AGENDA
CITY OF DOVER BOARD OF ADJUSTMENT
WEDNESDAY – August 15, 2012 9:00 AM – CITY HALL

ROLL CALL

APPROVAL OF AGENDA

APPROVAL OF MINUTES OF July 18, 2012 MEETING

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.

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
July 18, 2012

A Regular Meeting of the City of Dover Board of Adjustment was held on Wednesday, July 18, 2012 at 9:00 AM with Chairman Sheth presiding. Members present were Mr. Sheth, Mr. Keller, Mr. Hufnal, Colonel Ericson, and Mr. Senato.

Staff members present were Mrs. Townshend, Ms. Cornwell, Mrs. Harvey, Mrs. Purnell, and Mr. Rodriguez. Also present at the meeting were Ashley Gibbon, Fred Borda, Dr. James Fore, Barbara Kepner, Eric Williams, and Mary Merritt.

APPROVAL OF AGENDA

Colonel Ericson moved to approve the agenda with the minor change to move application #V-12-08 to be the first application, seconded by Mr. Senato and the motion was unanimously carried 5-0.

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 June 20, 2012 with the necessary correction to add the number "3" after "Scenario" on page 5, third paragraph, seconded by Mr. Hufnal and the motion was unanimously carried 5-0.

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-12-08:

307 North Governors Avenue, Ashley and Patricia Gibbon have requested a variance from the requirements of Article 7 §1.13 of the *Zoning Ordinance* pertaining to the reestablishment of a nonconforming use within one year to allow the existing building to be used as 2 apartment units.

Subject property is zoned RG-1 (General Residence Zone). The Tax Parcel ID # is ED05-067.20-03-44.00-000. The owners of record are Ashley and Patricia Gibbon.

Ms. Cornwell provided an overview of the application and submitted for the record the Staff Report, Floor Plan, Survey, Letters, and other documents.

Ms. Cornwell stated that the legal notice was published in the Delaware State Newspaper on July 8, 2012 and the public was notified in accordance with the regulations.

Representative: Ashley Gibbon

Mr. Ashley Gibbon was sworn in.

Mr. Gibbon stated that he and his wife purchased the property at 307 North Governors Avenue in April, 2012 and were unaware that it had been vacant for over a year. He contacted the Planning Office to verify the zoning and was told that the property was zoned RG-1 and was a valid non-conforming use; however, a restriction may have been on the property if it had been vacant for more than one year. He later found out that the property had not been vacant. It had been used as a rental unit. He knew of the one year rule upfront because he had spoken to the neighbors before making an offer to purchase the property. The neighbors to the right and left of the property believed that the property had been used as a duplex rental as early as a few months ago. Therefore, he considered it to be still non-conforming.

Mr. Gibbon stated that under criteria two (2) he did not believe that there would be any detriment to the character of the vicinity. It is neighbored by a single family home on each side. The home to the left as seen in the photo is in bad shape and is not being maintained. The rear yard of 305 North Governors Avenue has a 6 foot stockade privacy fence. He had spoken to Joanne Terray in regards to the property and she supports this application. A letter of support to reinstate the non-conforming use as a duplex was drafted for the neighbors to sign, but he was unable to receive a letter from John and Joanne because of the arrival of a new baby. He received support letters from Sandra Lamb and Teresa Crenshaw. The owner of 311 North Governors Avenue, Jean MacDonald was away in New England with her sister. He felt that there will be no negative effects on the neighboring property because it has been used as a multi-family building since 1978. The property was inhabited, but not by the tenant. It had stopped being used as a multi-family due to foreclosure and financial difficulties against the owner. It is possible that the building was being occupied by the owner and not as a rental. He plans on maintaining the building to very good standards and selecting tenants that would best suit the neighborhood. He also has another property at 34 North New Street. There is parking for two vehicles at the rear of the property off the lane, as well as parking on the street for a total of four (4) parking spaces.

Mr. Gibbon further stated that upon purchasing the property the thought of obtaining the rental license at that time went down on his priority list because he was more focused on improving the utilities and working to renovate the property as a duplex unit. The property was fixed up for tenants. He thought that upon completion he would then obtain the rental license for 307 North Governors Avenue along with 34 North New Street. At that time he was informed that the rental license application for 307 North Governors Avenue could not be issued because of the non-conforming use and he could request a variance to permit him to restore the use of the property as a duplex rental unit. Most of the money spent would be wasted if he had to redo the property. If you look at the floor plan it does not seem correct as a single family home. If you had to force through the front door, the downstairs steps would be the only access to come to the first floor. The room downstairs could not be a bedroom; it could only be a living room. The kitchen upstairs would have to be removed only to leave a 12’ x 10’ useless space for entrance from the other bedroom. You would then go from supplying two (2) one (1) bedroom apartments to one (1) two (2) bedroom apartment that would be very large in size. The property has been a duplex since 1978 and has two (2) separate metered electric service, natural gas service, and water service which is separate throughout the building. This would cause a hardship for me and my wife to convert this property back to a single family home.

Mr. Keller questioned if the property was purchased in April 2012? Responding to Mr. Keller, Mr. Gibbon replied yes. Mr. Keller questioned the time of the inquiry with the Planning Office as to the status of the property? Responding to Mr. Keller, Mr. Gibbon questioned if it was the time of the day or the time of the process purchase he was referencing? Responding to Mr. Gibbon, Mr. Keller replied the time of the process purchase. Responding to Mr. Keller, Mr. Gibbon replied that he found the property listed on zillo.com and called the Planning Office before looking at the property. Afterwards, he contacted the realtor to schedule an appointment to look at the property.

