

CITY OF DOVER
BOARD OF ADJUSTMENT
November 28, 2007

The Regular Meeting of the City of Dover Board of Adjustment was held on Wednesday, November 28, 2007 at 9:00 AM with Chairman Sheth presiding. Members present were Mr. Sheth, Mr. Senato, Dr. Goate' and Colonel Ericson. Mr. Hufnal was absent.

Staff members present were Mrs. Townshend, Ms. Cornwell, Mr. Albert and Mr. Pepper. Also present were Mr. William Winters, Mr. Gary Johnson, Mr. Doug Liberman, Mr. Robert Nichols, Mr. Sal Leone, Mr. Conny Malmberg, Ms. Robin Alexander, Mrs. Beth Pepper, Ms. Megan Molly, and Mr. Seok Hyun Yoon. Also speaking from the public was Mr. James Shar, Mr. Keith Votar, Ms. Aretha Meekins, and Ms. Kathy McKay.

Mr. Sheth stated that because today's agenda is rather lengthy, he would request that the agenda be changed to reflect that Application V-07-20 County Village Apartments on South Little Creek Road be moved to last on the agenda because of the length of time they would need for this case.

APPROVAL OF AGENDA

Mr. Senato moved to approve the agenda as amended, seconded by Colonel Ericson and the motion was unanimously carried.

APPROVAL OF THE REGULAR BOARD OF ADJUSTMENT MEETING MINUTES OF OCTOBER 17, 2007

Dr. Goate' moved to approve the regular Board of Adjustment meeting minutes of October 17, 2007, as submitted, seconded by Mr. Senato and the motion was unanimously carried.

OPENING REMARKS CONCERNING DEVELOPMENT APPLICATIONS

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

NEW BUSINESS

Applicant #V-07-32:

133 Walker Rd., Lands of William & Joan Winters: William & Joan Winters have applied to the City of Dover Board of Adjustment requesting a variance from the requirements of Article 5 §1.55 of the *Zoning Ordinance* pertaining to the height of fences in the front-yard setback.

Subject property is zoned R-10 (One Family Residence Zone) and the Tax Parcel ID #: ED05-067.16-03-09.02-000. The owners of record are William & Joan Winters.

Representatives: Mr. William F. Winters, Property Owner.

Mrs. Townshend stated that legal notice was published in the Delaware State News on November 18, 2007 and the public was notified in accordance with the regulations.

Mr. Winters stated that it is mentioned that they are requesting a six (6) foot column with a receding wall extending back on their property line. We have been advised that this height is in excess of the *Zoning Ordinance*; however, if you are familiar with the property that runs along Walker Road, from State Street heading west on Walker Road along side of Silver Lake, there is already an existing five (5) foot fence that runs from State Street all the way to the Baptist Church. We are being told that we would be limited to a four (4) foot high fence which is the existing regulation.

Mr. Winters further stated that he would like to submit some examples where there are already existing structures on this roadway that are in excess of the four (4) foot height requirement and have been there for many years. He also has pictures that could be presented if needed. The first property you see coming off of State Street onto Walker Road is a City of Dover property which is the Richardson Park. At that property, there are seven (7) foot columns right on the straight and we are requesting six (6) foot columns. As you head west of our property, within a hundred yards, there is another structure and he also has pictures of this if needed. *(At that time, Mr. Sheth requested that the pictures be presented)*

Mr. Winters further stated that for them to put in a four (4) foot fence and columns which is the suggested *Zoning Ordinance* regulations, he does not feel that it fits in with the surrounding area. Plus the fact that they already have a five (5) foot fence that runs along the entire length of the property from east to west on Walker Road.

Mr. Winters further stated that a couple of other issues that he would like to bring to your attention is that they do not live in a neighborhood; we live across from a neighborhood. We are trying to keep within what the aesthetic lines of what the other lines look like. This is why we are coming up with the six (6) foot height with a declining wall that goes further back onto their property. The primary reason that they are putting in the fence and gate within the next year if this is approved is that they are also concerned about security around their home since they do not live in a neighborhood. We have had a few situations where we have had people walk in off the street and if he is not home, his wife and two children are home alone and they are concerned about security. This is the reason for their request.

Mr. Albert stated that he would like to clarify that the wall or fence that would eventually be put in is not restricted to four (4) feet. There is a grandfather clause that exists because there is an existing five (5) foot fence so that fence could be replaced at five (5) feet it just could not be any larger than what is currently in place.

