

CONSTRUCTION AND PROPERTY MAINTENANCE CODE BOARD OF APPEALS

The Construction and Property Maintenance Code Board of Appeals meeting was held on May 27, 2026, at 3:31 p.m., with Mr. Boggerty presiding. The members present were Mr. Neil. Mr. Campana and Mr. Rocha were absent. Staff members present were Mr. Kopp, Ms. Brown, Mr. Layfield, Mr. Wood, Ms. Wheeler, and Ms. Martin. Mr. Martin was absent.

ADOPTION OF AGENDA

Mr. Neil moved for approval of the agenda, seconded by Mr. Rocha, and unanimously carried.

2009 International Residential Code (Chapter 1 – Scope and Administration, Section R105 - Permits) - Appeal of Citation for Failure to Obtain a Building Permit – 103 Lady Bug Drive

Ms. Sierra Brown, Code Enforcement Officer, reviewed the case history for 103 Lady Bug Drive.

Mr. Eddie Kopp, Chief Code Enforcement Officer, read into the record the 2009 International Residential Code R105-Permits, 105.1 Required:

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

Responding to Mr. Rocha, Mr. Kopp clarified that the permit would include contacting Miss Utilities and things of that nature.

Responding to Mr. Rocha, Ms. Brown clarified that the citation that was issued on April 16th was \$1,000. She noted that the fee schedule for citations, the first citation issued, started at \$100, and the citations increased from there.

Responding to Mr. Rocha, Ms. Brown stated that the highest the citation could go was for \$1,000. She noted that any subsequent citations after that first \$1,000 citation would continue to be \$1,000.

Responding to Mr. Rocha, Ms. Brown stated that the citation has been issued three (3) times for \$1,000 each.

Responding to Mr. Boggerty, Mr. Kopp stated that since the structure was built without a permit and the permit had been denied, it would have to be removed to be in compliance with the code. Even though a permit had been applied for, he noted that whether the permit was approved or denied, until that permit was finalized, it was still an outstanding code violation. He explained that the situation could have been prevented if the structure had been demolished, which would have been the requirement for the permit. If the permit was applied for and due process was followed, the permit would have been denied before the structure was assembled.

Responding to Mr. Rocha, Mr. Kopp stated that the structure could have been waived, to his knowledge, but the structure did not meet the zoning requirements due to its location.

Responding to Mr. Rocha, Mr. Kopp clarified that Ms. Whitley had the option to apply for a waiver and have the Board of Appeals make that determination. He noted that if Ms. Whitley had done so, she would not have had the violation on her end. He stated that because the structure would not have been corrected at that point, it would have been a non-issue for the Board. He further stated that there was an accessory structure that was built without a permit, and that was the reason for the appeal.

Responding to Mr. Campana, Mr. Kopp clarified that the structure was over the percentage of coverage.

Responding to Mr. Campana, Ms. Whitley stated that she had a series of contractors.

Responding to Mr. Campana, Ms. Whitley explained that she had to fire the first contractor due to several reasons, and the second contractor that was hired assured her they were filing for the permits. She expressed frustration and stated that the contractor had gone missing with their money, and the last contractor that finished the job gave them the groundwork to apply for the permit themselves. She stated that she applied for the permit that was submitted to the city.

Responding to Mr. Campana, Ms. Whitley stated that by the time they had the last contractor in place and had the permit application submitted was in April.

Responding to Mr. Campana, Ms. Whitley stated that a written contract existed for the work being performed by the first contractor, but the contract did not contain a description of the deck.

Responding to Mr. Campana, Ms. Whitley stated that the contract contained the scope of the work. She explained that once the work began with the first contractor, it became clear that the level of detail and scope of work he did not provide, and she fired the contractor.

Responding to Mr. Boggerty, Ms. Whitley stated that the second contractor had a contract in writing, but that contractor had disappeared.

Responding to Mr. Campana, Ms. Whitley stated that the third contractor finished the work and that they had a contract in place to apply for the permit. She noted that the third contractor would not apply for the permit on their behalf.

Responding to Mr. Campana, Ms. Whitley stated that the permit was applied for on April 6th.

Responding to Mr. Rocha, Ms. Whitley stated that she applied for the permit after the structure was built.

Responding to Mr. Neil, Mr. Kopp stated that if the permit was denied, the structure would need to be taken down.

Responding to Mr. Neil, Mr. Kopp clarified that Ms. Whitley would be facing an additional cost to remove the structure, and if she chose to rebuild a smaller structure, there would be a new expense.

