AGENDA
CITY OF DOVER BOARD OF ADJUSTMENT
WEDNESDAY – September 19, 2012 9:00 AM – CITY HALL

ROLL CALL

APPROVAL OF AGENDA

APPROVAL OF MINUTES OF August 15, 2012 MEETING

NEW BUSINESS

Applicant #V-12-10:
100 Campus Drive, Delaware Technical Community College has requested a variance from the requirements of Article 6 §3.11 of the *Zoning Ordinance* pertaining to the maximum number of parking spaces.

Subject property is zoned IO (Institutional and Office Zone). The Tax Parcel #'s are ED05-057.00-01-01.00-000, ED05-057.01-01-08.00-000 and ED05-057.01-01-07.00-000. The owner of record is State of Delaware c/o Delaware Technical Community College.

ADJOURN
29 Del.C. § 10004(e)(2)

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

CITY OF DOVER
BOARD OF ADJUSTMENT
August 15, 2012

A Regular Meeting of the City of Dover Board of Adjustment was held on Wednesday, August 15, 2012 at 9:00 AM with Chairman Sheth presiding. Members present were Mr. Sheth, Mr. Keller, Mr. Hufnal, and Colonel Ericson. Mr. Senato was absent.

Staff members present were Mrs. Townshend, Ms. Cornwell, Mrs. Harvey, Mrs. Purnell, and Mr. Rodriguez. Also present at the meeting were Bishop Marian Lott and Larry Harris.

APPROVAL OF AGENDA

Mr. Hufnal moved to approve the agenda as submitted, seconded by Col. Ericson and the motion was unanimously carried 4-0 with Mr. Senato absent.

APPROVAL OF THE REGULAR BOARD OF ADJUSTMENT MEETING MINUTES OF JUNE 20, 2012

Mr. Keller moved to approve the regular Board of Adjustment meeting minutes of July 18, 2012 with the necessary correction on pages 9, 11, and 14, seconded by Col. Ericson and the motion was unanimously carried 4-0 with Mr. Senato absent.

OPENING REMARKS CONCERNING DEVELOPMENT APPLICATIONS

Mrs. Townshend presented to the audience the policies and procedures that would be followed during these hearings.

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

NEW BUSINESS

Applicant #V-12-09:

38 South New Street, the House of Pride has requested a variance from the requirements of Article 7 §1.23 of the *Zoning Ordinance* pertaining to the restoration of an existing building as a non-conforming use as two dwelling units after damage exceeds 75% of the replacement cost of the building.

Subject property is zoned RG-1 (General Residence Zone). The Tax Parcel ID # is ED05-076.08-05-84.00-000. The owner of record is House of Pride Inc.

Ms. Cornwell provided an overview of the application and submitted for the record the Staff Report, Applicant response to the criteria and the Deed that was submitted along with the application.

Mrs. Townshend stated that the legal notice was published in the Delaware State Newspaper on August 5, 2012 and the public was notified in accordance with the regulations.

Representative: Bishop Marian Lott and Mr. Larry Harris

Bishop Lott stated that he resides at 218 Reed Street and is a Board Member of the House of Pride.

Mr. Harris stated that he resides at 29 South New Street and is the property manager of the House of Pride.

Bishop Marian Lott and Mr. Larry Harris were sworn in.

Bishop Lott stated that there are several reasons that we want 38 South New Street to remain a conditional use multi-family dwelling. From Division to Loockerman Street there are at least twenty-two (22) residential family dwellings, eleven (11) of them are multi-family dwellings, and eleven (11) single family dwellings. With that in mind, 38 South New Street was originally a multi-family dwelling and to change it to a single family dwelling would not change the climate or vicinity. With it remaining a two (2) family dwelling it would simply be incompliance with the other residence that are primarily in that area. He understood that the City of Dover would perhaps like to see single family dwellings in that area. He has been working with the House of Pride since 1994. He has also done work with the City of Dover in that neighbor as he is also a resident within that neighborhood. In all manner of fairness especially when it comes to the House of Pride, that 38 South New Street remain a two (2) family dwelling. There will be no primary or present changes to the use of the building in that area. It will continue to be a part of the zoning and climate is for that particular area.

Bishop Lott stated that the property was a two (2) family dwelling when it was acquired by the House of Pride over fifteen (15) years ago. No one knows how long it has been a two (2) family dwelling prior to House of Pride receiving ownership of the property. The insurance company gave House of Pride $50,000 to refurbish the property and bring it back to its original use. To change it from a two (2) family dwelling to a single family dwelling would exceed the amount of funds that the insurance company allotted for the restoration of the property since the fire damage. This would create a hardship for the organization. When entering the building the damage was mostly done in the upstairs bedroom. Remainder of the building had water and smoke damage. They believe that they can utilize the amount of funds that the insurance company allowed for the building to restore it to a two (2) family dwelling. If they are not allowed to restore it to a two (2) family dwelling then they run into financial difficulties in restoring the building. They would like for the Board of Adjustment to act in all ways of fairness to allow them to simply return to a point and a place where the building was operative and safe, and continue to use the building. The other necessity of the building remaining a two (2) family dwelling is because the organization rents the property. The revenue that is generated for the House of Pride is done through the use of renting some of the properties. If they are unable to use the building to generate funds for the operation of the program then that will also create a hardship for the organization. Overall they are trying to restore the building, get it back to operational use, and utilize it to continue to run the program.