Mr. Winters further stated that their point is the existing structures that he has already referred to are seven feet eight inches (7'8") and theirs will now be five (5) feet and just the contrast in those sizes we do not want something as high as the seven foot eight inch fence because we are trying to come up with something compatible with the surrounding area.

Dr. Goate' questioned if the difference between a five (5) foot or six (6) foot fence is so important to you? Responding to Dr. Goate', Mr. Winters stated that he was not sure. His wife designed these plans and what she wanted to see it presented as. He would request that the Board review their request at six (6) feet and if we have to go to five (5) feet then we will make

the decision of whether we will put the fence in the way it is structured now and will have to deal with security issues some other way.

Mr. Sheth questioned if there was any correspondence received regarding this application and there was none.

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

Mr. Senato moved to deny Application #V-07-32, 133 Walker Road, Lands of William & Joan Winters for a six (6) foot high fence; thereby, reverting back to a five (5) foot fence that would be within Zoning Ordinance regulations and therefore would not need a variance, seconded by Colonel Ericson and the motion was unanimously carried.

Mr. Winters stated that the Board is stating that they would be permitted a five (5) foot fence; however, the Code citation that was sent to him Article 5, Section 1.55 states that fences or walls shall be limited to a maximum feet of four (4) feet above the ground when situated in the front yard areas. Responding to Mr. Winters, Mrs. Townshend stated that the issue is that because you already have a five (5) foot fence it is legal non-conforming so you would be able to replace it in kind but not expand the non-conformity.

Applicant #V-07-33:

1000 Hayes Circle, Lands of Dover Housing Authority: The Dover Housing Authority has applied to the City of Dover Board of Adjustment requesting a variance from the requirements of Article 5 §1.55 of the *Zoning Ordinance* pertaining to the height of fences in the front-yard setback.

Subject property is zoned RG1 (General Residence Zone) and the Tax Parcel ID #: ED05-076.11-01-42.00-000. The owner of record is the Dover Housing Authority.

Representatives: Mr. Gary Johnson, Representing Telamon Corporation.

Mrs. Townshend stated that legal notice was not published in the Delaware State News on November 18, 2007 and the public was notified in accordance with the regulations.

Mr. Johnson stated that they are a Head Start non-profit organization in eleven states and this particular site is in a Colonial Gardens better known as Simon Circle. We provide services for three (3) and four (4) year old children. It has been a challenge at times as the building belongs to the Dover Housing Authority and we rent the building from them at a reduced rate so that we can provide these services for low income families.

Mr. Johnson further stated that there was a four (4) foot high fence around the property and over the years we have had to replace this fence several times and a lot of repairs. Our options were to either stay at this site or move. We really did not want to move because we have become a part of the community as a lot of our parents bring their children to this center as it is in Simon Circle which is convenient for them. What we came up with was to do a six (6) foot high fence as we looked around to see what we could do to make the site more secure. There problem is

that people come onto the playground congregating and tearing up playground equipment that they provide. Last year they had to replace thirty-two (32) screens and twenty-six (26) windows in the building. Trash would also be thrown around on the playground and we are trying to make this a safe place.

Mr. Johnson stated that they put up the fence unaware that they needed a variance. Since they put up this fence, they have not had to replace any windows or screens and debris on the property has become almost non-existent. People have not tried to break into the back door of the facility and overall it has been a lot safer. Also, what we have found out from the neighborhood watch is that people do not congregate on the playground anymore. We do not have people making loud noises and having the police called out as they were before. This has actually help in this particular part of the neighborhood because there are less people coming onto the playground who do not belong.

Mr. Johnson further stated that if you have the pictures of the old fence you find that a lot of the fence was taken away a lot of the top bars were bent which is not done by children it is definitely done by adults who do not belong on the playground area. On the chain link fence we had a double gate and he was called in one day because the double gate was gone because someone had taken it apart and just took the entire gate which had a chain lock on it. Three days later the gate reappeared with the chain lock still on it. It has been an ongoing process trying to find a safe environment for the children. The City of Dover has replaced the fence for them several times.

Mr. Johnson stated that the fence that they are requesting is the same type of fence that is surrounding the entire perimeter of the property and all they have added is a rail across the top of instead of the exposed spikes at the very top.

Mr. Sheth opened a public hearing.