Mr. Keller further stated his concern in regards to the timeframe of Mr. Gibbon purchasing the property and when he was told by the Planning Office that the property was legal non-conforming. Responding to Mr. Keller, Mr. Gibbon replied it was two months prior to April 2012. The settlement did take longer than thirty (30) days. He was not clear if there was a valid rental license during the two (2) month timeframe.

Mrs. Townshend stated that the rental permit expires on January 31st of each year. If Mr. Gibbon had called the Planning Office eight (8) weeks prior to purchase, it is possible that we were in the renewal phase of the rental permit. The rental permit would have lapsed for only a year and may not have been caught at that time.

Mr. Keller further questioned if the use was terminated due to the foreclosure? Responding to Mr. Keller, Mr. Gibbon replied yes. Mr. Keller further questioned what the timing involved was between Mr. Gibbon's interest in the property and subsequence activities involving finding out information about the property as to whether or not it was still taking place during the one (1) year time period? Responding to Mr. Keller, Mrs. Townshend replied it was right at the expiration of the one (1) year time period. It is very likely that when Mr. Gibbon called the rental permit was not on the books as being expired.

Mr. Senato questioned if the property was in use a few months prior to Mr. Gibbon purchasing it? Responding to Mr. Senato, Mr. Gibbon replied yes. Mr. Senato further questioned if the property was vacant for sixteen (16) months? Responding to Mr. Senato, Mrs. Townshend replied that the property did not have a valid rental permit. The rental permit had expired on January 31, 2011. In terms of having two (2) units we would look for the rental permit to determine if there were two (2) valid rental permits for the property. One of the units was occupied by the owner. Mr. Senato further questioned if it could be used as a duplex? Responding to Mr. Senato, Mrs. Townshend replied yes.

Mr. Keller questioned the concern regarding the granting of a variance of the property if it was to take place, would it contribute to the slowing of multi-family conversion back to single family residences? How much of the conversion back has taken place in that general area? Responding to Mr. Keller, Mrs. Townshend replied that she has not seen any conversion back at this point. In 2003 the *Zoning Ordinance* was amended to make the conversion of single family to a multi-family residence a Conditional Use. In 2006 the *Zoning Ordinance* was changed again specifically to prohibit the conversion of single family to a multi-family within the RG-1 zoning district. In 2003 this was also when the City went through the student housing ordinance to require that any student home would be a Conditional Use. This was done as an effort to improve the housing stock downtown. It was found that the downtown area which is the largest

RG-1 block in the city was slowly turning to multi-family rentals that were largely student inhabitants. The idea was to stop it at that point so that over time it could turn back. It has not turned back because a lot of the houses have been multi-family for a long time. In some cases there have been some serious structural alterations. Until the economy started to decline we were not seeing them vacant to the point that the non-conforming use would expire. In this case the applicant in the explanation of the exceptional practical difficulty has provided some documentation to demonstrate that renovating it back to a single family home is not that simple. This could be a factor into your consideration.

Mr. Sheth opened a public hearing.

Mr. Fred Borda was sworn in.

Mr. Borda stated that he lives at 235 North Governors Avenue. He is opposed to any more rental units. The students are very much out of control. When he first moved in the area there were only two (2) rental units, now there are more. It is a nice arrangement for someone looking for income, but he is more concerned about the neighborhood. Landlords normally do not police the property very well and do not take a serious interest in the property as much as the neighbors, as well as the circumstances of the tenants of how they live their lives. Some landlords are not aware of the problems or just do not care. He has called landlords and they inform me to call the police. Upon calling the police on a Friday they are busy responding to shootings, accidents on highways, while students drinking and yelling on the front porch at 4:00am is not a top priority.

Mr. Sheth stated that the city has a noise ordinance.

Mr. Borda stated that he was aware of the noise ordinance and he calls the police when incidents happen, but these students are twenty (20) years old, away from home for the first time getting drunk and breaking car windows.

Mrs. Townshend stated that if the variance is granted it would not be allowed to be used as a student home, it could not be rented out to college students unless it received a Conditional Use Permit from the Planning Commission. In order to receive the Conditional Use the applicant would need to meet the distance requirement from other student homes. It is very possible that it would not qualify.

Mr. Borda stated that there is a student housing behind the property. Responding to Mr. Borda, Mr. Sheth replied that the landlords will be made aware so that they can fulfill the *Zoning Ordinance* requirements.

Mr. Borda stated that in general he would like to see properties owner occupied.

Mr. Gibbon stated that when he spoke to Sandra Lamb she had agreed to sign his support letter. He mentioned to them that he would submit a personal commitment letter to each of them and to anyone wishing to have the letter. He had no intention of renting the property to college students. He stated that he would be looking for older and stable people from Dover who plan to stay in Dover. He also has property at 56 South New Street and 34 North New Street. He has been renting the property at 56 South New Street since 2008 and has experience in the rental

business and has made mistakes. He is willing to give his name and number to surrounding neighbors in the area should they have any problems.

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 if the property was vacant or occupied by a tenant? Responding to Mr. Keller, Mr. Gibbon replied yes it is being occupied by a tenant. The tenant is a woman and child who were displaced by a fire in the Clearfield Apartments.