Mrs. Townshend questioned that they received $50,000 from the insurance company for the repairs? She questioned once the repairs were complete they would be eligible for a total of $73,000 from the insurance company? Responding to Mrs. Townshend, Mr. Harris replied yes.

Mrs. Townshend questioned the rental income to support the program. Their understanding was the property was part of the program for the recovery and transitional housing. Responding to Mrs. Townshend, Mr. Harris replied no. Mrs. Townshend also stated that it is an issue because it has a tax exempt status based on it being used for the program. Responding to Mrs. Townshend, Mr. Harris replied that two (2) employees lived at the property. He lived at the property along with the deceased Mr. Jackson. Mrs. Townshend further stated that this will need to be corrected with the Tax Assessor Office.

Mrs. Townshend further stated that it is a nonprofit organization, but if it is used to generate rental income then it is not a nonprofit organization.

Mr. Sheth questioned what changed it from a non-conforming use? Responding to Mr. Sheth, Mrs. Townshend replied that because of the fire damage the section of the code that relates to the fire damage is in Article 7 non-conforming uses states that no building that houses a non-conforming use shall be restored for other than a conforming use after damage from any cause exceeding 75% of the replacement cost of such building exclusive of foundation. We received from the Tax Assessor Office what the assessed value of the building was and the $73,000 in the repairs exceeds the 75% replacement cost. Under the non-conforming use provisions if the repairs exceed 75% after a fire of the replacement cost then the building will need to come into compliance.

Mr. Harris questioned the amount of the Tax Assessor replacement cost? Responding to Mr. Harris, Mrs. Townshend replied that the information was in a letter that was sent to the House of Pride. Mr. Harris stated that he received information from the insurance company who assessed the property at $112,000. Responding to Mr. Harris, Mrs. Townshend replied that the replacement cost exceeds 75% of the value of the building. Whether it is $73,000 or $112,000 it exceeds 75% of the value of the building. All of the information was in the dangerous building file and the denial of the building permit.

Mr. Hufnal questioned if the fire was pertaining to only one room in the building and he counted nine (9) rooms how do you get 75% damage? Responding to Mr. Hufnal, Bishop Lott replied that the water and smoke damage downstairs was also calculated into that percentage. The fire department had to remove a portion of the roof in the process of putting out the fire. Since it was in the front portion of the building a lot of the smoke damage went from the bedroom into the living room. Mr. Hufnal questioned if the damage went down to the first floor? Responding to Mr. Hufnal, Bishop Lott replied the water and smoke damage went down to the first floor. Mr. Hufnal questioned if the fire went through the roof? Responding to Mr. Hufnal, Bishop Lott replied that the fire did not go through the roof; the damage to the roof was done by the fire company in the process of putting out the fire. The fire did not go onto the first floor. The ceiling of the first floor was damaged.

Col. Ericson questioned the estimate to repair to put it back as a multi-family unit is $73,000? Responding to Col. Ericson, Bishop Lott replied yes. Col. Ericson questioned the cost if it was changed to a single family unit? Responding to Col. Ericson, Bishop Lott replied that the cost of changing it to a single family would nearly double. Each floor has a bathroom and kitchen and the floor plan of the building would require some walls being removed as well as other items in order for it to become a single family dwelling. Also responding, Mr. Harris replied that upon

speaking with the contractor for the project he stated that it would be more than the removal of the kitchen. It is the way the top floor is designed with the bedrooms there would be changes to the structure. The contractor could not attend the meeting today due to a prior engagement. The contractor also expressed utility concerns, heating and plumbing issues being that the building was set up as two apartments. This would cause a hardship such as cost. Col. Ericson questioned why the cost would double in the amount if it is going to be repaired? He questioned what the extra cost would be to go from a multi-family to a single family dwelling? Responding to Col. Ericson, Mr. Harris replied that he was not a designer, but the contractor assured him that it would cost more than the funds House of Pride was given to restore it back to multi-family dwelling.

Mr. Keller questioned if they had more than one estimate for renovations? Responding to Mr. Keller, Mr. Harris replied no, they only had one estimate from the insurance company.

Mr. Keller stated if it must be converted to a single family unit and upon looking at the first floor plan and the second floor plan, the first floor plan would stand on its own even as a single family, and the second floor plan he was concern about the cost doubling. He stated that there would be more electrical plumbing involvement for a kitchen as opposed to just destination of another frame out bedroom with doorways. He questioned the cost doubling? Responding to Mr. Keller, Mr. Harris replied that he was not a builder, but would assume the contractor was talking about the living room area on the second floor. He would assume that it would become bedrooms. The contractor expressed concerns in the way it was designed.

Mr. Hufnal questioned when you go up the staircase and you reach the hallway, the first bedroom and a living room, how do you get from there to the kitchen? Is there a pass way on the right side of the living room that goes into the kitchen? Responding to Mr. Keller, Mr. Harris replied yes, it is on the right side. There is no door.

Mr. Hufnal questioned if the roof area on the second floor if there was a porch area to exit and would it have to be converted to a hallway? Responding to Mr. Keller, Mr. Harris replied on the second floor it is a small porch. Mr. Hufnal further questioned if it would have to be converted to a hallway if it was going to be converted to a single family dwelling? He stated that you cannot go from a living room to a bedroom into another bedroom without a hallway because of functional obsolescent. Mr. Harris replied yes. Mr. Hufnal further questioned if the extra cost would be building a hallway under the porch area?

Col. Ericson also questioned if there could be an opening from the living room to the bedroom and redesign another bedroom. Responding to Col. Ericson, Mr. Harris replied yes.

