lynn
Scott D. Koenig, City Manager

AGENDA ADDITIONS/DELETIONS

1. Appeal of Requirements to Obtain Certificates of Occupancy - Properties at 29 South New Street, 37 South New Street, and 20 North New Street, Owned by the House of Pride, Inc.

2. Adjournment

/dd
S:\AGENDAS-MINUTES-PACKETS-PRESENTATIONS-ATT&EXH\Misc-Agendas\CONSTRUCTION CODE BOARD OF APPEALS\11-06-2013.wpd

THE AGENDA ITEMS AS LISTED MAY NOT BE CONSIDERED IN SEQUENCE. THIS AGENDA IS SUBJECT TO CHANGE TO INCLUDE THE ADDITION OR THE DELETION OF ITEMS, INCLUDING EXECUTIVE SESSIONS.

Received Hand Delivered

OCT 22 2013

Planning & Inspections

Bishop Marion L. Lott
Director

P.R.I.D.E.
PEOPLE'S REHABILITATION & INDIVIDUAL DEVELOPMENT ENTERPRISE

Hoppride@aol.com

Dover, Delaware 19904

October 22, 2013

Ann Marie Townsend, AICP
Director of Planning & Community Development
City of Dover

Please consider our request for a formal hearing regarding the actions described in the letter dated October 14, 2013 (ref: RE: Follow-Up Inspections of October 10, 2013 Regarding Order to Vacate Properties at 29 South New Street, 37 South New Street, and 20 North New Street) and to show cause pursuant to Article 22 – 385 (1) and Section 104 of IEDC, and we further request that any action by the City be stayed pending a hearing.

Sincerely,
Mary-Beth Johnson
Mary Beth Johnson
Property Manager
House of Pride, Inc.

RECEIVED
OCT 22 2013
OFFICE OF THE CITY CLERK

House of Pride
Our Foundation is Built on Pride
105 South New Street
(302) 677-0116
Fax (302) –677-0234

From: Adam Perza
To: Devine, Denise
Cc: City Clerks Office; McDowell, Traci; WPepper@schmittrod.com
Subject: Re: ACTION REQUIRED - Construction Code Appeals Committee Meeting (and possible emergency meeting) - House of Pride Appeal
Date: Wednesday, October 23, 2013 1:56:08 PM

Denise,

Pursuant to Sec. 22-1(b) of the City Code, "[w]henever any person is aggrieved by a decision of the building inspector with respect to the provision of this chapter, it is the right of that person to appeal to the construction code appeals committee. Such appeal must be filed, in writing, within 30 days after the determination by the building inspector."

In this circumstance, the City issued a written decision on October 14, 2013 regarding the issuance of certificates of occupancy for certain properties of the applicant. The applicant filed an appeal of the October 14, 2013 decision with the City Clerk on October 22, within 30-days after the determination of the City. The filing of the applicant's appeal of the City's decision of October 14, 2013 should be accepted and a hearing date for consideration of the appeal scheduled.

The City Solicitor advises that the chair officer of the Construction Code Board of Appeals Committee has the unilateral discretion to grant or deny a stay of the execution of the September 9 order to vacate issued by City Council, or alternatively to schedule a special meeting of the Construction Code Board of Appeals Committee to consider the application for a stay. Acting on this authority, the application to stay the order of City Council of September 9, 2013 is granted by unilateral order of the chair, pending the disposition of the appeal. The stay expires upon the disposition of the appeal by the committee.

Pursuant to Sec. 22-1(c) of the City Code, a date, time and location shall be set for the appeal hearing "in not less than ten, nor more than 30-days" from the date of appeal. Please schedule a date and time for the appeal hearing and issue notice to the appropriate parties in conformance with Sec. 22-1(c).

Adam Perza,
Chair, Construction Code Board of Appeals

On Wed, Oct 23, 2013 at 12:10 PM, Devine, Denise <ddevine@dover.de.us> wrote:

> Mr. Perza,
>
> As a follow up to the voice mail message I left for you, we have received an appeal from the House of Pride regarding the requirements for the Certificate of Occupancy for properties located at 29 South New Street, 37 South New Street, and 20 North New Street. Additionally, the House of Pride has requested that any action by the City be stayed pending the appeal hearing. Therefore, we need to schedule a meeting of the Construction Code Appeal Committee to consider the appeal.
>
> Mr. Pepper has opined that, as the Committee Chair, you can independently make the decision whether to grant a stay of Ann Marie's order to vacate by Thursday, October 24, 2013, deny the stay, or refer the stay application to the full committee. If you chose to refer the stay issue to the full committee, the committee must meet before the order is scheduled to take effect (end of day on Thursday, October 24, 2013). We would, therefore, need to schedule an emergency meeting. Discussion would be limited to the issue of whether Ann Marie's order to vacate should be stayed and could not reach the merits. We would still need to schedule a separate meeting for the appeal hearing.
>
> Please let me know how you wish to proceed. Do not hesitate to contact me if you require

additional information.

Thank you,
Denise L. Devine
Assistant City Clerk
City of Dover
e-mail: ddevine@dover.de.us<mailto:ddevine@dover.de.us>
(302) 736-7008 phone
(302) 736-5068 fax

--
Adam Perza
Dover City Councilman, District 2
P.O. Box 475
Dover, Delaware 19903-0475
Telephone: 302-736-1776 (work)
Telephone: 302-883-2850 (home)

From:	Townshend, Ann Marie
To:	Bishop Marion Lott (bishopmllott@comcast.net); House of pride
Cc:	City Clerks Office; Truax, Dave; McDowell, Traci; Osika, Jason A.; Coburn, Ron; Taraila, Tim; Brown, Matthew; McGinnis, David; Gonzalez, Sam
Subject:	29 S. New Street
Date:	Monday, October 21, 2013 3:41:36 PM

Bishop Lott,

Mary Beth was in this morning and spoke to me about the requirement that 29 S. New Street be vacated by this past Saturday, October 19th, as required by the City Council action on September 9, 2013 and extended by the Department of Planning and Inspections. As you recall, the initial date set by Council was October 9, 2013, but I administratively extended this to October 19, 2013, following a meeting between our staff and the House of Pride, to allow time to meet the requirements for obtaining a Certificate of Occupancy.