Mr. Senato questioned if the property being rented to the woman and child who were displaced by a fire? He further questioned the time element of Mr. Gibbon not knowing the zoning of the property before purchasing and renting the property? He further questioned why this information was not given by the realtor? Responding to Mr. Senato, Mr. Gibbon replied that upon looking at the listing it is listed as a duplex. The real estate ads stated that the property must be verified by the purchaser prior. You cannot always rely on the real estate listings.

Mr. Senato moved to approve the variance for Application #V-12-08, located at 307 North Governors Avenue, allowing the non-conforming use of a duplex residence to continue, seconded by Mr. Hufnal and the motion was unanimously carried 5-0.

Applicant #V-12-06:
1008 South Governors Avenue, Governors Avenue Realty, LLC has requested a variance from the requirements of Article 5 §7.22 of the *Zoning Ordinance* pertaining to the landscaping buffer of the opaque barrier.

Subject property is zoned C-1A (Limited Commercial Zone). The Tax Parcel ID # is ED05-077.17-06-20.00-000. The owner of record is Governors Avenue Realty, LLC.

Ms. Cornwell provided an overview of the application and submitted for the record the Staff Report, Site Plan and Letters.

Ms. Cornwell stated that the legal notice was published in the Delaware State Newspaper on July 8, 2012 and the public was notified in accordance with the regulations.

Representative: Dr. James C. Fore

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

Dr. James C. Fore was sworn in.

Dr. Fore stated that he is requesting a variance to allow for the landscape buffer to be located on the commercial side of the property between the commercial use and residential use. The adjacent land uses have been shown on the staff report. Code citation requires screening that consists of opaque barrier at least six (6) feet in height accompanied by the landscaping. The use

of the Governors Avenue Animal Hospital is a permitted use with the zoning district and has been there for over 50 years. The Governors Avenue Animal Hospital occupies a corner lot on Governors Avenue and Wyoming Avenue. Dr. Mersky ran the hospital in the 1950's. We are currently undergoing the second expansion since being purchased by Dr. Janice Sosnowski in 1986. The fence required by code is that the screen area has to be at least six (6) feet in height. The reversal of the order from the opaque barrier will not seriously affect the neighboring properties. The back of the property is commercially zoned. The front of the property brings me before the Board of Adjustment today, consists of the abutting of a commercial and residential property next to each other. The Exceptional Practical Difficulty is the area from the parking lot to the property line and the area in question is about eight (8) feet. It would be impossible to move the fence far enough in to put the substantial tree line that needs to be there in place to have it maintained completely on the property. We have a letter from the owner of the residential property Terry Burchenal who is against us having the plants on that side or maintaining the plants on that side because this would traverse his yard given the configuration. Per our request he submitted a letter to the Planning Office stating that he was pleased with having a fence at or near the property line and then allow us to move the landscaping. Changing the position of the fence and plantings will improve the look of the animal hospital by allowing our clients to see the plantings. It will also give us more green space for the walking of the dogs as the people vacate their vehicles.

Dr. Fore further stated that Staff is recommending this variance based on the finding of fact and that we have demonstrated Exceptional Practical Difficulty of the installation of the trees on the residential side of the fence and the difficulty to maintain them. The intent of the opaque barrier has been maintained and the placement of the landscaping could allow for use of our clients with the open space greenery and contribute to the appearance of the property. The trees will exceed the height of the fence very quickly because they are going in at six (6) feet.

Mr. Hufnal questioned if the variance was not granted would the buffer be placed on the other side of the fence which is next to the residential and you would have to go onto their property to maintain? Responding to Mr. Hufnal, Dr. Fore replied yes. If you tried to move the fence far enough to do that, it would bring the fence to the edge of the parking since it is only eight (8) feet.

Mrs. Townshend stated that this is an area of the code whereas Staff would like to bring forward an amendment to deal with. There are a number of issues with this section of the *Zoning Ordinance*. It is a dated issue section of the *Zoning Ordinance* that needs to be updated.

Dr. Fore stated that he agreed and after being Chairman of the Planning Commission in Queen Anne County for fifteen (15) years and served on the Critical Area for the State of Maryland. The difference between buffers and the trees that we want because of clean air and environment is a buffer requirement. Therefore, we would put trees in that we would never see. We are proposing to put in a fence that will be able to see and maintain the trees in the already irrigated area.

Mr. Senato questioned if the neighbors were objecting to the fence? The fence would be on the property line and the trees would be on the other side of the fence. Responding to Mr. Senato, Dr. Fore replied that flowers are not being planted; there are tall evergreen trees by ordinance.

The neighbor is not objecting to the fence, he is pleased that the fence is being installed. Mr. Senato further questioned if the fence would be six (6) feet in height? Responding to Mr. Senato, Dr. Fore replied yes, it is already a six (6) foot white vinyl fence and the opaque barrier will match.

Mr. Keller stated that he agreed with the rationale expressed by Mrs. Townshend and Dr. Fore to take another look at the *Zoning Ordinance.* He was concerned because the fence could not be placed on any part of the abutting neighbor's property. He stated that Dr. Fore's design plan shows that it could appear in one area and not the other given the configuration provided. Responding to Mr. Keller, Dr. Fore replied that there is only an eight (8) foot strip. Mr. Keller questioned what types of trees were being planted? Responding to Mr. Keller, Ms. Cornwell replied Arborvitae. It is a tall evergreen tree.