Col. Ericson questioned if they had received a written estimate from the contractor to convert the building to a single family dwelling? Responding to Col. Ericson, Mr. Harris replied no, he did not receive a written estimate, he was given verbal information.

Mrs. Townshend stated that upon Ms. Cornwell speaking with the Tax Assessor Office the value of the structure is $92,000 and seventy-five percent of the $92,000 would be $69,000. Therefore, the $73,000 exceeds the seventy-five percent (75%).

Mr. Hufnal questioned how damage was assessed? Is it assessed by fire coverage, or what was man made by water damage? Responding to Mr. Hufnal, Mr. Sheth replied the assessment comes from the insurance company.

Mrs. Townshend stated that Ms. Cornwell contacted the Tax Assessor Office to verify that the $92,000 is for the structure and not for the land and structure. The $92,000 is for the land and the building. The value of the building is $66,600.

Mr. Sheth stated that part of the building is land value and the structure may be less than $92,000.

Col. Ericson questioned when was it zoned to RG-1? Responding to Col. Ericson, Mrs. Townshend replied that the downtown area has always been RG-1. In 2001 or 2003 the City of Dover changed the *Zoning Ordinance* to take multi-family out of the permitted uses and put it in the conditional uses. In 2006 the *Zoning Ordinance* changed once again to specify that single family dwellings conversions to a multi-family in the RG-1 was prohibited.

Col. Ericson questioned that at one time there were thirty-eight (38) multi-family dwellings and currently it is down to eleven (11). Responding to Col. Ericson, Mrs. Townshend replied yes. Also responding, Ms. Cornwell replied that there are approximately twenty-two properties in that block and roughly half are multi-family dwellings or apartments, and the other half are single family homes. Col. Ericson questioned if they were multi-family and then converted to single family dwellings. Responding to Col. Ericson, Ms. Cornwell replied no, she believed they have always been used as single family residences. She does not know if there was any conversion.

Mr. Sheth stated that before 2006 the properties could have had a grandfather clause. Due to the fire there is an issue with the *Zoning Ordinance*. The seventy-five percent (75%) of $66,600 which is $49,500 exceeds the assessment value of the structure.

Mrs. Townshend also stated that the determination of the non-conforming use was made in consultation with the Deputy City Solicitor.

Mr. Sheth stated that they wanted the applicant to understand that they are following the requirements and City of Dover *Zoning Ordinance*. The City Councils are the only people who can change the *Zoning Ordinance*.

Bishop Lott stated that even if 38 South New Street was changed to a single family dwelling, from Division Street to Loockerman Street that block will never be single family dwelling because of the multi-family dwellings. There are apartment buildings that exist on the street itself.

Mr. Sheth stated that he agreed with Bishop Lott, but the City of Dover zoning ordinance must be followed and what is already existing will most likely remain there until something happens because of the grandfather clause. If something happens to any of the other buildings such as your building the same non-conforming use will be followed.

Col. Ericson questioned if RG-1 that it is now zoned bad, if it is prohibited from replacing those with multi-family dwellings. Responding to Col. Ericson, Mrs. Townshend replied that if the use ceases for a period of one year, if there is fire damage or changed back to a single family dwelling it cannot go back to a multi-family dwelling. If it is enlarge it will need to come into compliance. The period of one year or fire damage the repair cost exceed seventy-five percent (75%) of the value of the structure.

Mr. Keller stated that it is noted in the Staff Report that the property is subject to a Conditional Use permit as a transitional house. He questioned that prior to the fire was the property listed as non-conforming? Responding to Mr. Keller, Mrs. Townshend replied yes. He further questioned if it required a Conditional Use permit to allow something other than a single family use? Responding to Mr. Keller, Mrs. Townshend replied that the Conditional Use permit was to allow transitional housing rather than it being two (2) one (1) family dwellings. It was to allow the property to be used as transitional or recovering housing associated with the House of Pride programming.

Col. Ericson questioned if there should be a high turnover? Responding to Col. Ericson, Mrs. Townshend replied that they do not monitor the turnover, but the Conditional Use permit is for recovery and transitional housing. The Conditional Use did not cover a building if it was a multi-family dwelling, but it allowed for each of those dwellings to be utilized. It did not legitimize the conversion. For example, if you had a single family dwelling you could not convert it to a multi-family. This is where the non-conforming side of it takes place because the structure itself is two units.

Mr. Keller questioned that with the current zoning had there been a transition from whatever existed prior to zoning towards single family usage? Responding to Mr. Keller, Mrs. Townshend replied that they have not seen it; we have seen a number of areas in the RG-1 zoning district where older buildings have been taken down and replaced with conforming structure. She would have to research to determine what if any of them have been multi-family. There have been some areas where houses have been rebuilt.

Mr. Keller stated that the whole purpose in Planning and Zoning for regulations is to have some uniformity in the application and usage of all the properties within the City of Dover. With the advent of zoning sometimes there are non-conforming properties, but it is generally held to the benefit of the City with the uniform application of the various ordinances, zoning regulations, planning efforts, bulk regulations, and front and side yard setbacks.

Mr. Sheth stated that anytime you make a change you lose the non –conforming status.

Col. Ericson stated that referring to exceptional practical difficulty task we have to first state that if you grant a variance it is not contrary to public interest. We have to conform to the *Zoning Ordinance* and make sure substantial justice is done. It seems that using the word prohibited in the code it is stating that the City of Dover would like to change the entire neighbor to single family dwellings. He questioned if this was correct? Responding to Col. Ericson, Mrs. Townshend replied that was the intent when the ordinance was drafted in 2006 in coordination with Mayor Speed. It was specifically drafted because of the concerns brought forward of the

effect that conversion from single family dwellings to multi-family dwellings was having on the residential community.