Speaking for the variance:

Mr. James Shar – Court One Corporation, Contractor of the Fence – Stated that since they have installed the fence for Telamon, they have been back to the fence at least three or four times to make repairs on the fence already that are minor with people still trying to get into their playground. The fence so far has withstood anyone trying to get into the playground area. The six (6) foot fence seems to keep people from going over the top of it and keeping them out.

Mr. Sheth asked if there was any correspondence received for this application and there was none.

Mr. Keith Votar – Project Manager of the Dover Housing Authority – Stated that he is very happy with the fence because before they had a four (4) foot high chain link fence that kids were climbing very easily. They would even damage shingles as they would get up on the A/C units and rip shingles off so our roof leaks and he feels that this fence has saved them a lot of money from vandalism.

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

Mr. Sheth questioned if there were any members of the Board that had any conflict of interest and there were none.

Mr. Sheth questioned if there was any correspondence received regarding this application and there was none.

Colonel Ericson moved to approve Application V-07-33, 1000 Hayes Circle, Lands of Dover Housing Authority, because of the physical condition of the property and the way that the property is designed with mostly a front yard, would not impact the character of the neighborhood and would in fact it is better looking then the chain link fence and would be more effective in keeping down property damage, seconded by Mr. Senato and the motion was unanimously carried.

Applicant #V-07-35:

1196 South Little Creek Road, Lands of Dover Post Properties, LLC at 1196 South Little Creek Road: Dover Post Properties, LLC has applied to the City of Dover Board of Adjustment requesting an variance from the requirements of Article 5 §11.13 of the *Zoning Ordinance* pertaining to the construction of structures within the floodplain and within twenty five (25) feet of the floodplain.

Subject property is zoned M (Manufacturing Zone) and is subject to the AEOZ (Airport Environs Overlay Zone) APZ II and Noise Zones B & C. The Tax Parcel ID # is ED05-077.12-01-06.01-000. The owner of record is Dover Post Properties, LLC.

Representatives: Mr. Doug Liberman, Larson Engineering; Mr. Robert Nichols, property owner; and Mr. Sal Leone, Construction Project Manager of Site.

Mrs. Townshend stated that legal notice was published in the Delaware State News on November 18, 2007 and the public was notified in accordance with regulations.

Mr. Sheth questioned if there were any members of the Board with a conflict of interest and there was none.

Mr. Liberman stated that the presentation before you today is to locate parking within the flood plain and flood plain setback. This parcel came to you before seeking to place a building within this flood plain and was turned down and what they did was they had a building located in the front that extended down into the flood plain with a larger building located off of the back with parking within the flood plain.

Mr. Liberman further stated that what they are trying to do is with this flood plain was created after the site was developed. If you look at the historical maps that have been presented to you in 1982 the flood plain maps do not show the site being located within the flood plain site. There was a subsequent map issued in 2003 that shows the flood plain now coming up through the property do to development upstream from this site.

Mr. Liberman further stated that what you have is a situation where the site cannot be expanded without going through the flood plain. The access to the site is through the existing driveway

and existing parking area which is located within the flood plain. What we did with this revised plan was to pull all of the building out of the flood plain and flood plain setback and minimize the parking within the flood plain and the flood plain setback. We tried to do as minimal an impact to the flood plain as possible.

Mr. Liberman further stated that they would be establishing some grass islands within the flood plain which did not exist previously. This will help with the stormwater numbers and the impact to the flood plain. With regards to the hardship and exceptional practical difficulties test, Staff is supporting the development and the flood plain and are recommending approval of the variance.

Mr. Liberman further stated that the physical difficulties associated with this site are not due to the applicant because they did not exist prior to the original building being built on the site. This project would stay within the character of the neighborhood of manufacturing it would just be expanding the manufacturing process on site.

Mr. Sheth questioned what the hardship would be with this application? Responding to Mr. Sheth, Mr. Liberman stated that the financial hardship is that this site cannot be expanded. You cannot get to the back of the property without going through the flood plain.

Mr. Leone stated that the financial hardship here is that the Dover Post desperately needs to expand. Their operation has gotten so large they would want to keep everyone together on one site for the new printing presses and without this it is going to be very difficult for them to keep up with their growth.

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

Mr. Sheth questioned if there was any correspondence received regarding this application and there was none.

Dr. Goate' moved to approve Application V-07-35 1196 South Little Creek Road, Lands of Dover Post Properties, LLC, seconded by Mr. Senato and the motion was unanimously carried.