Dr. Fore questioned if the variance was granted does the fence go right on the property line or is legally supposed to be within six (6) to eight (8) inches from the property line? Responding to Dr. Fore, Mrs. Townshend replied that it needs to be on your property, but it can go right up to the property line.

Mr. Sheth opened a public hearing.

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

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

Col. Ericson moved to approve the variance for Application #V-12-06, located at 1008 South Governors Avenue to allow the landscaping to be erected and maintained on the commercial side of the property as opposed to the outside or directly adjacent to the residential property, seconded by Mr. Hufnal and the motion was unanimously carried 5-0.

Applicant #V-12-07:
142 Red Oak Drive, Barbara Kepner has requested a variance from the requirements of Article 5 §1.11 of the *Zoning Ordinance* pertaining to the setback for a swimming pool.

Subject property is zoned R-10 (One Family Residence Zone). The Tax Parcel ID # is ED05-067.14-04-12.00-000. The owner of record is Barbara Kepner.

Ms. Cornwell provided an overview of the application and submitted for the record the Staff Report, Surveys, Diagram and other documents.

Ms. Cornwell stated that the legal notice was published in the Delaware State Newspaper on July 8, 2012 and the public was notified in accordance with the regulations.

Representative: Barbara Kepner

Barbara Kepner was sworn in.

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

Ms. Kepner stated that she resides at 142 Red Oak Drive. Attending the meeting with her today is her daughter Alexandria and the contractor. When the home was purchased she did not realize there was a twenty (20) foot drainage easement located along the rear property line. The disclosure stated that it was behind the fence which seemed normal because the previous house had open space behind it. When she called the contractor Anthony & Sylvan Pools in April they were marking the pool close to the house. The contractor then informed her that the drainage easement was on the other side of the fence close to her home. This would put the pool right outside the window. The pool is 22'x14' and to have the pool four (4) feet or five (5) feet from the house did not seem safe or aesthetically pleasing to the eye. She cut down a large tree because we looked at moving the pool to the side of the home. When we went to apply for the permit we were informed that it was too close to the neighbor's property line and she could apply for a variance.

Mr. Senato questioned that when she purchased the home she did not realize that there was a twenty (20) foot drainage easement located along the rear property line? Responding to Mr. Senato, Ms. Kepner replied correct. Listed on the disclosure statement it stated twenty (20) foot easement behind the fence. When she was in the process of buying a home she was looking to purchase one whereas she could install a pool at a later date. The backyard is roughly thirty-five (35) feet.

Mr. Senato stated that item #21 was marked yes that there were right-of-ways, easements or similar matters that may affect the property at the time of the seller's disclosure. It stated that there was a twenty (20) foot easement behind the house. He questioned if it was on the other side of the fence? Responding to Mr. Senato, Ms. Kepner replied that on the seller's disclosure it stated that it is twenty (20) feet behind the fence. The realtor and she both thought the easement was behind the fence. Mr. Senato further questioned that she thought it was behind the fence, but in reality it was not? Responding to Mr. Senato, Ms. Kepner replied it was on her side of the property. Mr. Senato further questioned that based on the information given by the seller she thought it was correct? Responding to Mr. Senato, Ms. Kepner replied yes.

Mr. Senato further stated that Ms. Kepner has an existing deck that is four (4) feet by ten (10) inches from the corner of the house and the patio area. He questioned if the pool could be moved closer to the existing deck area? He further questioned if this would be a consideration to move it closer to the house? Responding to Mr. Senato, Ms. Kepner questioned if he was asking if the pool was turned. Responding to Ms. Kepnar, Mr. Senato replied yes.

Mr. Senato further questioned if she was requesting a seven (7) foot property line variance? Responding to Mr. Senato, Ms. Kepner replied yes.

Mr. Eric Williams was sworn in.

Mr. Eric Williams stated that he lives at 126 West Abby Drive in Townsend, Delaware. One of the items that were discussed was direct entrance into the pool being very close to the house. We thought about putting it in the area to the right where it would meet all the setbacks with the twenty (20) foot easement being in the rear and the fifteen (15) foot setback on the side.

However, there are two (2) windows on the property that does not reflect on the drawing. The pool would be four (4) feet from the window. We initially wanted to apply for an easement variance where we could push the pool back, but were informed that it could not be administered. Therefore, we ask if the pool could be put on the side yard.

Mr. Senato questioned if these were regular windows or sliding door windows? Responding to Mr. Senato, Ms. Kepner replied regular windows in the dining room area. Mr. Senato further questioned if they considered putting the pool in that area by the window? Responding to Mr. Senato, Mr. Williams replied that during his twenty-four (24) years of service with Anthony & Sylvan Pools doing commercial insulations as well as building the YMCA in Dover, you cannot have a pool that close to a window. Mr. Senato further questioned what were the regulations for residential properties? Responding to Mr. Senato, Mr. Williams replied that it is not in code, but from his personal opinion this is not done for safety and aesthetic reasons. Mr. Senato further questioned if the only reason that the pool would not be placed by the window is because of safety factors, but not a building code requirement? Responding to Mr. Senato, Mr. Williams replied that was correct. Also responding, Ms. Kpener replied that other safety reasons would be the replacement of siding, roofing, and other renovations.