When Mary Beth came in today, she indicated that you and she were under the impression that because we walked through the properties on October 10, 2013 and followed up with correspondence on October 14, 2013, there would be more time granted to obtain the Certificate of Occupancy. I do not believe that the administrative discretion exists to continue to extend this matter. However, due to the confusion, the Department of Planning and Inspections will allow until the end of the day Thursday, October 24, 2013 to vacate the units. The Department's staff will inspect the units at 29 S. New Street on Friday, October 25, 2013 to ensure they are vacant and board the units to secure them.

Please let me know if you have any questions.

Ann Marie

Ann Marie Townshend, AICP
Director of Planning & Community Development
Planning and Inspections / Parks and Recreation
P.O. Box 475
Dover, DE 19901
(302) 736-7196
(302) 736-4217

www.cityofdover.com
"Like" us on Facebook at "City of Dover Recreation"

Division of
Code Enforcement
15 Loockerman Plaza
Dover, DE 19901

City of Dover

Phone: (302) 736-7010
Fax: (302) 736-4217

October 14, 2013

Bishop Marion Lott
House of Pride
105 South New Street
Dover, DE 19904

RE: Follow-Up from Inspections of October 10, 2013 Regarding Order to Vacate Properties at 29 S. New Street, 37 S. New Street, and 20 N. New Street

Dear Bishop Lott:

On Thursday, October 10, 2013, a walk-through inspection of the above properties was conducted by myself, Dave Truax (Fire Marshal), Greg Akers (Chief Building Inspector), and Matt Brown (Code Enforcement Officer). The purpose of the inspections was to be able to provide guidance as to what is required in order to obtain a certificate of occupancy for each property. Based on these inspections, we have made the following determinations.
Issuance of a Certificate of Occupancy is a certification by the City of Dover that a property and/or building meets the minimum code requirements for its intended use. Upon our inspection of the properties, we are not able to document that the properties meet the minimum code requirements for the intended use, and we determined that additional information is needed from an architect or structural engineer as to the building conditions. A summary of what additional information needs to be addressed in these evaluations is stated below for each property. In addition to the structural evaluation that is required, a number of violations of the International Property Maintenance Code were observed and documented during the inspection. Reports of these violations will be sent under separate cover. In addition to any corrections identified as part of a structural evaluation, violations identified in these reports must be corrected prior to issuance of certificates of occupancy.

<u>37 South New Street</u>
This building is a one family dwelling that allegedly had been converted to a two-family dwelling. This type of conversion is no longer permitted by the *Zoning* Ordinance, so the two-family dwelling would have been considered a non-conforming use. Upon inspection, it was determined that the building was not functioning as two independent dwelling units as there is no lock on the door to the downstairs apartment. It is also unclear from the building permit records if this structure was ever legally converted to a two-family dwelling, as there have been no permits issued for such a conversion. Therefore, this building will need to be re-established as a one-family detached dwelling.

There are hardwired and interconnected smoke detectors present throughout the dwelling. These must be maintained, including the presence of working batteries in each for the battery back-up. A smoke detector is required on each level of the structure, one in each bedroom, and one in each living space. Smoke detectors are not required in crawl spaces or attics.

A leak was observed above the shower in the upstairs bathroom. This area of the ceiling had been documented on several previous inspections, and the interior finish had been repaired. The source of the moisture has not been repaired. The structural evaluation will need to document the condition of the roof and whether roof leaks are present along with recommended corrective actions. If the leak in the bathroom is not the result of a roof leak, the structural evaluation must document the source and recommend the corrective action. Please note that the structure does not have gutters and downspouts to allow for roof drainage. The structural evaluation must address whether this condition is acceptable or whether gutters and downspouts must be added to facilitate roof drainage.

There are areas of siding that are damaged or missing. This causes concern as to the integrity of the structure beneath it. The structural evaluation must document the condition of the structure and any recommended corrective actions. The condition of floor supports in this building must also be evaluated.

Our staff did not have access to the basement or crawl space. The structural evaluation must address the condition of the foundation and any recommended corrective actions.
This house has no gutters or downspouts.

<u>29 South New Street</u>
There are areas of siding that are damaged or missing. This causes concern as to the integrity of the structure beneath it. The structural evaluation must document the condition of the structure and any recommended corrective actions. The condition of floor supports and the roof must also be evaluated.

There are hardwired and interconnected smoke detectors present throughout the dwellings. These must be maintained, including the presence of working batteries in each for the battery back-up. A smoke detector is required on each level of the structure, one in each bedroom, and one in each living space. Smoke detectors are not required in crawl spaces or attics. As this building would remain a two-family dwelling, one of the three options is required prior to issuance of a certificate of occupancy:

1. Convert the structure back to a single family dwelling;
2. Provide required fire separation between the dwelling units; or
3. Install a fire alarm in lieu of the separation if acceptable to the Fire Marshal and Building Inspector.

The basement appeared to be in reasonable condition with the exception of a wet area near the bottom of the steps. This appears to be due to a broken window. The structural report must address any necessary repairs to the basement and foundation of the building.

20 North New Street

There are areas of siding that are damaged or missing. This causes concern as to the integrity of the structure beneath it. The structural evaluation must document the condition of the structure and any recommended corrective actions. . The condition of floor supports and the roof must also be evaluated.

There are hardwired and interconnected smoke detectors present throughout the dwelling. These must be maintained, including the presence of working batteries in each for the battery back-up. A smoke detector is required on each level of the structure, one in each bedroom, and one in each living space. Smoke detectors are not required in crawl spaces or attics.

Our staff did not have access to the basement or crawl space. The structural evaluation must address the condition of the foundation and any recommended corrective actions.

If you should have any questions, please contact me at (302) 736-7196.