Applicant #V-07-36

Forrest Avenue, Lands of DoveView LLC: DoveView LLC has applied to the City of Dover Board of Adjustment requesting a variances from the requirements of Article 5 §10.173 of the *Zoning Ordinance* pertaining to the formula for determining Cash-In-Lieu of recreation area reconstruction and Article 5 §10.175 to allow for the phasing of the Cash-In-Lieu payments.

Subject property is zoned IO (Institutional/Office Zone) and the Tax Parcel ID #: ED05-076.07-01-30.00-000. The owner of record is DoveView LLC.

Representatives: Mr. Conny Malmberg, Attorney at Law.

Mrs. Townshend stated that legal notice was not published in the Delaware State News on November 18, 2007 and the public was notified in accordance with the regulations.

Mr. Malmberg stated that this site is located on the corner of Route 8 and Saulsbury Road tucked in behind the Walgreens that is being constructed. This is a senior housing facility for 192 senior housing units. The request today is very limited and we would ask that you take up the balance of the request at the December 19, 2007 meeting. There request today is only that while we are working with the City on calculating a cash-in-lieu of donation to the City that we be allowed to pull building permits which in a strict reading of the Code of Section 10.175 building permits cannot be issued until the full cash-in-lieu can be paid and since we are working with the City on determining what the cash-in-lieu should be, which is part of the application that will be heard on December 19, 2007, should you agree, we do not want this to hold us up.

Mr. Malmberg further stated that he would give a little background for this site. This project started quite some time ago and as the applicant was going through the engineering of this site, the interpretation of the City was there is a center water feature in the park land surrounded by the four senior housing units. The interpretation of the City when the project started to be developed was that this counted as active open space including the water feature in the center of the project. That interpretation changed as the project went along to where the water feature in the center of the open space did not count as active open space. This left the applicant with $\frac{3}{4}$ of an acre too little of open space. The applicant discussed the matter with the City and decided that the cash-in-lieu was a perfect idea for this project for several reasons, one is close proximity to the Modern Maturity Center, and the type of housing that it is. It was a good fit from the City's perspective. The cash-in-lieu program and the formula calculated does not make sense on high density development such as this. What we are seeking for you to do is utilize a different appraisal method to come up with a logical and cost effective cash-in-lieu of. We have just not got there yet because the appraiser needs time to do this.

Mr. Malmberg further stated that the hardship to his client is that they are ready to start pouring foundations in the ground and this all came up when it was time for them to start this. The holidays are upon us and then the first of year where the ground will start to freeze making it difficult for this project to get underway.

Colonel Ericson stated that one of the recommendations of the Staff is that with the start of the foundations with the understanding that you still may have to come up with the cash-in-lieu of \$443,000 dollars. Responding to Colonel Ericson, Mr. Malmberg stated that this Board still has the discretion to deny the other half of this variance and if you do that, our foundations will be in and we will have to pay the money. We are hoping that this does not happen as a matter of fact, we are so far along in the process now foundations in or not, this project will have to go forward as is.

Mr. Malmberg stated that the only condition is that we know that we are going forward at our own risk and as we go forward with the process if the Board does not grant relief on the other half of the issue which is the number, then we do this at our own peril.

Mr. Pepper stated that he feels that granting foundation only permits is appropriate to avoid the potential hardship caused by the ground freezing. If you grant some relief in December they have at least got foundations in and table the second part. It would be really tough to come up with a defensible analytical framework to apply to other projects.

Colonel Ericson further stated that he agrees with Staff regarding this issue; however, he does not want to give Mr. Malmberg that this is all going to work when in fact we are stretching this Board pretty far with the authority of what we do and before we do that, he would like to have all the comforts of knowing that the legal review and research has been done and that what we are doing is feasible and what we should be doing.

Responding to Colonel Ericson, Mr. Malmberg stated that one of the reasons we were bifurcating this hearing is that we do not have sufficient information contributing to your lack of comfort right now. We think that by the time December 19, 2007 gets here, that we will be able to come up with something that makes sense to all of us and be able to present a reasonable proposal that has a defensible number that Staff is comfortable with and can support.

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

Mr. Sheth questioned if there was any correspondence received regarding this application and there was none.

Mr. Sheth questioned if there were any members of the Board with a conflict of interest and there was none.