Mr. Hufnal stated that the street is already half single family dwellings and half multi-family dwellings.

Bishop Lott stated that he lives on Reed Street. There are two (2) multi-family dwelling remaining. The remaining streets adjacent to New Street, Governors Avenue, and Queen Street also have multi-family dwellings. The whole block of segment of Dover is multi-family.

Mrs. Townshend stated that the word "prohibited" is not in the code. The code under conditional uses states "multi-family dwellings subject to the following restrictions, conversions of single family dwellings to multi-family residential dwellings shall be limited to RG-2 district". The RG-1 and RG-2 regulations are all in one section. The language states that you cannot have the conversion in RG-1; you can only have it in RG-2.

Mr. Keller questioned if it was a conversion from a single family property to a multi-family property? Responding to Mr. Keller, Mrs. Townshend replied that it is a former conversion. In reviewing the code with the deputy city solicitor; the conversion is a legal non-conforming use until such time that under Article 7 needs to come into compliance.

Mr. Keller questioned if it was legal non-conforming in essence by virtual of the zoning to RG-1. Responding to Mr. Keller, Mrs. Townshend replied correct.

Mr. Keller further questioned that it was not a conversion, but allows for continuation of the non-conforming use in affect? Responding to Mr. Keller, Mrs. Townshend replied correct. It was originally built as a one family dwelling structure, but had been converted over time and that is where the non-conforming comes into play.

Mr. Keller questioned that the structure was probably built as single family homes and then used as multi-family or rental units ongoing? Responding to Mr. Keller, Mrs. Townshend replied yes. Also responding, Mr. Sheth replied that this is why the *Zoning Ordinance* changed in 2006.

Mr. Hufnal stated that the property had been used a multi-family unit for at least fifteen (15) years. He questioned that in 2006 when the regulations changed is that the time they had to get a Conditional Use permit? Responding to Mr. Hufnal, Mrs. Townsend replied no, the Conditional Use permit was due to the way the property was being used and not complying with the one family resident use as a transitional and recovery unit. We looked at the *Zoning Ordinance* to determine where it fits. They went before the Planning Commission for a Conditional Use to essentially legitimize the use they had by virtue of it being a philanthropic use, which is a Conditional Use within the one family and general residence.

Col. Ericson questioned if they would still have the Conditional Use regardless of what happens today? Responding to Col. Ericson, Mrs. Townshend replied that it was a separate issue.

Mr. Sheth stated that anyone who would like to buy into that particular area a single family home and they are expecting 9:42 (24) to 9:42 (51) He does not think that they understand that their

next door neighborhood could be a multi-family unit because of the zoning. Responding to Mr. Sheth, Mrs. Townshend replied that the purpose of the non-conforming use section of the code is to allow the non-conforming use to continue, but they would be phased out through attrition. If you have read Article 7 that is how it is written unless it is an injectable use. There are more things that would be on the industrial side that would not be phase out, they would just stop. In terms of something that is legal non-conforming it sets up conditions that would convert; therefore, over time you would have an attrition of non-conformity.

Mr. Sheth stated that you would have to keep it existing because when the ordinance was changed in 2006 you cannot deny that it exists. They try to liberalize by having the 75% structural exceed. If it was less than 75% then they will continue the non-conforming use. This is done to prevent a hardship because it already exists. 9:43 (40) to 9:44 (29)

Col. Ericson stated that by approving this application it would be contrary to the public interest and it not fall within the *Zoning Ordinance.* It being a hardship practical difficulty it seems very weak because they did not have any figures. If it was changed to a single family dwelling they stated that the cost would double to renovate the building, but he finds that hard to believe when there is no written back up from the contractor. He questioned if the applicant had anything solid that they could give that would support the contingent that this would be a hardship? Responding to Col. Ericson, Bishop Lott replied that they could get the information in writing from the contractor as to what they can do with the building with the amount of funds that are available. This will be the first building, 38 The Green, that will fall under the criteria of the *Zoning Ordinance* that has been established by the City of Dover since it was put in place when Mayor Speed was in office. Col. Ericson further stated that when making a decision it sets precedence for everyone else.

Bishop Lott further stated that he has lived in that area since 1994. Upon working with the Mayor we have dealt with problems in the neighborhood, the nature of the neighborhood, and parking issues. He understood when the *Zoning Ordinance* was put in place that it was based on the problems in the neighborhood and what would be good for the neighborhood. We are here today in regards to 38 South New Street because this particular property does not meet those criteria. He understood that a decision had to be made that sets precedence for all the other decisions that will be made in the future pertaining to the units in that particular block, and perhaps in downtown Dover in general. At the same time with your building plan regarding the building on Governors Avenue that faces New Street that will be apartment buildings and not a single family home. Since living in the area apartment buildings between New Street and Kirkwood Street have been built. The building on the corner of Division Street and New Street were renovated and refurbished; and they are apartment buildings. None of those buildings are going anywhere. If anything, other buildings of that nature will be coming in to that vicinity. Even if you look twenty (20) years ahead, you look at the buildings that are on Bradford Street, Governors Avenue, and other buildings in the surrounding area they are not just going to be single family dwellings. The City of Dover did allow for a single family dwelling to be put on the corner of New Street and Reed Street. The building has no resemblance to any building in the neighborhood. If an appraisal is done from Bradford Street towards New Street it will be a high appraisal, if one is done from West Street then it is a low appraisal. He could see some of the buildings being refurbished to bring them up to code and update the appearance.