Sincerely,

Ann Marie Townshend

Ann Marie Townshend, AICP
Director of Planning and Community Development
atownshend@dover.de.us

cc: Traci McDowell – City Clerk
Timothy M. Taraila – Code Enforcement Supervisor
David Truax – Fire Marshal
City Solicitor

EXCERPT FROM THE SEPTEMBER 9, 2013 REGULAR COUNCIL MEETING MINUTES

PUBLIC HEARING - APPEAL OF ORDER TO VACATE - 20 NORTH NEW STREET, 29 SOUTH NEW STREET, AND 37 SOUTH NEW STREET, OWNED BY HOUSE OF PRIDE

Mrs. Ann Marie Townshend, Director of Planning and Community Development, advised members that on July 8, 2013, the Code Enforcement Division and Fire Marshal's Office conducted inspections of 20 North New Street, 29 South New Street, and 37 South New Street. She stated that the City inspectors identified numerous code violations during these inspections, many of which were chronic violations found in prior years. She explained that each year the violations are corrected, only to be found again in subsequent inspections. She stated that violations were initially reported on these properties following inspections conducted on April 24, 2013. Although staff allowed sufficient time to correct the violations, they remained present during the July 8, 2013 inspection. She indicated that, due to the repeated lack of compliance with code requirements, including life safety requirements, in accordance with Dover Code, Chapter 22 - Buildings and Building Regulations, Article XI - Dangerous Buildings, Section 22-382 (2), the Department of Planning and Inspections ordered the building to be vacated and closed on July 25, 2013.

Mrs. Townshend noted the receipt of a letter, dated July 25, 2013, from Ms. Marian Harris, on behalf of the House of Pride, appealing the Order to Vacate (in accordance with Section 22-384(5)(d) of the Dover Code).

Mrs. Townshend reviewed a presentation providing a chronological history and depicting conditions of the properties located at 20 North New Street, 29 South New Street, and 37 South New Street ***(Exhibit #1)***. She explained that the Order to Vacate would require repairs and obtaining a Certificate of Occupancy prior to re-occupying the properties.

Staff recommended that City Council uphold the action of the Department of Planning and Inspections to order the properties at 20 North New Street, 29 South New Street, and 37 South New Street to be vacated and closed.

Council President Bonar declared the public hearing open.

Mr. La Mar Gunn, Chairman and Chief Executive Officer (CEO) of Gunn Wealth Management, 63 Harcrest Court, Dover, advised members of his background in advanced fundraising, noting that as a certified fundraising executive, he had served on several local and national non-profit boards. At this time, he was representing the House of Pride (main office at 105 South New Street) and advised members that he had been requested to develop a new strategic plan for the House of Pride. With regard to the Order to Vacate, Mr. Gunn indicated that all noted defects at the three (3) properties had been cured and, as such, he questioned why City Council would support staff in the Order to Vacate the properties. In developing a new strategic plan, he stated that a new vision had been developed for the House of Pride. He noted that there had been issues in the past, as the pictures that were displayed reflected; however, since they had been resolved, the focus was on moving forward. It was his hope that City Council would serve as a strong partner to the House of Pride as it ventured into the future.

Referring to the concerns regarding the properties being utilized as multi-family dwellings, Mr. Gunn stated that all properties had been converted into single-family dwellings; therefore, this was no longer an issue. He advised members that the House of Pride was currently in advanced discussions

regarding moving the recovery and transitional housing programs outside of City limits and off New Street. He assured members that the House of Pride was playing their part in making improvements to the community. He indicated objections to staff's recommendation to require a Certificate of Occupancy since the receipt of letters from the City of Dover, dated August 9, 2013 and August 26, 2013 indicated that all defects had been cured and the properties were in compliance with the Dover Code.

In response to Mr. Hutchison, Mr. Gunn stated that business and finance plans would be completed in conjunction with the strategic plan. Although work had begun on the strategic plan, he anticipated it would not be completed until December 2013.

Responding to Mr. Lynn, Mr. Gunn stated that he served as the party overseeing the transition for the House of Pride and was working with the Board and Ms. Marian Harris, Executive Director, on this project. With regard to the properties being used for purposes other than single-family dwellings, he reiterated that, in addition to all defects being corrected, other concerns such as the sign-in sheets had been eliminated. He noted that the properties were no longer occupied by the same residents and that the previous tenants either chose to move on their own or were relocated to a property that was more in line with the City's Code. Mr. Gunn confirmed that the attorney for the House of Pride, Ms. Sandra Dean, was present; however, he was requested to represent the House of Pride by Bishop Lott, a member of the Board, as well as the Executive Director.

In response to Mr. Perza, Mrs. Townshend stated that, due to indications remaining throughout the residences such as numbering on doors, there remained a question regarding the use of the properties as rooming houses.

At the request of Mr. Hare, Mr. Gunn assured members that as long as he remained involved, Council would have his word that none of the House of Pride properties located on North and South New Streets would be used as recovery program homes.

Responding to questions of Mr. Lynn, City Solicitor Rodriguez indicated his opinion that the burden of proof would be on the City of Dover. He noted that the Dover Code provides for a hearing, "fact finding" by Council after the hearing is closed, and then a written decision.

There being no one else wishing to speak, Council President Bonar declared the public hearing closed.

Mr. Lynn moved to uphold the action of the Department of Planning and Inspections to order the properties at 20 North New Street, 29 South New Street, and 37 South New Street to be vacated and closed. The motion was seconded by Mr. Slavin.

Responding to Mr. Hare, Mrs. Townshend explained that the House of Pride would be required to complete necessary renovations and obtain a Certificate of Occupancy prior to the properties being re-occupied. She confirmed that the properties would eventually be re-occupied as single-family dwellings. Noting that all violations had been corrected, Mr. Hare questioned what would prevent the House of Pride from obtaining the required Certificate of Occupancy. Responding, Mrs. Townshend stated that inspectors would conduct different types of inspections, since issuance

of a Certificate of Occupancy would require a different level of Code review, and building plans could be involved if renovations were to be made. She confirmed that there were no current Code violations for single-family dwellings; however, this had been the case in previous instances, only for the City to become aware that the properties were being used for lodging and rooming.