Ms. Whitley stated that her permit denial letter mentioned that she could file an application with the Board of Adjustment and file a variance. She explained that she wanted to appeal to the

Construction and Property Maintenance Code Board of Appeals to see what direction the right direction was to take because the lot coverage for her particular property lot was at 75%, and with the deck as built, the lot coverage was at 78%. There was 3% overage, and adjustments could be made to the deck to bring the lot coverage down to 75%. She noted that she was trying to figure out the best way to go, whether to make the adjustments, tear it down, or apply for a variance application.

Responding to Ms. Whitley, Mr. Kopp stated that the best thing to do was to consult with the Planning Office. He noted that the Board of Adjustments would decide on the variance application, so it was not guaranteed that the board would approve a variance. He added that the decision would be on the board, and he did not want to speak on behalf of the board.

Ms. Whitley mentioned that the gazebo was the reason the lot coverage requirements came into consideration. She stated that removing the gazebo would be an option and replacing it with an alternative structure, such as a retractable awning.

Responding to Mr. Rocha, Mr. Kopp stated that it was the Dover Code of Ordinance zoning that considered a gazebo as a building.

Ms. Brown stated that according to the Dover Code of Ordinance, Appendix B - Zoning, Article 5, Section 1.1. Accessory Buildings:

An accessory building may be located in a required side or rear yard, provided:

1.11 Such buildings shall not exceed 15 feet in height.

1.12 Such buildings shall be set back five feet from any lot line and not be located less than ten feet from an adjoining principal structure.

1.13 All such buildings in the aggregate shall not occupy more than 30 percent of the area of the required rear and side yard.

Ms. Brown explained that the gazebo on the deck did not comply with the required setback of five (5) feet from the side and rear property line, and it occupied more than 30% of the rear yard.

Responding to Mr. Rocha, Ms. Brown stated that, according to the Dover Code of Ordinance, Appendix B - Zoning, Article 4, Section 4.11, the maximum lot coverage for her lot was 75%. He noted that the open deck did not count toward lot coverage, but as the deck included the gazebo, it counted toward lot coverage. She further noted that based on the information provided and on record with the city, the lot coverage was approximately 78%.

Responding to Mr. Rocha, Mr. Kopp clarified that if the gazebo was to be removed, they would still have Article 5, Section 1.1, which stated that the structure was over the 10-foot line from the property line.

Responding to Mr. Rocha, Mr. Kopp stated that if they removed Article 5, Section 1.11, shall not exceed 15 feet in height, the structure would still not comply with Article 5, Sections 1.12 and 1.13.

Responding to Mr. Rocha, Ms. Whitley stated that she had not applied with the Board of Adjustment because she wanted to appeal to the Construction and Property Maintenance Code Board of Appeals before they decided what the right direction to go in.

Responding to Mr. Rocha, Mr. Kopp clarified that there was no permit when the structure was built.

Mr. Rocha stated that it caused issues because when an individual applied for the permit prior to part of the construction, the inspector would do their inspection and let the individual know they could only use certain types of materials for construction.

Responding to Mr. Rocha, Ms. Whitley stated that the deck was built at grade and that it was not raised.

Responding to Mr. Rocha, Mr. Kopp was not sure since the deck was built at grade that it was up to code; he would need to look at the construction plans. He was unsure if the structure would require footers.

Responding to Ms. Whitley, Mr. Rocha stated that it was a process to go through, and inspection might have required those footers, and then they would have asked her to go to the Board of Adjustments to see if she could build out that far.

Responding to Mr. Rocha, Ms. Whitley stated that when she walked out her back door, the deck was leveled with the ground.

Responding to Ms. Whitley, Mr. Rocha stated that, even so, the structure might not be within code.

Responding to Mr. Rocha, Ms. Whitley stated that she did her research on footers and looked into the height and the requirements for the footers.

Responding to Ms. Whitley, Mr. Rocha stated that the permit was required to be submitted beforehand due to the city's code. He explained that the inspectors may have to come out and make additional assessments regarding requirements. He further stated that Miss Utility would be contacted to mark the locations of the electrical lines, and things of that nature.

Responding to Mr. Rocha, Ms. Whitley stated that she had received a shed waiver and that there were no easements, utilities, or anything of that nature.

Responding to Mr. Rocha, Ms. Whitley clarified that since they did not go into the ground with their structure, she received a shed waiver.

Responding to Ms. Whitley, Mr. Neil stated that there were several waivers from the city that she received, because the initial complaint came from the Public Works Department, since their trucks could not get through. He noted that she had received two (2) waivers from the city.