Mr. Keller stated that looking at the depiction of the proposed pool it is located four feet ten inches from the corner of the house. The pool layout detail is twenty (28) feet but it is shown as a 14'x28' and the cross section detail was given to scale. Responding to Mr. Keller, Ms. Kepner replied that it was a mistake. If you flip the pool over mirror image and it does appear that any difficulties when considering exceptional practical difficulty it must be adherent in the property and not the personal likes and dislikes of the applicant. It appeared that there was adequate spacing to the right of the existing deck with the same size pool. Responding to Mr. Keller, Mr. Williams replied that it is a fiber glass pool that can't be flipped. It can only be rotated. Responding to Mr. Williams, Mr. Keller stated that he did not mean literally the structure, he meant the depiction. Move the location of the pool over to the right of the existing deck.

Mr. Keller stated that Mr. Neely, the Professional Engineer, did not depict on the property plan the location of or mention the drainage easement. Mr. Keller questioned if there was any verification done regarding the existence of the drainage easement? Is there a record plan noted for the subdivision? Responding to Mr. Keller, Ms. Cornwell replied that when the submission originally came in it did not have a survey. She went back through the files and found a survey for the property that showed the twenty (20) foot easement on the property. This is how the issue originated. The original location was within the easement. The pool has been move about four or five times to attempt to get it to fit.

Mr. Sheth questioned if the applicant was keeping the same direction of the pool because the deck already existed, and the steps were on that side? Responding to Mr. Sheth, Mr. Williams replied that was correct.

Mr. Keller stated that it appears that there is more than enough space on the right rear of the property than there is on the left side of the property.

Mr. Sheth further questioned if they put the pool on the right side of the house would be a lesser need for a variance? Responding to Mr. Sheth, Mr. Keller replied there would be no need for a

variance. Also, responding Ms. Cornwell replied that it raises the applicant concern regarding safety the edge of the pool being less than four (4) feet. The closest point to the pool from the house is five (5) feet. If it was flipped it would be less and that would be a safety concern. The decking or the pool cannot go within the twenty (20) foot drainage easement. They need to have decking around the pool.

Mr. Sheth stated that it looks like there is more room on the right side of the deck than the left side. Responding to Mr. Sheth, Mr. Williams replied that the patio would have to be cut out six (6) feet larger. The patio cannot go into the drainage easement.

Mr. Keller stated that the patio behind the proposed pool could not be more than a foot. Responding to Mr. Keller, Mr. Williams replied in one spot.

Mr. Hufnal stated that on the right side the applicant would lose quite a bit of concrete decking around the pool. Also responding, Ms. Cornwell stated that the pool would be much closer to the house.

Mr. Senato questioned if the importance of any distance for the proposed pool was the decking? Are they willing to eliminate the decking around the pool to satisfy the zoning? There are thousands of pools without decking whether above ground or in ground. He agreed with Mr. Keller that the gate area going into the pool has only four (4) feet. This is a safety concern. He did not see any hardship without the decking. You would then have another 4ft. x 10in. less with the pool on the right side. Responding to Mr. Senato, Mr. Williams replied that fiber glass pool needs to have at least three (3) feet of decking. You could get by with one (1) foot because this holds the pool in place.

Mr. Senato questioned if this was for an in ground or above ground pool? Responding to Mr. Senato, Mr. Williams replied in ground. Mr. Senato further questioned that if it was in ground then the dirt doesn't have any impact of holding the pool together? Responding to Mr. Senato, Mr. Sheth replied that it was a technical question. Also, responding Mr. Williams replied that there are several different types of pools that the company installs. The concrete in the fiber glass pools serves as the footer that holds the entire lift of the pool in the ground. It is not just the four (4) foot patio on top that locks and hold the pool in place. Mr. Senato further questioned what was the minimum? Responding to Mr. Senato, Mr. Williams replied that the minimum could be two (2) feet. In this case, if the variance was granted, we only have one (1) foot that would be fine because the majority of the pool would be adequate.

Mr. Sheth questioned what the distance between the property line and the house on both sides was? Responding to Mr. Sheth, Mr. Williams replied that listed on the survey from the front corner it is eighteen and a half feet, but it is a little more in the rear.

Mr. Keller questioned if Anthony & Sylvan Pools construct rectangle or oval, or any other size pools other than the kidney shaped 14'x28' pool as shown on the drawing. Responding to Mr. Keller, Mr. Williams replied yes they construct other shapes of pools.

Mr. Keller stated that when they give consideration to exceptional practical difficulties there are routine difficulties involved with every aspect of engineering, home development, site location,

etc. This dilemma with the ample space to the right rear of the house appears not to be inherent in the property. You could even put a pool that is 14'x22' kidney shape as depicted and placed with adequate decking all around the pool on the right hand side and place the steps in another direction.

Mr. Keller further questioned the applicant response that "granting the variance will also conform to the neighboring properties that have in ground pools installed in the rear and side yard setbacks". Does the city have any knowledge of pools having been placed in this immediate vicinity within setbacks? Responding to Mr. Keller, Ms. Cornwell replied that based on the aerial photographs, the neighboring property to the left has an in ground pool within the easement. Possibly when they pulled a permit the easement was not shown on the survey. Therefore, the permit would have been issued. There is a possibility that the neighboring pool could be within ten (10) feet of the side property line. Until last year when the swimming pool section of the *Zoning Ordinance* was amended and pools shall be fifteen (15) feet away from the side and rear property lines. The neighboring pool is most likely legal non-conforming. Mr. Keller further questioned if the property was the Kays? Responding to Mr. Keller, Ms. Cornwell replied that was correct.