For clarification, Mr. Lynn explained that the issue was the distinction between the properties being operated as residential recovery centers versus single-family residential dwellings. He stated his opinion that the mere fact that Mr. Gunn had indicated that the previous residents had been moved to other properties in and of itself is an admission that the properties were not being utilized as residential rental property. He noted Mr. Gunn's response to the question regarding the legal mechanism used to remove the residents from the properties was that they were moved to other properties. Mr. Lynn felt that this was an indication that this matter was not brought to landlord/tenant court; therefore, this implied that there were no leases and that the properties were used as a recovery center. He indicated that the basic factual distinction was that there were sign-in sheets along with house rules, which was not indicative of a residential roommate situation.

In response to Mr. Hare, Mrs. Townshend stated her understanding that the occupants of the properties had been moved out when the inspections were done; however, new occupants had been moved in since that time. She explained that the Order to Vacate would require the property to remain vacant until all renovations were made and a Certificate of Occupancy was issued. She explained that the level of review for a Certificate of Occupancy was more thorough than a housing inspection for property maintenance Code compliance. She indicated that when the City conducts housing inspections, the International Property Maintenance Code is utilized, which may have elements that would be required if the property were newly renovated or constructed. Since the property had been occupied, some elements would not have to be brought up to Code as they would be "grandfathered," although other elements would, such as smoke detectors, etc. Mrs. Townshend stated that when an inspection is conducted for a Certificate of Occupancy, other aspects included in the International Residential Code are required.

Responding to Mr. Slavin, Mrs. Townshend stated that upon her employment with the City in 2006, the City was experiencing ongoing issues involving the House of Pride properties. In 2007, the House of Pride was required to go through the conditional use process since it was clear their properties were not being operated as single-family units, and this was reviewed on an annual basis. Ultimately, conditional use of the properties was presented to the Planning Commission to consider revoking the status since there were constant issues in this respect.

Mrs. Townshend confirmed that, at this time, staff was requesting Council's support to require the properties to be vacated and ensure that the House of Pride followed through on making necessary repairs or corrections in order for Certificates of Occupancy to be issued for single-family residences.

Mr. Hare expressed his concern that if there were actually single families residing at the properties, the City would be displacing them without allowing a period of time, such as 30 days, to ensure that the properties were being used as single-family residences before taking action to have the properties vacated. He reminded members that Mr. Gunn had assured members that the properties were now being used as single-family residences.

Considering the state of the properties, Mr. Slavin relayed concern with allowing anyone to live in those conditions.

Mr. Dixon stated his concurrence with Mr. Slavin's concerns; however, he agreed that the City should provide the owners a period of time to address the issues before requiring the properties to be vacated.

Responding to Mr. Perza, Mrs. Townshend confirmed that all issues depicted in the photos provided in the presentation had been addressed.

Council President Bonar stated he had observed the operations of the House of Pride deteriorate over the years. He indicated that what was once a well-intended and well-run operation had turned into nothing and that he would not want anyone to have to live in those conditions. He stated that it was City Council's responsibility to not only require such dwellings to be brought up to Code but ensure that they are maintained as such.

The motion to uphold the action of the Department of Planning and Inspections to order the properties at 20 North New Street, 29 South New Street, and 37 South New Street to be vacated and closed failed by a roll call vote of four (4) yes, (Lynn, Slavin, Hutchison, and Bonar), three (3) no (Dixon, Perza, Hare), and two (2) absent (Anderson and Williams).

Mr. Hare moved to uphold the action of the Department of Planning and Inspections to order the properties at 20 North New Street, 29 South New Street, and 37 South New Street to be vacated, with the stipulation that the House of Pride be provided 30 days to satisfy the concerns of City staff prior to moving forward with the Order to Vacate. The motion was seconded by Mr. Perza.

For clarification, Mr. Hare explained that the inspection conducted by City staff would require authorization to issue a Certificate of Occupancy for a single-family residence.

Responding to questions of Mr. Gunn, City Solicitor Rodriguez indicated that if City Council did not overturn City staff's decision, the Order to Vacate would remain in effect. Mrs. Townshend stated that the current motion would alter staff's recommendation, explaining that although the Certificate of Occupancy would still be required, vacating the properties would not be required for up to 30 days while the issues with the properties were being resolved in order to obtain a Certificate of Occupancy.

Of the three (3) subject properties, Mr. Gunn stated that one (1) property was currently occupied; however, he expressed confusion with the motions that had been made.

Calling a point of order, Mr. Lynn relayed objection to Mr. Gunn even representing the House of Pride, explaining that there was no resolution by which the Board had authorized him to speak on their behalf, nor was he an attorney; therefore, City Council was essentially enabling his unauthorized practice of law, noting that the House of Pride had a lawyer in attendance and there were individuals present from the Board. He questioned the capacity in which Mr. Gunn was addressing City Council.

Bishop Marion Lott, 218 Reed Street, advised members that he had been working with the House of Pride for several years. He stated that the subject properties were single-family dwellings. He explained that the House of Pride had placed emphasis on making themselves available for those in dire need and that they had focused on homeless men, women, and families. He advised members that the House of Pride had worked with the City since July 2013 in conducting inspections to ensure that all Code issues had been resolved. Understanding that there had been a history of issues involving the House of Pride, Bishop Lott stated that changes had been made to improve these issues and felt confident that the continual violations would cease. He stated that the House of Pride had instituted property managers, conducted inspections every 30 days, signed lease agreements that include the requirement to maintain property, etc. It was desired that these changes would not just provide a place for people to live but provide quality living conditions. He assured members that there had been substantial improvements made to the House of Pride properties.

Responding to Mr. Lynn, Bishop Lott stated that there were currently four (4) individuals (adult men) residing at 29 South New Street and, although they were unrelated individuals, the house itself had been designed to serve as a duplex. He stated that the property at 37 South New Street was unoccupied; however, he noted that it also had been designed to serve as a duplex, and the property at 20 North New Street was currently vacant and was designed to serve as a single-family residence. With reference to the individuals residing at 29 South New Street, Bishop Lott stated that there were leases with two (2) of the individuals (one for each duplex) and that the residents of the lower duplex shared their expenses, as did the residents of the upstairs duplex, confirming that the House of Pride received rental income for both duplexes. The leases were signed with the individuals in approximately July/August 2013. He assured members that there were no "house rules" for these individuals and explained that there were such rules when there was a recovery program; however, the recovery program ceased and the properties were converted to single-family homes. He noted that there was a transitional period when individuals continued to reside at the properties.