Bishop Lott further stated that at the same time this is what we plan to do with 38 South New Street. We plan to renovate the building and it will have a resemblance of the other buildings that are in that vicinity.

Mrs. Townshend stated that the House of Pride is a non-profit organization. The question about it being a rental was in regards to it being a part of the transitional housing and recovery? If it is a rental and it is not used for the transitional housing or recovery program then that is an issue for the tax office not the Board of Adjustment.

Bishop Lott stated that he stood to be corrected on a statement that he made; that 38 South New Street is part of the program, but from the perspective that non-paid Staff lives there.

Mr. Keller questioned where Bishop Lott lived whether it was Reed or New Street? Responding to Mr. Keller, Bishop Lott replied that the lives at 218 Reed Street.

Mr. Keller questioned if Bishop Lott owned property on New Street? Responding to Mr. Keller, Bishop Lott replied yes. He owned 59 South New Street which is a single family dwelling.

Mr. Keller questioned that with the number of multi- family apartment usage that Bishop Lott referenced did he have any knowledge as to whether these houses were built as single family dwellings; but just became rental units over time? Responding to Mr. Keller, Bishop Lott replied that they did not just become rental units. House of Pride has had this property for over fifteen (15) years and it was used as a multi-family dwelling prior to House of Pride purchasing the property.

Mr. Keller stated that probably historically the houses were built as single family houses as was his house on Division Street. A number of those have become multi-family through the apartment usage. We have the *Zoning Ordinance* and allowable fair provisions for on-going uses of non-conforming use, but we do have restrictive measures in when the property become so destroyed so as to inhibit their bringing it back to the original non-conforming use again. This brings a slow transition into compliance with the Planning and Zoning efforts within the City.

Mr. Keller questioned the applicant if they had only one estimate from the contractor for the repairs to bring about the insurance money to utilize for the conversion of the apartment? Responding to Mr. Keller, Mr. Harris replied yes.

Mr. Sheth opened a public hearing.

Mr. Osman Sammander was sworn in.

Mr. Sammander stated that during the last Hearing regarding the House of Pride they promised that all of the owners and landlords would take care of the street. He does not think that this happened. He owns the property at 50 South New Street. He has been trying to sell it for the past four (4) months. There have been a lot of activities in that area. They were promised that the program would revitalize the area and take care of the problem. It did not happen. His taxes and insurance have increased. He is afraid to go in the area to make repairs to his rental property the because of the activities and he does not want to rent it anymore. He stated that he did not have

anything against the House of Pride.

Mr. Sheth and Mrs. Townshend stated that Mr. Sammander could give his suggestions at the Planning Commission meeting.

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

Mr. Sheth questioned if there was any correspondence for the record and there was none.

Mr. Keller questioned that there are a number of units in that immediate area and if they are multi-family use and rental units; would there be City records reflecting that a rental application is necessary and is on file to determine whether it is a multi-family usage? Responding to Mr. Keller, Mrs. Townshend replied that they can provide data on the number of rentals in that general vicinity; they can provide data on the number of multi-family verses single family; information on vacant lots; and vacant units. There are vacant houses in the area that do not fall in either of the categories. Mr. Keller further questioned if they were distressed properties? Responding to Mr. Keller, Mrs. Townshend replied yes, there are some.

Mr. Keller further questioned if there was action underway to bring them into compliance or change of use? Responding to Mr. Keller, Mrs. Townshend replied that they have registered vacant buildings so that we can provide that information. There are some that are on the administrative list that would potentially be moving forward to Council for dangerous building action. She does not know if any of them are in the immediate vicinity. She can provide information that the Board of Adjustment may need.

Mr. Keller stated that the information would be beneficial because it may give the Board of Adjustment some indication as to the trend of staying in some multi-family apartment usage or a trend coming into compliance with the *Zoning Ordinance* as a RG-1 single family dwelling.

Mr. Hufnal stated that on the list the subject property shows 38 South New Street, it shows 37 South New Street and 39 South New Street as being both apartments and he assumed that would be on either side? Responding to Mr. Hufnal, Mrs. Townshend replied they were across the street.

Col. Ericson stated that there seems to be problems with parking and congestion. The City of Dover has meet with the community and has passed ordinances that they want to make single family homes in the area to make a better community. He has not heard anything from the applicant today that there is undue hardship or exceptional practical difficulty.

Mr. Keller stated that he agreed with Col. Ericson. It could still be used by the House of Pride if it was renovated to a single family dwelling. It could still be used as a rental unit. Seeing the proposed floor plan it is easy conversion to additional bedrooms or living room as opposed to the complete separate living unit involving a kitchen installation.

Mr. Sheth stated that at least everyone was in agreement with the ordinance that changed in 2006. We all hoped that it would not cause a financial hardship for anyone. Sometimes it could be a slow process. 10:03 (52)

Col. Ericson stated that if they go in the other direction with the variance it would slow the process more and it would be almost impossible to say no to the next applicant because we have set precedent.

Mr. Keller stated that an allowance of this variance would put the Board of Adjustment in the position of creating a non-conforming uses and not after some reasonable allowance through the years. If it had been a matter of the door catching on fire or broken window which would be an easy fix up with a small cost; we would not be having this meeting.

Mr. Hufnal stated that House of Pride is a wonderful program and does a great job in the community of providing housing; however, the Board of Adjustment has a ruling to look at that they need to abide by.