Ms. Kepner stated that she visited the neighbor two days ago and we discussed the rear property line direction. The pool is at the twenty (20) feet; however, the concrete is in the easement. She was told that this could be corrected. Responding to Ms. Kepner, Ms. Cornwell replied that without a survey she could not 100% state that it is not encroaching.

Col. Ericson questioned if the applicant could build their pool with water right up to the drainage easement and the concrete could extend into it? Responding to Col. Ericson, Ms. Cornwell replied no. Nothing can be built within the easement.

Mr. Sheth questioned the distance requirements from the property line? Responding to Mr. Sheth, Ms. Cornwell replied that the concrete decking for the pool can be within five (5) feet of the side and rear property lines. However, in this case nothing can be within twenty (20) feet of the property line due to the drainage easement.

Mr. Keller further stated that when he relates to the large area on the right rear of the house where there is a potential site for pool insulation that the pool's water edge could go to the setback line but decking could extend another ten (10) feet. Responding to Mr. Keller, Ms. Cornwell replied yes, but the actual placement of the pool gets closer to the house, which has been stated as a safety concern.
Mr. Keller further questioned that it was only because of the configuration chosen by the owner as to the kidney shape design pool as oppose to another design. Responding to Mr. Keller, Ms. Cornwell replied that she could not give information on it without seeing drawings, but it is a potential.

Mr. Williams questioned if cement could be poured into the easement? Responding to Mr. Williams, Ms. Cornwell replied no. Mr. Keller also responding replied you could in the setback area up to (5) five feet on the side.

Col. Ericson questioned what would be the plan if the variance is disapproved? Where would the pool be placed or would the applicant drop the issue or get a smaller pool? Responding to Col. Ericson, Ms. Kepner replied that the pool is rather small now. Col. Ericson further questioned what the size of the pool is? Responding to Col. Ericson, Ms. Kepner replied it is 28'x14'. If it was put on the other side the houses are fairly close together. The windows of the neighbor on the east side would be able to look down onto the pool. If it was put on the other side there are no windows and there is only one bedroom window in the corner that is not as close as the others. It would be more private.

Col. Ericson stated that he could appreciate the safety concerns in regards to not putting it on the right side of the house if there is only four (4) feet clearance. There would be a problem if you decided to take off and put on new shingles or siding on the house. If there was a fire it would be very difficult for the fire truck to get into that area. If the pool is to the left it is a better position for the pool.

Mr. Hufnal stated that he agreed with Col. Ericson statement regarding a fire. If you had construction work on the house or a fire you would not be able to get to that area because the pool would be too close to the house. At least in the corner it would give you flexibility to go around.

Col. Ericson further stated that he did not see what the applicant would lose by putting it on the other side. There are other pools that are not within code in the same area.

Mr. Senato further stated that you are talking about a fire which is a possibility and roofing which could occur every twenty (20) years. He did agree with those items, but he disagrees to the extent of something that is going to happen twenty (20) years from now based on zoning today. It is not clear to him. He stated that he has to consider what the *Zoning Ordinance* is stating and that is what he needs to reference at the present time. A 28'x14' is a good size that would give you plenty of swimming area with the steps. Mr. Senato questioned what would the option be with a smaller pool? Do you have a Plan B if this variance is not approved? Responding to Mr. Senato, Ms. Kepner stated that she brought her daughter who is a high school student to the meeting today so that she could see and hear the process of getting the pool that she was asking about. She did not want her daughter to think that the pool was not installed due to a decision her mother made.

Col. Ericson stated that if you look at the four (4) feet and put a ladder up to the roof it would be a pretty steep one. Everyone has an occasion to go up on a ladder even if it is to wash windows once a year. When you get to the pool that is 14' x 28' that is not a large pool. He asked if the company built many smaller pools? Responding to Col. Ericson, Mr. Williams replied no.

Ms. Kepner questioned the ability to get to the roof were they referencing the deck side or the left side. Responding to Ms. Kepner, Col. Ericson replied if the pool was moved to the rear right side with a four (4) foot clearance. Col. Ericson questioned if you were to put a ladder up within that four (4) feet to service the roof, siding or shingles, or clean the windows this would be pretty close. Responding to Col. Ericson, Ms. Kepner replied yes. Also responding, Ms. Cornwell replied that she was not certain that they actually had four (4) feet of a clearance between the edge of the house and the edge of the pool if it was moved to that side. She did look at different

scenarios and if it was moved to the other side they would need to have some decking on that side to hold the swimming pool in place which automatically pushes it out further. The pool could potentially be closer to the house than it is proposed on the other side.

Mr. Keller further questioned if it was based on the size and shape of the pool? Responding to Mr. Keller, Ms. Cornwell replied yes, it is still based on the size and shape of the pool.

Mr. Senato further questioned that since all of this is based on the pool size and shape is there a Plan C or D? Responding to Mr. Senato, Mr. Williams replied that the pool has already been manufactured and is ready to install. When Ms. Kepner purchased the pool we were under the assumption that there was no easement and there was plenty of room.

Mr. Keller further questioned what happens in the case an application is denied? Responding to Mr. Keller, Mr. Williams replied he was not prepared to answer that question. He wants to be fair with our clients.

Mr. Sheth further questioned if the pool goes all the way to the easement line can a walk way be built? Responding to Mr. Sheth, Ms. Cornwell replied no, they cannot build anything within the easement.