Mr. Hare withdrew his motion to uphold the action of the Department of Planning and Inspections to order the properties at 20 North New Street, 29 South New Street, and 37 South New Street to be vacated, with the stipulation that the House of Pride be provided 30 days to satisfy the concerns of City staff prior to moving forward with the Order to Vacate, as did Mr. Perza, the seconder of the motion.

Mr. Hare moved to uphold the action of the Department of Planning and Inspections to order the properties at 20 North New Street and 37 South New Street to be vacated, and that the House of Pride be provided 30 days to make necessary repairs and obtain a Certificate of Occupancy for the property located at 29 South New Street, before requiring the House of Pride to vacate the property. The motion was seconded by Mr. Slavin and carried by a unanimous roll call vote (Anderson and Williams absent).

ARTICLE XI. DANGEROUS BUILDINGS

Sec. 22-381. Definitions.
Sec. 22-382. Standards for repair, vacation or demolition.
Sec. 22-383. Nuisance declared.
Sec. 22-384. Duties of building inspector.
Sec. 22-385. Hearing before council.
Sec. 22-386. Violations; penalty for disregarding notices or orders.
Sec. 22-387. Duties of the city solicitor.
Sec. 22-388. Emergency cases.
Sec. 22-389. Procedure when owner absent from the city.
Sec. 22-390. Administrative liability.
Sec. 22-391. Duties of fire marshal and city employees.
Secs. 22-392—22-399. Reserved.

Sec. 22-381. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Dangerous buildings means all buildings or structures which have any or all of the following defects or uses:

(1) *Leaning interior walls.* Those of which the interior walls or other vertical structural members list, lean or buckle to such an extent that a plumb line passing through the center of gravity falls outside of the middle third of its base.

(2) *Damaged walls, etc.* Those which, exclusive of the foundation, show 33 percent or more of damage or deterioration of the supporting member or members, or 50 percent of damage or deterioration of the nonsupporting enclosing or outside walls or covering.

(3) *Loads on roofs.* Those which have improperly distributed loads upon the floors or roofs or which the same are overloaded or which have insufficient strength to be reasonably safe for the purpose used.

(4) *Fire damage, etc.* Those which have been damaged by fire, wind or other causes so as to have become dangerous to life, safety, morals, or the general health and welfare of the occupants or the people of the city.

(5) *Unfit for habitation.* Those which have become or are so dilapidated, decayed, unsafe, insanitary or so utterly fail to provide the amenities to decent living that they are unfit for human habitation, or are likely to cause sickness or disease, so as to work injury to the health, morals, safety or general welfare of those living therein.

(6)

Light, air, sanitation. Those having light, air, and sanitation facilities which are inadequate to protect the health, morals, safety, or general welfare of human beings who live or may live therein.

(7) *Fire escapes, etc.* Those having inadequate facilities in case of fire or panic, or those having insufficient stairways, elevators, fire escapes, or other means of communication.

(8) *Loose parts.* Those which have parts thereof which are so attached that they may fall and injure members of the public or property.

(9) *General welfare.* Those which, because of their condition or use, are unsafe, insanitary, or dangerous to the public health, morals, safety or general welfare of the people of this city.

(10) *Code violations.* Those existing in violation of any provisions of the building code of this city, or any provision of the fire prevention code, or other ordinances of this city.

(11) *Drug sales, use, etc.* Those which are being used for the unlawful selling, serving, storing, giving away or manufacturing (which includes the production, preparation, compounding, conversion, processing, packaging or repackaging) of any drug, which includes all narcotic or psychoactive drugs, cannabis, cocaine and all controlled substances as defined in the Uniform Controlled Substances Act (16 Del. C. § 4701 et seq.).

(12) *Unoccupied buildings.* Those which are left unoccupied and unattended for periods of three months or more so that decay is being accelerated by natural or manmade causes or which may be attracting trespassers and vagrants, increasing the probability of fire and danger to human life.

(13) *Incomplete buildings.* Those under construction, if the authorized work is substantially suspended or abandoned for a period of three months or more.

(Ord. of 2-28-1955, § 1; Code 1981, § 5-86; Ord. of 10-28-1996; Ord. of 3-13-2000)

Sec. 22-382. Standards for repair, vacation or demolition.

The following standards shall be followed in substance by the building inspector in ordering repair, vacation, or demolition of dangerous buildings:

(1) *Repair.* If the dangerous building can reasonably be repaired so that it will no longer exist in violation of the terms of this article, it shall be ordered repaired.

(2) *Vacation.* If the dangerous building is in such a condition or is being used as to make it dangerous to the health, morals, safety, or general welfare of its occupants, it shall be ordered to be vacated and closed. Buildings ordered closed shall not be reopened until a certificate of occupancy is issued.

(3) *Demolition.* In any case where a dangerous building is 50 percent damaged, decayed or deteriorated from its original value or structure, it shall be demolished, and in all cases where a building cannot be repaired so that it will no longer exist in violation of the terms of this article, it shall be demolished. In all cases where a dangerous building is a fire hazard as determined by the fire marshal, or is existing or erected in violation of the terms of this article or any ordinance of the city or statute of the state, it may be demolished.

(Ord. of 2-28-1955, § 2; Code 1981, § 5-87; Ord. of 10-28-1996)

Sec. 22-383. Nuisance declared.

All dangerous buildings within the terms of section 22-381 are hereby declared to be public nuisances, and shall be repaired, vacated and closed or demolished as hereinbefore and hereafter provided.

(Ord. of 2-28-1955, § 3; Code 1981, § 5-88; Ord. of 10-28-1996)

Sec. 22-384. Duties of building inspector.

The building inspector shall:

(1) *Inspect public buildings.* Inspect or cause to be inspected semiannually all public buildings, schools, halls, churches, theaters, hotels, tenements, or commercial, manufacturing, or loft buildings for the purpose of determining whether any conditions exist which render such places a dangerous building within the terms of section 22-381

(2) *Complaints.* Inspect any building, wall or structure about which complaints are filed by any person to the effect that a building, wall or structure is or may be existing in violation of this article.