Colonel Ericson moved in regard to the two part Application #V-07-35 Forrest Avenue, Lands of DoverView, LLC; the first part is to table the decision regarding Article 5, Section 10.173 of the application until an alternative form for cash-in-lieu amount can be determined by December 19, 2007, the second part that they be granted approval for a variance Section 10.175 to authorize Staff to issue foundation only permits for the two buildings so that the applicant may begin construction prior to a decision on the cash-in-lieu amount. If this variance is granted it shall be made clear that the applicant will proceed at their own risk that there is no guaranteed that the \$443,268.23 will be used, seconded by Mr. Senato and the motion was unanimously carried.

Applicant #V-07-37

959 Silver Lake Blvd., Lands of Robin Alexander: Robin Alexander has applied to the City of Dover Board of Adjustment requesting a variance from the requirements of Article 4 §4.4 of the *Zoning Ordinance* pertaining to the rear-yard setback.

Subject property is zoned RG-3 (Group Housing Zone) and the Tax Parcel ID # is ED05-067.12-03-28.00-000. The owner of record is Robin Alexander.

Representatives: Ms. Robin Alexander, Property Owner

Mrs. Townshend stated that legal notice was published in the Delaware State News on November 18, 2007 and the public was notified in accordance with regulations.

Ms. Alexander stated that this setback variance occurred when the surveyor from her resent buyer transaction in September. The day before there closing was set, the survey seemed to show that there was more than a one foot variance in what had been previously added as an addition in the back of the house before she purchased it. This did not show up during her closing

procedures 6 ½ years ago so it came as quite a shock. This issuance of a letter from Mrs. Townshend discussed this problem and what the survey showed. We are hoping that this variance is granted so that she can proceed with a willing buyer for her property so that they can go to closing.

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

Mr. Sheth questioned if there was any correspondence received regarding this application and there was none.

Mr. Sheth questioned if there were any members of the Board with a conflict of interest and there was none.

Mr. Senato moved to approve Application V-07-37 959 Silver Lake Boulevard lands of Robin Alexander, seconded by Colonel Ericson and the motion was unanimously approved.

Applicant #V-07-20

Country Village Apartments on South Little Creek Road, Connections, Community Support Programs Inc. is making an appeal of the City Planner’s interpretation of the requirements of Article 3 §7.1 of the *Zoning Ordinance* pertaining to permitted uses in the RM-2 (Medium Density Residential) zoning district.

Subject property is zoned RM-2 (Medium Density Residential) and the Tax Parcel ID # is ED05-077.11-01-04.00-000. The owner of record is the Country Village Association.

Representatives: Mrs. Beth Pepper, Representing Connections Community Support; and Meghan Molly, Co-Council Representing Aretha Meekins.

Mrs. Townshend stated that legal notice was published in the Delaware State News on November 18, 2007 and the public was notified in accordance with regulations.

Mr. Senato moved to lift Application #V-07-20 from the table, seconded by Colonel Ericson and the motion was unanimously carried.

Mrs. Pepper stated that she represents Connections and Ms. Molly represents Ms. Meekins who is a resident in the program the Connections operates. There are also representatives here today from Connections as well as her firms Planning expert, David Nutter in which a copy of his report was submitted.

Mrs. Pepper further stated that their plan for today is to go over some information that has been provided to you to make you extra comfortable with the Federal Fair Housing Act. The issue is whether a Staffed apartment #447-A can be treated as a permitted use under the *Zoning Ordinance* and enlighten to the Fair Housing Act which is a Federal Law that prohibits discrimination against people with disabilities. The only issue is very limited to a staffed apartment that is used to provide the 24/7 supervision and care to approximately thirty (30) residents who are scattered throughout the Country Village Apartment complex in their own rental units. The program is not at issue and the units where the resident’s lives is not an issue as

they are clearly allowed to be there.

Mrs. Pepper further stated that the staffed apartment is critical and essential to the housing needs of the individuals who live at Country Village Apartments. These individuals are individuals who, without the staffed apartment, would be homeless and is the state that they were in before they came into the Connections program. It is because of the 24/7 on-site supervision that the individuals that have disabilities are able to live successfully in the community. We believe that permitting the use would be consistent with the Zoning Code and the Comprehensive Plan and also believe that permitting the use will advance and further the goals of the Fair Housing Act. This case does present this intersection between zoning and the Civil Rights Laws. The Fair Housing Act was a law that was initially passed in 1968. Twenty years later Congress added the word "disability" to its statute which essentially says "you can not discriminate in housing against people with disabilities". The people living in the Connections program are people with disabilities.