Mr. Sheth questioned if the patio and pool was moved two feet or if the pool was moved to the easement line not to build the concrete pad may satisfy the requirement? He further questioned if he knew how many feet were between the pool and the easement line? Responding to Mr. Sheth, Mr. Willims replied in the current proposed location it is a foot from the easement line with the pool. The concrete pad is right up to the easement line.

Mr. Sheth opened a public hearing.

Mr. and Mrs. Robert Merritt were sworn in.

Mrs. Merritt stated that she lives at 24 Tam O Shanter Court. She only had general questions and was very pleased to meet their neighbor. They live behind the neighbor and this will be the second pool in the area. They do not have an objection to where the position of the pool is proposed to be located. They are glad that they came to the meeting because they are hearing different suggestions about the positioning of a pool. This would affect them in some ways if it is moved up to the fence area. They wanted to know if the pool was moved back to the fence are there plans to move the fence? Responding to Mrs. Merritt, Ms. Cornwell replied that the pool cannot be moved back towards the fence because the fence is within the easement. The fence looks to be three (3) feet off the property line and is in the easement and nothing can be built in that area. Therefore, the pool would not be getting closer towards their property line.

Mrs. Merritt questioned the suggestion of moving the pool back towards the easement? Responding to Mrs. Merritt, Ms. Cornwell replied that the suggestion was that it be moved from one side of the property to the other side of the property. This would not go into the easement area.

Mrs. Merritt stated again that this will be the second pool behind their house and wanted to make

sure of the regulations. She wanted the neighbors to enjoy, but at the same time they wanted to enjoy their privacy.

Mr. Keller questioned Mrs. Merritt, according to the survey conducted by Robert Nelly, he if she was the owner of Lot #160? Responding to Mr. Keller, Mrs. Merritt replied yes. He further questioned if she was aware of any drainage easement across the rear of her property? Responding to Mr. Keller, Mrs. Merritt replied she thought that something was there because when that area was being built behind the house there were some water issues and there was water running into her back yard. There was something done regarding the easement when the house was approved. The City had to come out and drain the water from her back yard.

Col. Ericson questioned if she had an objection to the pool? Responding to Col. Ericson, Mrs. Merritt replied that she did not have a problem with where it existed on the diagram.

Mr. Keller stated that he was not suggesting that the pool be relocated or that they build a pool he was only trying to point out from the engineering and design plans given by Anthony & Sylvan Pools that there appears to be adequate space to locate in another area of the back yard even without the issue of a variance. There is availability that this could be done if the applicant chose to do so.

Mr. Sheth questioned if the pool that has already been ordered can be used for another client? Responding to Mr. Sheth, Mr. Williams replied yes.

Mr. Hufnal stated that he sees too many problems having the pool moved to the right side. There are too many safety factors. If there were any emergencies or construction work they would use that side of the house and the pool in that area would create problems. It would also be too close to the house.

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

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

Mr. Keller stated that given the configuration of the pool there would be options to the rectangle design as oppose to the kidney shape which brings the ends of the kidney close to the house. They could possibly have a rectangle pool placed all the way to the setback and easement line a with adequate decking to extend another ten (10) feet beyond that since you can come within five (5) feet of the adjourning property line with decking. With all appearance it would be six (6) or seven (7) feet from the back of the house. If there was some consideration given to the establishing a pool to the right rear of the property as opposed to the proposed pool shown on the plan, which it has been depicted to be within four feet and ten inches to the waterline on one side and it is only approximately three (3) feet or four (4) feet coming in to the gate.

Ms. Cornwell stated that from the Staff report this is a unique situation as there is a twenty (20) foot drainage easement. Typically when you see an easement on a property it is ten (10) feet or maybe fifteen (15) and it is normally split between the property lines. She has never seen a forty (40) foot drainage easement between two property lines. This could be considered an exceptional

practical difficulty as the applicant has lost the ability to use twenty (20) foot of her rear yard which limits the area of developable space on the land.

Mr. Senato moved to table the variance for Application #V-12-07, located at 142 Red Oak Drive, for an alternative plan, there was no second therefore the motion failed.

Mr. Senato moved to deny the variance for Application #V-12-07, located at 142 Red Oak Drive, for an alternative plan and due to lack of demonstration of exceptional practical difficulty, seconded by Mr. Keller and the motion failed 2-3 with Mr. Sheth, Mr. Hufnal and Col. Ericson in opposition.

Mr. Hufnal moved to approve the variance for Application #V-12-07, located at 142 Red Oak Drive, as an exceptional practical difficulty is created because of the twenty foot easement located at the rear of the property, based on Staff recommendations that the swimming pool is not out of character with surrounding properties, the edge of the pool is allowed to be within fifteen (15) feet of the property line and the decking to be within five (5) feet of the property line, second by Mr. Sheth, and the motion carried 3-2 with Mr. Senato and Mr. Keller in opposition.

Mr. Senato moved to adjourn the meeting, seconded by Col. Ericson and the motion was unanimously carried 5-0.

Meeting adjourned at 10:49 AM

Sincerely,

Maretta Savage-Purnell
Secretary

City of Dover

Board of Adjustment

August 15, 2012

V-12-09

Location:	38 South New Street
Applicant:	House of Pride Inc.
Owner:	House of Pride Inc.
Tax Parcel:	ED-05-076.08-05-84.00-000
Application Date:	July 13, 2012
Present Zoning:	RG-1 (General Residence Zone)
Present Use:	Residential
Reviewed By:	Janelle M. Cornwell, AICP
Variance Type:	Area Variance
Variance Requested:	Allow for the reconstruction of a non-conforming building after damage.

