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 Marion Lott and Mr. 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 JULY 18, 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's 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 Marion 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 Marion 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 multi-family dwelling. Located between Division Street and Loockerman Street there are at least twenty-two (22) residential dwellings; eleven (11) of them are multi-family dwellings, and eleven (11) are single family dwellings. With that in mind, 38 South New Street was originally a single family dwelling and to change it back to a single family dwelling would not change the character of the area. With it remaining a two (2) family dwelling it would simply be in compliance with the other residences that are primarily in that area. He understands that the City of Dover would 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 the neighborhood as he is also a resident within the neighborhood. In all manner of fairness especially when it comes to the House of Pride, that 38 South New Street should 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 character for this particular area.

Bishop Lott further 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 the 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. This would create a hardship for the organization. Most of the damage occurred in the upstairs bedroom. The 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 is operational and safe; and to continue to use the building. The other necessity of the building remaining as 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 the amount of money that the House of Pride received from the insurance company for the repairs? The applicant stated that they received $50,000; however, she had been informed that they would receive $73,000 from the insurance company. Responding to Mrs. Townshend, Mr. Harris replied yes. The insurance company will issue a total of $73,000 for the repairs.

Mrs. Townshend questioned the rental income to support the program, as it was the City's understanding that the property was part of the program for the recovery and transitional housing? Responding to Mrs. Townshend, Mr. Harris replied no.

Mrs. Townshend 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 stated that this will need to be corrected with the Tax Assessor's Office. 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. It 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's Office what the assessed value of the building was and the $73,000 in repairs exceeded 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's 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 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 there was water and smoke damage downstairs that 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 further questioned if the damage went down to the first floor? Responding to Mr. Hufnal, Bishop Lott replied that 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 to the first floor. The ceiling of the first floor was damaged.

Col. Ericson questioned if the estimate to repair the building as a multi-family unit was $73,000? Responding to Col. Ericson, Bishop Lott replied yes. Col. Ericson further questioned what the cost would be 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. 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 as the building was set up as two apartments. This would cause a hardship such as cost.

Col. Ericson further questioned why the cost would double if it is going to be repaired? What would the extra cost would 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 he was concerned about the cost doubling. There would be more electrical and plumbing work for a kitchen as opposed to another bedroom with doorways. 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 stated when you go up the staircase and you reach the hallway, there is 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. Hufnal, Mr. Harris replied yes, it is on the right side. There is no door.

Mr. Hufnal further 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. Hufnal, 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? You cannot go from a living room to a bedroom into another bedroom without a hallway. Responding to Mr. Hufnal, Mr. Harris replied yes.

Col. Ericson 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 further 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's Office the value of the structure is $92,000 and seventy-five percent of $92,000 would be $69,000. Therefore, the $73,000 exceeds 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 on total damage.

Mrs. Townshend stated that Ms. Cornwell contacted the Tax Assessor's 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.

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 as a Conditional Use. In 2006, the *Zoning Ordinance* changed once again to specify that single family dwellings conversions to a multi-family in the RG-1 were 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 (22) properties in that block and roughly half are multi-family dwellings or apartments, and the other half are single family homes.

Col. Ericson further 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.

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

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

Col. Ericson questioned if RG-1 was 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.

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. Prior to the fire was the property listed as non-conforming? Responding to Mr. Keller, Mrs. Townshend replied yes.

Mr. Keller 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. 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 as transitional housing. 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 structures. She would have to do 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 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 the Board grants 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. Is this correct? Responding to Col. Ericson, Mrs. Townshend replied that was the intent when the ordinance was drafted in 2006. It was specifically drafted because of 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 dwellings remaining. The adjacent streets New Street, Governors Avenue, and Queen Street also have multi-family dwellings. That 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 virtue of the zoning to RG-1? Responding to Mr. Keller, Mrs. Townshend replied that was correct.

Mr. Keller further questioned that it was not a conversion, but allowed for continuation of the non-conforming use? 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 further questioned that the structure was probably built as single family home and then used as multi-family or rental units? 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 as a multi-family unit for at least fifteen (15) years. 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 it was used as a transitional housing 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 zones.

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 the future will be more single family unit due to the compliance with the *Zoning Ordinance* if there is a fire or other destruction to the units. 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 objectionable 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 the use. Over time you would have 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 those already existed. They try to liberalize by having the 75% structural exceed then you lose the non-conformity. If it was less than 75% then they will continue the non-conforming use.

Col. Ericson stated that by approving this application it would be contrary to the public interest and it would not fall within the *Zoning Ordinance.* It being a hardship or practical difficulty 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. He finds that hard to believe when there is no written back up from the contractor. If the applicant had anything solid that they could give that would support that this could 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 South New Street, 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.

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. 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. 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 as apartment buildings. None of those buildings are going anywhere. If anything, other buildings of that nature will be coming into 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. 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.

Mr. Keller questioned that with the number of multi-family apartment usage that Bishop Lott referenced did he have any knowledge as to whether those houses were built as single family dwellings; however, 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 dwellings. We have the *Zoning Ordinance* and allowable fair provisions for on-going uses of non-conforming uses, however, 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 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 because of the activities and he does not want to rent it anymore. 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 the 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 multi-family? 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, and 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 an administrative list that would potentially be moving forward to City Council for dangerous building action. She does not know if any of them are in the immediate vicinity.

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 of coming into compliance with the *Zoning Ordinance* as a 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 would be an easy conversion to additional bedrooms or living room as opposed to the complete separate living unit involving a kitchen installation.

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 use. 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 would the House of Pride could still continue with the renovations 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 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