Mr. Keller questioned if the application request for a variance was denied, the House of Pride could still continue with the renovation and create another facility as a single family and still bring about revenue? Responding to Mr. Keller, Mr. Sheth replied yes, they would convert from a multi-family to a single family dwelling.

Mr. Sheth questioned if there was any correspondence for the record and there was none.

Col. Ericson moved to deny the variance for Application #V-12-09, located at 38 South New Street, based upon testimony provided and the Staff Report, seconded by Mr. Keller and the motion was unanimously carried 3-1 with Mr. Hufnal opposing and Mr. Senato absent.

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

Meeting adjourned at 10:09 AM

Sincerely,

Maretta Savage-Purnell
Secretary

City of Dover

Board of Adjustment

September 19, 2012

V-12-10

Location:	100 Campus Drive
Applicant:	Delaware Technical Community College (Del-Tech)
Owner:	State of Delaware c/o Delaware Technical Community College
Tax Parcels:	ED-05-057.00-01-01.00-000, ED-05-057.01-01-08.00-000 and ED-05-057.01-01-07.00-000
Application Date:	August 15, 2012
Present Zoning:	IO (Institutional/Office Zone)
Present Use:	College
Reviewed By:	Tracey Harvey
Variance Type:	Area Variance
Variances Requested:	Allow the construction of a proposed parking lot on the DelTech Campus that would further exceed the maximum number of parking spaces allowed by city code.

Project Description:
The applicant is requesting a variance from the *Zoning Ordinance* of Article 6 Section 3.11 limiting the number of parking spaces to no more than 25% over the minimum number of parking spaces required by code. The college is proposing an addition to be built onto the existing Office of the President/Administration Building. The building is located in the northern portion of the campus on the west side of North DuPont Highway and south of West Denneys Road and north of Scarborough Road. The proposed addition to be constructed is to the statewide administrative headquarters that provides administrative services for all DelTech campuses and requires travel daily from the Wilmington, Stanton, Georgetown and Dover campuses.

Adjacent Land Uses

The adjacent properties are a mixture of commercial, residential, and institutional uses. The properties to the north, across West Denneys Road are located in Kent County and are zoned IL (Limited Industrial District, RMH (Residential Manufactured Home District), and BG (General Business District). The properties to the south across Scarborough Road are zoned IO (Institutional Office Zone). The properties to the west are zoned IG (General Industrial Zone within Kent County and IPM (Industrial Park Manufacturing Zone) within the City of Dover. The properties to the east across North DuPont Highway are all located within Kent County and are zoned BG (General Business District).

Code Citation

Article 6 Section 3. - Required off-street parking spaces.

> 3.11 *Maximum number of parking spaces.* The maximum number of parking spaces shall not exceed 25 percent over the number of parking spaces required by the code.

Exceptional Practical Difficulties Tests

Article 9, §2 dictates the specific powers and duties of the Board of Adjustment with regard to granting variances. Specifically the Board must determine:

Specifically the Board must determine:

2.1 Variance **–** The board shall have the authority to authorize variances from provisions of the zoning ordinance that are not contrary to public interest where the board determines that a literal interpretation of the *Zoning Ordinance* would result in undue hardship or exceptional practical difficulties to the applicant. In granting variances, the board shall determine that the spirit of the *Zoning Ordinance* is observed and substantial justice done.

2.11 Area Variance. A variance shall be considered an area variance if it relates to bulk standards, signage regulations, and other provisions of the *Zoning Ordinance* that address lot layout, buffers, and dimensions. In considering a request for an area variance, the board shall evaluate the following criteria and document them in their findings of fact:

> (a) the nature of the zone in which the property lies;
> (b) the character of the immediate vicinity and the contained uses therein;
> (c) whether, if the restriction upon the applicant's property were removed, such removal would seriously affect neighboring properties and uses; and
> (d) whether, if the restriction is not removed, the restriction would create unnecessary hardship or exceptional practical difficulty for the owner in his efforts to make normal improvements in the character of that use of the property that is a permitted use under the provisions of the zoning ordinance.

1. The nature of the zone in which the property lies.

   Applicant Responses:
   This parcel is zoned Industrial Office (IO) which is a very broad zone and allows uses that range from business, medical and governmental offices to hospitals, police

stations, and athletic fields. This zone applies one parking regulation that does not properly account for all the various uses. For example, both Delaware State University (Del State) and Delaware Technical Community College (DelTech) are zoned IO, yet have drastically different parking needs. DelState provides room and board for its students and some staff, and a portion of those students are not allowed to park a vehicle on campus. In contrast, DelTech does not offer on-campus housing, which requires every student and every staff member to commute to the campus on a daily basis resulting in a much higher demand for parking.

The IO Zoning requires one parking space per 300 square feet of the building area. If this 15,193 S. F. administrative building were located on a separate parcel, 51 total parking spaces would be required for this facility to adequately function. This plan proposes a total of 51 parking spaces, only enough to bring the administrative building up to code, which is enough for this facility to properly function.

Staff Response:
The use as a college is in keeping with the IO (Institutional/Office Zone) Zoning District. The Zoning Ordinance calculates parking for college or universities at a rate of one (1) parking space for every five (5) seats within the main auditorium/cafeteria or gymnasium; however, if none of those apply the parking is calculated at a rate of one (1) parking space for every 300 SF of floor space within the building. Based on the total square footage of the buildings 974 parking spaces are required for the campus. The site has 1,333 parking spaces, 37% more than the maximum number required. The Office of the President/Administration Building already has existing parking adjacent to the building. The building is located at the rear of the campus and services all four campuses on a daily basis.