Responding to Mr. Neil, Ms. Whitley stated that she had not paid any fines.

Responding to Mr. Neil, Ms. Whitley stated that this was her first appeal.

Responding to Mr. Neil, Ms. Whitley stated that she was not in the city during the winter, acknowledging that it was not an excuse, but indicated that she was not present for the dates that she was issued the citations on April 6th, February 19th, January 20th, and November 20th.

Responding to Ms. Whitley, Mr. Neil stated that there was a cost that was involved because they had to follow the regulations that exist in the city. He emphasized that the costs could have been more if her neighbors had not gotten involved first, but it was the city that handled it since the trucks could not get through. He noted that the staff has made efforts to assist her in bringing the matter into compliance. He further noted that he would be surprised at some level of cost in terms of the fact that there was no response, regardless of the reason she was.

Responding to Mr. Neil, Ms. Whitley stated that her appeal was for the last fine that she received. She emphasized that she would not argue with the previous fines because she understood there was a process and that the appeal requirements were not met for the first fine.

Responding to Mr. Neil, Ms. Brown stated that currently, there was a balance of \$4,100 in outstanding fines for the property in the case. She explained that the fine that was issued on April 6th would have been the \$1,000 citation, and Ms. Whitley stated that was when she had applied for the permit at that time. She also added that there has been only one (1) within that timeframe that was able to be appealed; prior to April 6th, there would have still been \$3,100 worth of citations.

Responding to Mr. Boggerty, Ms. Whitley stated that she would not be arguing the fees for the last three (3) times and that she was aware of the fines.

Mr. Rocha made a motion that the Board would waive the \$1,000 fine, acknowledging that Ms. Whitley had applied for the permit before she received the appeal, and that the remaining \$3,100 outstanding fines would still be owed to the city. The motion was seconded by Mr. Neil.

Mr. Kopp questioned whether they wanted to put a caveat for a time limit to either have the case go before the Board of Adjustment or the structure be removed, because the structure remained a non-compliant structure and remained in violation of the code. He noted that he was unsure if the board wanted to put a set time for Code Enforcement to resume after the Board of Adjustment had reviewed the case, since they were making a motion to remove the \$1,000 fine.

Responding to Mr. Kopp, Mr. Rocha stated that the timeframe before Code Enforcement would resume action on the property would be 90 days.

Responding to Mr. Campana, Mr. Kopp clarified that if they were to decide, it would depend on what the Board of Adjustment decided.

Responding to Mr. Campana, Mr. Kopp stated that 90 days would be fair to appeal to the Board of Adjustment, but in the event that Ms. Whitley did not follow through, they would still have a structure because their next step would be to order the abatement. He explained Ms. Whitley would either remove the structure herself or the City of Dover would remove the structure due to it being non-conforming.

Mr. Rocha amended his motion to add 90 days for Ms. Whitley to make her appeal to the Board of Adjustment or remove the structure. Mr. Neil, as the seconder, agreed with the amendment.

Mr. Rocha moved to waive the \$1,000 citation fee, acknowledging that Ms. Whitley had applied for the building permit. If an appeal is not received by the Board of Adjustment or the deck is not removed by 90 days, Code Enforcement action will resume. The balance of \$3,100 in outstanding fees must be paid before obtaining a permit or filing an appeal with

the Board of Adjustment. The motion was seconded by Mr. Neil and unanimously carried (Martin absent).

Mr. Boggerty stated that the 90 days would begin on May 28, 2026.

Responding to Ms. Whitley, Ms. Brown stated that if the Board of Adjustment approved a variance allowing the structure to remain as constructed, or if modifications were required to submit a new permit, clean hands would require that all outstanding fines be paid before the city issued a building permit.

Responding to Ms. Whitley, Mr. Kopp stated for the record that, before hiring another contractor, she should contact the city so staff could verify that the contractor was properly licensed and confirm that any required permits had been obtained. He explained that the contractors working in the city must be licensed by the State of Delaware and the City of Dover.

Responding to Ms. Whitley, Mr. Kopp stated that when it came down to appeals, if she wanted to appeal to the Board of Adjustment, that would be her right. He noted that the Board of Adjustment deals more with planning. He recommended that she consult with the planner and ask them specifically what was put in their letter so that she could get clarification, and then she could make the decision.

Responding to Mr. Kopp, Ms. Whitley stated that there were two (2) parts: the 75% and the 78% lot coverage. She noted that there was one (1) for 30%, and they could figure that out. She noted that she would need the variance because she was so close to the setbacks, and that would be something she would need to figure out.