(3) *Reported violations.* Inspect any building, wall or structure reported (as hereinafter provided for) by the fire or police departments of this city as probably existing in violation of this article.

(4) *Dangerous buildings.* Inspect such other buildings as shall from time to time come to his attention as possibly dangerous buildings within the terms of section 22-381

(5) *Notice to owner.* Notify, in writing, the owner, occupant, lessee, mortgagee, agent and all other persons having an interest in said building, as shown by the land records of the recorder of deeds of the county, of any building found by him to be a dangerous building within the standards set forth in section 22-381, that:

a. *Duties of owner.* The owner must vacate and close, or repair, or demolish said building in accordance with the terms of the notice and this article;

b. *Duties of occupant.* The occupant or lessee must vacate and close said building or may have it repaired in accordance with the notice and remain in possession;

c. *Persons with interest.* The mortgagee, agent or other persons having an interest in said building, as shown by the land records of the recorder of deeds of the county, may, at their own risk, repair, vacate and close, or demolish said building or have such work or act done; provided that any person notified under this subsection to repair, vacate and close, or demolish any building shall be given such reasonable time, not exceeding 30 days, as may be necessary to do, or have done, the work or act required by the notice provided for herein;

d. *Appeal.* The person or entity receiving notice by the building inspector shall have the right to appeal his decision directly to the council and have a hearing conducted in accordance with the provisions of section 22-385 before council, provided that the notice of appeal is filed with the city clerk no later than five days after receiving notice from the building inspector.

(6) *Order to remedy conditions.* Set forth in the notice provided for in subsection (5) hereof a description of the building or structure deemed unsafe, a statement of the particulars which make the building or structure a dangerous building and an order requiring the same to be put in such condition as to comply with the terms of this article within such length of time, not exceeding 30 days, as is reasonable.

(7) *Noncompliance with notice.* Report to the council any noncompliance with the notice provided for in subsections (5) and (6) hereof.

(8) *Testify at hearings.* Appear at all hearings conducted by the council and testify as to the condition of dangerous buildings.

(9) *Notice on buildings.* Place a notice on all dangerous buildings, reading as follows:

"This building has been found to be a dangerous building by the building inspector. This notice is to remain on this building unit until it is repaired, vacated and closed, or demolished in accordance with the notice which has been given the owner, occupant, lessee, mortgagee, or agent of this building, and all other persons having an interest in said building, as shown by the land records of the recorder of deeds of Kent County. It is unlawful to remove this notice until such notice is complied with."

(10) *Orders of council.* Carry out all orders of the council to cause the repair, vacation and closure, or demolition of dangerous buildings pursuant to section 22-385. In causing the vacation of the dangerous building, the building inspector may order the city utilities to be disconnected. In causing the closure of dangerous buildings, the building inspector may direct the removal from the building of all furniture, equipment and other personal property left by vacated occupants.

(Ord. of 2-28-1955, § 4; Code 1981, § 5-89; Ord. of 10-28-1996; Ord. of 7-8-2002)

Sec. 22-385. Hearing before council.

The council of the city shall:

(1) *Notice of hearing.* Upon receipt of a report of the building inspector as provided for in section 22-384(7), give written notice to the owner, occupant, mortgagee, lessee, agent, and all other persons having an interest in said building, as shown by the records of the recorder of deeds of the county, to appear before it on the date specified in the notice to show cause why the building or structure reported to be a dangerous building should not be repaired, vacated and closed, or demolished in accordance with the statement of particulars set forth in the building inspector's notice provided for herein in section 22-384(6).

(2) *Conduct of hearing.* Hold a hearing and hear such testimony as the building inspector or the owner, occupant, mortgagee, lessee, or any other person having an interest in said building, as shown by the land records of the recorder of deeds of the county, shall offer relative to the dangerous building. Hearings relative to reported dangerous buildings as defined in section 22-381(11) shall include the testimony of the city chief of police, who may submit arrest records, complaint records, and affidavits relative to the property as evidence for the hearing.

(3) *Findings.* Make written findings of fact from the testimony offered pursuant to subsection (2) of this section as to whether or not the building in question is a dangerous building within the terms of section 22-381

(4) *Order.* Issue an order based upon findings of fact made pursuant to subsection (3) of this section, commanding the owner, occupant, mortgagee, lessee, agent and all other persons having an interest in said building, as shown on the land records of the recorder of deeds of the county, to repair, vacate and close, or demolish any building found to be a dangerous building within the terms of this article, setting the time within which said building shall be repaired, vacated and closed, or demolished, and provided that any person so notified, except the owners, shall have the privilege of either vacating or repairing said dangerous building; or any person not the owner of

said dangerous building but having an interest in said building as shown by the land records of the recorder of deeds of the county may demolish said dangerous building at his own risk to prevent the acquiring of a lien against the land upon which said dangerous building stands by the city as provided in subsection (5) hereof.

(5) *Failure to comply.* If the owner, occupant, mortgagee, or lessee fails to comply with the order provided for in subsection (4) hereof within ten days, cause such building or structure to be repaired, vacated and closed, or demolished, as the facts may warrant, under the standards hereinbefore provided for in section 22-384, and shall, with the assistance of the city solicitor, cause the costs of such repair, vacation, or demolition to be charged against the land on which the building existed as a municipal lien or cause such costs to be added to the tax duplicate as an assessment, or to be levied as a special tax against the land upon which the building stands or did stand, or to be recovered in a suit at law against the owner, provided that in cases where such procedure is desirable and any delay thereby caused will not be dangerous to the health, morals, safety, or general welfare of the people of this city, the council shall notify the city solicitor to take legal action to force the owner to make all necessary repairs or demolish the building.

(6) *Report to solicitor.* Report to the city solicitor the names of all persons not complying with the order provided for in subsection (4) hereof.

(Ord. of 2-28-1955, § 5; Code 1981, § 5-90; Ord. of 10-28-1996)

Sec. 22-386. Violations; penalty for disregarding notices or orders.