2. The character of the immediate vicinity and the contained uses therein.

Applicant Responses:
This property is surrounded by major commercial facilities consisting of various commercial, business, and industrial zones and uses. The area is supported by four major roads: Scarborough road, West Dennys Road and US Rt. 13 and St. Rt. 1 which are all designed to transport members of the community to and from these various facilities. This major transit infrastructure allows large parking areas for the community to utilize. Therefore, the zoning, uses and transportation infrastructure of the surrounding area are consistent with our proposed request.

Staff Response:
The surrounding properties are a mixture of industrial, commercial, institutional and residential uses with access to available parking and transit needs. There is also a Park and Ride parking area located at the front entrance of the campus that provides transportation and parking needs for members of the community and the campus. The Park and Ride lot is included in the parking count, as the spaces serve both park and ride users and visitors to the campus.

The building currently has 29 parking spaces and 2 handicap spaces with an additional 539 parking spaces shared with the Terry Building and the Science and Engineering Technology building, with an additional 101 spaces shared with the Education and Technology building for parking needs that are in close proximity to the building.

3. Whether, if the restriction upon the applicant's property were removed, such removal would seriously affect neighboring properties and uses.

Applicant Responses:
The existing administrative building and adjacent parking lot is separated from the Terry Campus by a major internal loop road. The proposed parking area will be located behind the existing building and is situated to providing screening from neighboring properties. It will be installed adjacent to the existing parking lot, creating continuity and reducing the impact to any adjacent properties.

Although this administrative headquarters does not function solely to serve the Terry Campus, the minor addition of 22 requested parking spaces will result in a 1.7% increase in total parking for the facility. This small increase in parking will not negatively affect the surrounding properties.

Staff Response:
The location of parking located behind the building would not negatively affect the neighboring properties as they have parking available for their uses. The parking would not be easily visible from the adjacent properties.

4. Whether, if the restriction is not removed, the restriction would create unnecessary hardship or exceptional practical difficulty for the owner in his efforts to make normal improvements in the character of that use of the property that is a permitted use under the provisions of the zoning ordinance.

Applicant Responses:
This building is the statewide administrative headquarters for all four Del-Tech campuses (Wilmington, Stanton, Dover, and Georgetown). This unique facility provides services to all four campuses and administrative members from all four campuses travel to this facility. This building is separate from the educational functions of the Terry Campus and therefore should not be included in the parking calculations for this campus alone. It is not categorized as the same use as the campus buildings and therefore has parking needs that are not consistent with that of the educational campus.

The existing parking count for the Terry Campus includes 234 parking spaces that directly serve a park and ride which is independent of the DelTech Terry Campus. The park and ride serves the entire community and is well situated with direct access to Scarborough Road. The DelTech Terry Campus should not be hindered because a public facility designed to serve the community is located on their property. If these parking spaces are removed from the parking calculations, the

Terry Campus will be in compliance with the code and would not need a variance in order to construct the 22 space parking expansion. We believe the community use of the Del-Tech parking facilities should be considered in our variance request.

DelTech is a commuter based educational facility. Limiting the amount of parking creates a hardship because the staff and students need to park their vehicles at the facility every day in order to access it.

The location of this facility supports additional parking because it has direct access to four major roadways (US. Rt. 13, St. Rt. 1, Scarborough Rd. and West Denneys Rd.), providing the transportation necessary to serve the facility and the proposed parking expansion. Due to the location of the Terry Campus in relation to surrounding community facilities we believe the parking spaces may be used for functions other than that of the Terry Campus. We believe the use of this parking area is good for the Dover community; however, the community use of parking should not hinder the Del-Tech educational or administrative facilities.

Currently, the DelTech administrative building staff utilizes 7 of the Terry Campus parking spaces. The campus parking utilized by the administrative building staff is separated by a major access road to the DelTech Terry Campus. If this restriction is not removed the administrative building will have to reserve an additional 10-15 campus parking spaces for the additional staff associated with the building expansion. It is a hardship for the administrative staff to cross a major access road every day in order to utilize their administrative headquarters. If the restriction is not removed the staff will exacerbate the safety problem associates with crossing this access road.

Staff Response:
If the restrictions are not removed the applicant would not experience an unnecessary hardship or exceptional practical difficulty. The site is required to provide thirty one (31) parking spaces based on the existing square footage of the building of 9,164 S. F. and in compliance with the *Zoning Ordinance*. With the proposed addition to the existing building, there is still additional parking available at the adjacent parking area. The adjacent parking area has a total of 539 parking spaces. The parking requirement for the Terry Building is 221 spaces and the requirement for the Science & Engineering Technology Building is 162 spaces based on the parking calculations of the *Zoning Ordinance.* There is still an additional 156 parking spaces available that will be available at the site. In order to alleviate the safety concern of crossing the access road, a pedestrian crosswalk could be installed to eliminate this safety concern.

Variance Recommendations:
Staff recommends denial of the area variance for an additional parking lot for the reasons as follows:

- The applicant has not demonstrated that there is a shortage of parking on campus.

- The applicant has not demonstrated exceptional practical difficulty as the site already provides additional parking that is adjacent to the existing building. With the proposed addition to the site, there is still more than enough parking available at the site.
- The campus currently exceeds the maximum number of parking spaces permitted by 115 parking spaces.
- There is sufficient parking located across the loop road for this building and the two other buildings those five (5) parking lots serve.
- Safety concerns by the applicant can be addressed by installing traffic calming measures including the installation of a pedestrian crosswalk to alleviate the concern for staff crossing the access road.
- Although the variance would not negatively impact the neighboring properties, an increase in parking at the site is not required with the proposed addition.