Responding to Ms. Whitley, Mr. Kopp stated that she could always consult with the Planning Office, and they could give her information on past practices and the history of the board. He noted that they would present the information to the staff, and it would be up to the board to make the decision.

Responding to Ms. Whitley, Ms. Brown stated that she would like to meet with someone from the Planning Office who was available to talk to her.

2009 Property Maintenance Code Violation (Chapter 3 - General Requirements, Section 302.8 - Motor Vehicles) - Appeal of Citation and Related Fines – 209 West Division Street

Responding to Mr. Boggerty, Mr. Layfield stated that the tire was still flat and the vehicle had not been repaired, and provided pictures for the board to review (**Attachment #1**).

Mr. Matthew Layfield, Code Enforcement Officer, reviewed the case history for 209 West Division Street.

Responding to Mr. Boggerty, Mr. Layfield stated that the fine is \$100.

Responding to Mr. Rocha, Mr. Layfield stated that once the appellant had applied for the appeal, he had stopped sending him the citation, but if he had not applied for the appeal, he would have received another citation of \$200.

Mr. Eddie Kopp, Chief Code Enforcement Officer, read into the record the 2009 International Residential Code 302.8 Motor Vehicles:

Except, as provided for in other regulations, no inoperative or unlicensed motor vehicle shall be parked, kept, or stored on any *premise*, and no vehicle shall at any time be in a state of major disassembly, disrepair, or in the process of being stripped or dismantled. Painting of vehicles is prohibited unless conducted inside an *approved* spray booth.

Exception: A vehicle of any type is permitted to undergo a major overhaul, including body work, provided that such work is performed inside a structure or similarly enclosed area designed and approved for such purposes.

Mr. Njubigbo stated that there was nothing wrong with the vehicle itself, except for the passenger front tire. He explained that the front tire was plugged, and it was in the middle of winter, so he did not have time to take the vehicle to the shop to replace the tire. Pending when the weather improved, he mentioned that he would be able to put air in the tire and take the vehicle to the shop to replace the tire. He noted that the vehicle was registered, insured, had tags, and was currently running. He further noted that he was not planning to remove the vehicle because he still planned on using it. He stated that the letter he received from the City of Dover stated that he had refused to remove an abandoned vehicle, but emphasized that the vehicle was not abandoned, since he still needed to use the vehicle.

Responding to Mr. Njubigbo, Mr. Boggerty stated that for a tire repair, there has been decent weather.

Mr. Njubigbo stated that he had intended to take the vehicle to the shop to repair the tire, but he needed time from work to be able to do that. He noted that the vehicle ran very well, and he planned on not getting rid of the vehicle. It was just that he needed one (1) new tire for his vehicle.

Mr. Kopp stated for clarification that the city did not require a vehicle to be removed. He explained that the vehicle either needed to be repaired or removed from the property. He added that they were not requiring the appellant to get rid of his vehicle; they just needed the vehicle to be operational.

Responding to Mr. Njubigbo, Mr. Neil questioned how important it was to get a tire replaced for the vehicle, even though it was important for him to work. He noted companies could come out and replace the tire. He pointed out that it seemed that the vehicle was not as valuable to him as missing time from work, and that he would rather pay the fine because of the law. He stated that the ordinances that they have were very clear and that the vehicle had to be able to be operational.

Mr. Neil moved to uphold the Code Enforcement Officer's decision and deny the appeal for 209 West Division Street. The motion was seconded by Mr. Rocha.

Responding to Mr. Kopp, Mr. Neil stated that Code Enforcement could resume action within 30 days.

Mr. Rocha concurred with Mr. Neil that action could resume within 30 days.

Mr. Boggerty stated that the motion has been modified to deny the appeal, and Code Enforcement would resume action within 30 days, which would result in additional fines.

Mr. Neil moved to uphold the Code Enforcement Officer's decision and deny the appeal for 209 West Division Street. The Board is giving 30 days to bring the vehicle into compliance. If the vehicle is not brought into compliance, Code Enforcement would assess additional fees. The motion was seconded by Mr. Rocha and unanimously carried (Martin absent).

Mr. Boggerty moved for an adjournment of the Construction and Property Maintenance Code Board of Appeals meeting. The motion was seconded by Mr. Rocha and unanimously carried (Martin absent).

The meeting adjourned at 4:10 p.m.

Andre M. Boggerty
Chairman

AB/cw

Attachments

Attachment #1 – Picture provided by Mr. Layfield for the address 209 West Division Street