(a) *Violations by owner.* The owner of any dangerous building who shall fail to comply with any notice or order to repair, vacate and close, or demolish said building given by the council shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined as provided for in Appendix F—Fees and Fines.

(b) *Violations by occupant or lessee.* The occupant or lessee in possession who fails to comply with any notice to vacate and close or who fails to repair said building in accordance with any notice given by the council as provided for in this article shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined as provided for in Appendix F—Fees and Fines.

(c) *Removal of notice.* Any person removing the notice provided for in section 22-384(9) shall be guilty of a misdemeanor and, upon conviction, shall be fined as provided for in Appendix F—Fees and Fines.

(d) *[Late payment.]* Fines not paid within 14 days of the day the fine was issued, including the day the fine was issued, shall be automatically doubled in amount.

(Ord. of 2-28-1955, § 6; Code 1981, § 5-91; Ord. of 10-28-1996; Ord. of 9-22-2003; Ord. No. 2009-09, 6-22-2009)

Sec. 22-387. Duties of the city solicitor.

The city solicitor shall:

(1) *Prosecutions.* Prosecute all persons failing to comply with the terms of the order provided for in section 22-385(4).

(2) *Hearings.* Appear at all hearings before the council in regard to dangerous buildings.

(3) *Collections.* Bring suit to collect all municipal liens, assessments, or costs incurred in repairing or causing to be vacated and closed or demolished dangerous buildings.

(4) *Other legal action.* Take such other legal action as is necessary to carry out the terms and provisions of this article.

(Ord. of 2-28-1955, § 7; Code 1981, § 5-92; Ord. of 10-28-1996)

Sec. 22-388. Emergency cases.

In cases where it reasonably appears that there is an immediate danger to the life or safety of any person, unless a dangerous building is immediately repaired, vacated and closed, or demolished, the building inspector shall report such facts to the council, which may cause the immediate repair, vacation, or demolition of such dangerous building. The costs of such emergency repair, vacation or demolition of such dangerous building shall be collected in the same manner as provided in section 22-385(5).

(Ord. of 2-28-1955, § 8; Code 1981, § 5-93; Ord. of 10-28-1996)

Sec. 22-389. Procedure when owner absent from the city.

In cases, except emergency cases, where the owner, occupant, lessee, or mortgagee is absent from the city, all notices or orders provided for herein shall be sent by registered or certified mail to the owner, occupant, mortgagee, lessee and all other persons having an interest in said building, as shown by the land records of the recorder of deeds of the county, to the last known address of each, and a copy of such notice shall be posted in a conspicuous place on the dangerous building to which it relates. Such mailing and posting shall be deemed adequate service.

(Ord. of 2-28-1955, § 9; Code 1981, § 5-94)

Sec. 22-390. Administrative liability.

No officer, agent, or employee of the city shall render himself personally liable for any damage that may accrue to persons or property as a result of any act required or permitted in the discharge of his duties under this article. Any suit against any officer, agent, or employee of the city as a result of any act required or permitted in the discharge of his duties under this article shall be defended by the city solicitor until the final determination of the proceedings therein.

(Ord. of 2-28-1955, § 10; Code 1981, § 5-95)

Sec. 22-391. Duties of fire marshal and city employees.

The fire marshal, all members of the fire department, all officers of the police department, and all other employees of the city shall report, in writing, to the building inspector all buildings or structures within the city which shall come to their knowledge or attention as being dangerous buildings within the terms of this article.

(Ord. of 2-28-1955, § 11; Code 1981, § 5-96)

Secs. 22-392—22-399. Reserved.

102.2 Other laws. The provisions of this code shall not be deemed to nullify any provisions of local, state, or federal law.

102.3 Application of references. References to chapter or section numbers or to provisions not specifically identified by number shall be construed to refer to such chapter, section, or provision of this code.

102.4 Referenced codes and standards. The codes and standards referenced in this code shall be considered part of the requirements of this code to the prescribed extent of each such reference. Where differences occur between provisions of this code and referenced codes and standards, the provisions of this code shall govern.

Exception: Where enforcement of a code provision would violate the conditions of the listing of the equipment or appliance, the conditions of the listing shall govern.

102.5 Partial invalidity. In the event that any part or provision of this code is held to be illegal or void, this shall not have the effect of making void or illegal any of the other parts or provisions.

PART 2—ADMINISTRATION AND ENFORCEMENT

SECTION 103
DEPARTMENT OF BUILDING SAFETY

103.1 Creation of enforcement agency. The Department of Building Safety is hereby created, and the official in charge thereof shall be known as the *code official*.

103.2 Appointment. The *code official* shall be appointed by the chief appointing authority of the jurisdiction.

103.3 Deputies. In accordance with the prescribed procedures of this jurisdiction and with the concurrence of the appointing authority, the *code official* shall have the authority to appoint a deputy *code official*, the related technical officers, inspectors, plan examiners, and other employees. Such employees shall have powers as delegated by the *code official*.

SECTION 104
DUTIES AND POWERS OF CODE OFFICIAL

104.1 General. The *code official* is hereby authorized and directed to enforce the provisions of this code. The *code official* shall have the authority to render interpretations of this code and to adopt policies and procedures in order to clarify the application of its provisions. Such interpretations, policies, and procedures shall be in compliance with the intent and purpose of this code. Such policies and procedures shall not have the effect of waiving requirements specifically provided for in this code.

104.2 Applications and permits. The *code official* shall receive applications, review construction documents, and issue permits for the *repair*, *alteration*, *addition*, demolition, *change of occupancy*, and relocation of buildings; inspect the premises for which such permits have been issued; and enforce compliance with the provisions of this code.

104.2.1 Preliminary meeting. When requested by the permit applicant or the *code official*, the *code official* shall meet with the permit applicant prior to the application for a construction permit to discuss plans for the proposed work or *change of occupancy* in order to establish the specific applicability of the provisions of this code.

Exception: *Repairs* and Level 1 *alterations*.

104.2.1.1 Building evaluation. The *code official* is authorized to require an *existing building* to be investigated and evaluated by a registered design professional based on the circumstances agreed upon at the preliminary meeting. The design professional shall notify the *code official* if any potential nonconformance with the provisions of this code is identified.