Project Description:
The applicant is requesting a variance from the *Zoning Ordinance* 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.

Adjacent Land Uses
The adjacent properties are residential uses. The properties to the north, south, east and west are all zoned RG-1 (General Residence Zone).

General Information
The subject property was purchased by the House of Pride Inc. on November 10, 1997 (deed attached). The property was at that time, and still is , a residential dwelling

consisting of one apartment upstairs and one apartment downstairs. (Floor plans attached).

Code Citation

Section 1. - Nonconforming buildings and uses.
The following provisions shall apply to all buildings and uses existing on the effective date of this ordinance, which buildings and uses do not conform to the requirements set forth in this ordinance; to all buildings and uses that become nonconforming by reason of any subsequent amendment to this ordinance and the zoning map which is a part thereof; and to all conforming buildings housing nonconforming uses:

> 1.2 Except as provided in paragraph [subsection] 1.4 below, no building which houses a non-conforming use shall be:
>
> > 1.21 Structurally altered or enlarged; or
> >
> > 1.22 Moved to another location where such use would be nonconforming; or
> >
> > 1.23 Restored for other than a conforming use after damage from any cause exceeding 75 percent of the replacement cost of such building, exclusive of foundations. Any such building damage[d] to a lesser extent may be restored, but not enlarged, and the nonconforming use reinstated within one year of such damage; [however,] if the restoration of such building is not completed within the said one-year period, the nonconforming use of such building shall be deemed to have been discontinued, unless such nonconforming use is carried on without interruption in the undamaged portion of such building.

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:

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:
   The nature of the zone in which the property lines is residential. In the block of South New Street between Reed Street and Division Street, in which the property lies, there are 22 residential buildings. Eleven of these are multi-family dwellings, based on visual inspection from outside:

   38 S. New St. – the subject of this application, apartments
   30 S. New St. – New Hope Apartments
   16 S. New St. – Apartments
   8-10 S. New St. – Two family duplex
   55-57 S. New St. – Two family duplex
   39 S. New St. – Apartments
   37 S. New St. – Apartments
   29 S. New St. – Apartments
   23-25 S. New St. – Two family duplex
   19-21 S. New St – Two family duplex
   15 S. New St. – Apartments

   Staff Response:
   The property is zoned RG-1 (General Residential Zone) and is surrounded by other residential uses. The General Residence Zone is primarily a one-family residence zone. The property was considered legal non-conforming with regards to the use of the building as two apartments. Fire damage to the building required that the building come into compliance with the *Zoning Ordinance*.

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

   Applicant Responses:
   Based on this assessment of use, the character of the vicinity is clearly residential with half being multifamily dwellings and half being single family dwellings.

   Staff Response:
   The character of the vicinity is residential. The *Zoning Ordinance* permits only single family residences. There is a mixture of multifamily residences and single family residences within the area. The other multifamily residences are all considered legal non-conforming. The area also has a number of properties that are subject to a Conditional Use Permit to allow for transitional housing and as residential recovery facilities. This property is subject to the Conditional Use permit as a transitional house.

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

Applicant Responses:
The subject property has been an apartment house for at least 15 years. It is unknown how long it was an apartment house before purchase by The House of Pride Inc. Therefore, a variance allowing a multi family dwelling would not affect the neighboring property and uses at all.

Staff Response:
The property has been used as a multifamily residence for at least the last fifteen (15) years. The use as a multifamily residence would not negatively impact the neighborhood as there a number of multifamily residences within the area.

Granting the variance would slow the attrition of multi-family conversions back to single-family residences, which has long-term implications on the character of the area

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:
If the restriction is not removed, it would create unnecessary hardship and practical difficulty for the House of Pride in their efforts to restore the property to residential use for the following reasons:

The property is presently unoccupied because of a fire which occurred in the upstairs apartment. The fire caused significant damage to one room of the upstairs, and it caused smoke and water damage of the remainder of the building in varying degrees.

The insurance carrier for The House of Pride Inc. has approved as claim for damages, and has issued payment on the claim in the amount of approximately $50.000.00 which is presently held in escrow for the repairs. This claim and payment is based on restoration of the building to its previous use, which was an upstairs and a downstairs apartment. Each apartment contains, of course, its own kitchen and bathroom. It the applicant is required to convert the building to a single family residence, the cost will be at least double the amount of the insurance payment, funds which the applicant does not have.

Another aspect of the hardship this would cause is that the House of Pride has derived income in rents from two apartments in the building. If the building were restricted to single family residence, it would decrease this rental income

Staff Response:
An exceptional practical difficulty would not be created as renovations to the structure are required to rebuild the building. The property as a single family

residence could still be used as a rental property and could still be used as part of the Conditional Use Permit, provided it maintains compliance with the various code requirements. The removal of the kitchen from the upstairs is the only conversion that would be necessary to convert the property into a single family residence and due to fire damage, a full renovation of the upstairs is required.

Variance Recommendation:
Staff recommends denial of the reconstruction of a non-conforming building due to damage variance for reasons as follows:

- The applicant has not demonstrated exceptional practical difficulty as the conversion to a single family residence could be done as part of the necessary renovations caused from the fire.
- The property is zoned in a general residence zone.
- The owner would still be able to rent the property as a single family residence.
- The neighborhood is a mixture of single family residences and multifamily residences.
- The property is currently being used as a transitional home as part of a Conditional Use Permit.