BOARD OF ADJUSTMENT
Justification for Variance

2012025.00 DTCC Admin. Building Addition
August 17, 2012

PROJECT SUMMARY:

The Delaware Technical Community College has proposed a 5,900 s.f. addition to the existing 9,164 s.f. state-wide administrative headquarters, along with an expansion to the adjacent parking lot. Although the administrative headquarters is located on the Terry Campus in Dover, it provides administrative services for all four Del-Tech campuses. Administrative members of each campus in Wilmington, Stanton, Dover, and Georgetown travel to the state-wide building daily.

VARIANCE REQUEST:

An area variance from Appendix B, Article 6, Section 3.11 of the City of Dover Code limiting the total maximum number of parking spaces to twenty-five percent (25%) over the number of parking spaces required by code has been requested for the above referenced project. According to Article 9, Section 2.11 of the City of Dover Code, we believe this variance should be granted based on the following:

1. The nature of the zone in which the property lies;

   This parcel is Zoned Industrial Office (IO) which is a very broad zone and allows uses that range from business, medical and governmental offices to hospitals, police stations, and athletic fields. This zone applies one parking regulation that does not properly account for all the various uses. For example, both Delaware State University (Del-State) and Delaware Technical Community College (Del-Tech) are zoned IO, yet have drastically different parking needs. Del-State provides room and board for its students and some staff, and a portion of those students are not allowed to park a vehicle on-campus. In contrast, Del-Tech does not offer on-campus housing, which requires every student and every staff member to commute to the campus on a daily basis resulting in a much higher demand for parking.

   The IO Zoning requires one parking space per 300 square feet of building area. If this 15,193 s.f. administrative building were located on a separate parcel, 51 total parking spaces would be required for this facility to adequately function. This plan proposes a total of 51 parking spaces, only enough to bring this administrative building up to code, which is enough for this facility to properly function.
2. The character of the immediate vicinity and the contained uses therein;

   This property is surrounded by major commercial facilities consisting of various commercial, business, and industrial zones and uses. The area is supported by four major roads: Scarborough Road, West Denneys Road and US. Rt. 13 and St. Rt. 1 which are all designed to transport members of the community to and from these various facilities. This major transit infrastructure allows large parking areas for the community to utilize. Therefore, the zoning, uses and transportation infrastructure of the surrounding area are consistent with our proposed request.
3. Whether, if the restriction upon the applicant's property were removed, such a removal would seriously affect the neighboring properties;

   The existing administrative building and adjacent parking lot is separated from the Terry Campus by a major internal loop road. The proposed parking area will be located behind the existing building and is situated to providing screening from neighboring properties. It will be installed adjacent to the existing parking lot, creating continuity and reducing the impact to any adjacent properties.

Although this administrative headquarters does not function solely to serve the Terry Campus, the minor addition of 22 requested parking spaces will result in a 1.7% increase in total parking for the facility. This small increase in parking will not negatively affect the surrounding properties.

4. Whether, if the restriction is not removed, the restriction would create unnecessary hardship or exceptional practical difficulty for the owner in his efforts to make normal improvements in the character of that use of the property that is permitted uses under the provisions of the zoning ordinance;

This building is the state-wide administrative headquarters for all four Del-Tech campuses (Wilmington, Stanton, Dover, and Georgetown). This unique facility provides services to all four campuses and administrative members from all four campuses travel to this facility.

This building is separate from the educational functions of the Terry Campus and therefore should not be included in the parking calculations for this campus alone. It is not categorized as the same use as the campus buildings and therefore has parking needs that are not consistent with that of the educational campus.

The existing parking count for the Terry Campus includes 234 parking spaces that directly serve a park and ride which is independent of the Del-Tech Terry Campus. The park and ride serves the entire community and is well situated with direct access to Scarborough Road. The Del-Tech Terry Campus should not be hindered because a public facility designed to serve the community is located on their property. If these parking spaces are removed from the parking calculations, the Terry Campus will be in compliance with the code and would not need a variance in order to construct the 22 space parking expansion. We believe the community use of the Del-Tech parking facilities should be considered in our variance request.

Del-Tech is a commuter based educational facility. Limiting the amount of parking creates a hardship because the staff and students need to park their vehicles at the facility every day in order to access it.

The location of this facility supports additional parking because it has direct access to four major roadways (US. Rt. 13, St. Rt. 1, Scarborough Rd. and West Denneys Rd.), providing the transportation necessary to serve the facility and the proposed parking expansion. Due to the location of the Terry Campus in relation to surrounding community facilities we believe the parking spaces may be used for functions other than that of the Terry Campus. We believe the use of this parking area is good for the Dover community; however, the community use of parking should not hinder the Del-Tech educational or administrative facilities.

Currently, the Del-Tech administrative building staff utilizes 7 of the Terry Campus parking spaces. The campus parking utilized by the administrative building staff is separated by a major access road to the Del-Tech Terry Campus. If this restriction is not removed the administrative building will have to reserve an additional 10-15 campus parking spaces for the additional staff associated with the building expansion. It is a hardship for the administrative staff to cross a major access road every day in order to utilize their administrative headquarters. If the restriction is not removed the staff will exacerbate the safety problem associates with crossing this access road.