104.3 Notices and orders. The *code official* shall issue all necessary notices or orders to ensure compliance with this code.

104.4 Inspections. The *code official* shall make all of the required inspections, or the *code official* shall have the authority to accept reports of inspection by approved agencies or individuals. Reports of such inspections shall be in writing and be certified by a responsible officer of such approved agency or by the responsible individual. The *code official* is authorized to engage such expert opinion as deemed necessary to report upon unusual technical issues that arise, subject to the approval of the appointing authority.

104.5 Identification. The *code official* shall carry proper identification when inspecting structures or premises in the performance of duties under this code.

104.6 Right of entry. Where it is necessary to make an inspection to enforce the provisions of this code, or where the *code official* has reasonable cause to believe that there exists in a structure or upon a premises a condition which is contrary to or in violation of this code which makes the structure or premises unsafe, *dangerous*, or hazardous, the *code official* is authorized to enter the structure or premises at reasonable times to inspect or to perform the duties imposed by this code, provided that if such structure or premises be occupied that credentials be presented to the occupant and entry requested. If such structure or premises be unoccupied, the *code official* shall first make a reasonable effort to locate the owner or other person having charge or control of the structure or premises and request entry. If entry is refused, the *code official* shall have recourse to the remedies provided by law to secure entry.

104.7 Department records. The *code official* shall keep official records of applications received, permits and certificates issued, fees collected, reports of inspections, and notices and orders issued. Such records shall be retained in the official records for the period required for retention of public records.

104.8 Liability. The *code official*, member of the Board of Appeals, or employee charged with the enforcement of this code, while acting for the jurisdiction in good faith and without malice in the discharge of the duties required by this code or other pertinent law or ordinance, shall not thereby be rendered liable personally and is hereby relieved from personal liability for any damage accruing to persons or property as a result of any act or by reason of an act or omission in the discharge of official duties. Any suit instituted against an officer or

employee because of an act performed by that officer or employee in the lawful discharge of duties and under the provisions of this code shall be defended by legal representative of the jurisdiction until the final termination of the proceedings. The *code official* or any subordinate shall not be liable for cost in any action, suit, or proceeding that is instituted in pursuance of the provisions of this code.

104.9 Approved materials and equipment. Materials, equipment, and devices approved by the *code official* shall be constructed and installed in accordance with such approval.

104.9.1 Used materials and equipment. The use of used materials that meet the requirements of this code for new materials is permitted. Used equipment and devices shall be permitted to be reused subject to the approval of the *code official.*

104.10 Modifications. Wherever there are practical difficulties involved in carrying out the provisions of this code, the code official shall have the authority to grant modifications for individual cases upon application of the owner or owner's representative, provided the code official shall first find that special individual reason makes the strict letter of this code impractical and the modification is in compliance with the intent and purpose of this code, and that such modification does not lessen health, accessibility, life and fire safety, or structural requirements. The details of action granting modifications shall be recorded and entered in the files of the Department of Building Safety.

104.10.1 Flood hazard areas. For *existing buildings* located in *flood hazard areas* for which *repairs*, *alterations* and *additions* constitute *substantial improvement*, the code official shall not grant modifications to provisions related to flood resistance unless a determination is made that:

1. The applicant has presented good and sufficient cause that the unique characteristics of the size, configuration or topography of the site render compliance with the flood-resistant construction provisions inappropriate.
2. Failure to grant the modification would result in exceptional hardship.
3. The granting of the modification will not result in increased flood heights, additional threats to public safety, extraordinary public expense nor create nuisances, cause fraud on or victimization of the public or conflict with existing laws or ordinances.
4. The modification is the minimum necessary to afford relief, considering the flood hazard.
5. A written notice will be provided to the applicant specifying, if applicable, the difference between the design flood elevation and the elevation to which the building is to be built, stating that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced floor elevation and that construction below the design flood elevation increases risks to life and property.

104.11 Alternative materials, design and methods of construction, and equipment. The provisions of this code are not intended to prevent the installation of any material or to prohibit any design or method of construction not specifically prescribed by this code, provided that any such alternative has been approved. An alternative material, design, or method of construction shall be approved where the code official finds that the proposed design is satisfactory and complies with the intent of the provisions of this code, and that the material, method, or work offered is, for the purpose intended, at least the equivalent of that prescribed in this code in quality, strength, effectiveness, fire resistance, durability, and safety.

104.11.1 Research reports. Supporting data, where necessary to assist in the approval of materials or assemblies not specifically provided for in this code, shall consist of valid research reports from approved sources.

SECTION 105
PERMITS

105.1 Required. Any owner or authorized agent who intends to *repair*, add to, alter, relocate, demolish, or change the occupancy of a building or to *repair*, install, add, alter, remove, convert, or replace any electrical, gas, mechanical, or plumbing system, the installation of which is regulated by this code, or to cause any such work to be done, shall first make application to the *code official* and obtain the required permit.

105.1.1 Annual permit. In lieu of an individual permit for each *alteration* to an already approved electrical, gas, mechanical, or plumbing installation, the *code official* is authorized to issue an annual permit upon application therefor to any person, firm, or corporation regularly employing one or more qualified trade persons in the building, structure, or on the premises owned or operated by the applicant for the permit.

105.1.2 Annual permit records. The person to whom an annual permit is issued shall keep a detailed record of *alterations* made under such annual permit. The *code official* shall have access to such records at all times, or such records shall be filed with the *code official* as designated.

105.2 Work exempt from permit. Exemptions from permit requirements of this code shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of this code or any other laws or ordinances of this jurisdiction. Permits shall not be required for the following:

Building:

1. Sidewalks and driveways not more than 30 inches (762 mm) above grade and not over any basement or story below and that are not part of an accessible route.
2. Painting, papering, tiling, carpeting, cabinets, counter tops, and similar finish work.
3. Temporary motion picture, television, and theater stage sets and scenery.
4. Shade cloth structures constructed for nursery or agricultural purposes, and not including service systems.
5. Window awnings supported by an exterior wall of Group R-3 or Group U occupancies.