Mrs. Pepper further stated that in addition, this laws states that "Local Zoning Boards must make adjustments in their zoning rules, their practices, or their decisions in order to give people with disabilities and equal opportunity to live and enjoy their housing."

Mr. Pepper stated that he has discussed with the Board members and told them what the law is could you flush out for them in a little more detail why the accommodation you are requesting is necessary to allow the client's to be on equal footing?

Ms. Molly stated that she is an attorney with Community Legal Aid in Delaware and she represents Aretha Meekins who is one of the tenants in the Connections program located in Country Village Apartments. There is an error in exhibit #7 as there was no second page for the letter. There was a signed affidavit submitted by Ms. Meekins that was submitted after the initial packet that has already been distributed.

Ms. Molly further stated that regarding the issue of developing the facts of why this requested accommodation is necessary for the residents of Connections, first of all the programs that Country Village Apartments are specifically designed for homeless individuals with disabilities. The programs are specifically programmed to provide these supported services and specifically in this case the presence of twenty-four hour on-site staff supervision. The goal of staffed supervision is to increase each tenants skills and abilities to stabilize tenant health issues and to increase access for these tenants to services in the community as well as to develop relationships with other providers in the community to make sure that the tenants that are residing in this program are getting all the necessary services and interventions they need that meet their individual needs according to their individual disabilities.

Ms. Molly further stated that the programs are specifically designed for people who have serious symptoms and impairments and who may not otherwise be able to maintain housing options on their own without the presence of the on-site staff with twenty-four hour supervision. In the affidavit provided they describe how these programs are funded by grants from HUD. Connections received these grants to provide housing for people with disabilities and to also provide in conjunction with that supportive services which that staff apartments functions with.

Ms. Molly further stated that with regards to the specific tenant, Ms. Aretha Meekins, her

affidavit has been provided as Exhibit #16 and in her affidavit she describes the types of services that staff provides for her and why the staff is necessary for her to enjoy her apartment. Ms. Meekins has lived in the apartments since the fall of 2006 and has multiple disabilities that impact her ability to use and enjoy her rental unit and she depends on Staff assistance to help with a variety of things including house keeping, maintaining her medication regime, and providing psychological and emotional support.

Ms. Molly further stated that also included in the packet was an affidavit from Ms. Kimberly Rockenbough as exhibit #18 who is the Director of Planning and Community Development at the Delaware State Housing Authority. She describes in her affidavit that for the model that is used by Connections in on site twenty-four hour staffed provision for the residents is a model that has been used with great success in other places in Delaware and throughout the Country has been found to be critical to allowing people with disabilities to reside in communities to have as a model such as Connections model where Staff is present twenty-four hours a day, seven days a week. This particular model fills needs that would otherwise not be able to be met specifically with respect to Dover because there are not a whole lot of other support housing facilities this particular program that Connections meets as a significant need in the City of Dover by allowing people with disabilities to be integrated into the community to be able to live in housing of their choice.

Mr. Senato stated that he has gone through all of the material several times and what you are talking about is people that need the apartment because they are disabled. Is it a question of making one apartment an office apartment the issue because first of all when the lease was signed there is no indication that an apartment would be set aside for an office which was signed February 28, 2007? It states that you would rent 22 apartments and not 23 apartments with one used as an office. In lieu of that, Country Village Apartments is not what he would call a support housing complex that has a variety of people living there. He feels that the question then becomes whether or not a variance shall be granted for the use of an apartment office not the fact that we are not allowing someone who lives there already out of their apartment.

Mr. Pepper stated that we are on an interpretation on a variance and the issue is whether the Board will interpret the situation presented that the use of this unit as a staffed apartment is a reasonable accommodation of the Fair Housing Amendments Acts of 1988. The issue of the use of the unit whether they have a resident in there or not is between Country Village and Connections and is not our concern. Our concern is the use of the unit and whether it complies with the *Zoning Ordinance* or whether it complies as it intersects with the Fair Housing Amendment Acts of 1988.

Ms. Molly stated that what they are saying is that this staffed apartment is necessary and is required for all our tenants who are a member of the Connections program to be able to live in Country Village Apartments. Staff is necessary for the tenants to be able to use and enjoy their apartments without the Staff present tenants would not be able to use and enjoy their units because of their disabilities; therefore, under Fair Housing Act we have requested as a reasonable accommodation in that the Zoning Code be interpreted to allow this staffed unit to remain so that it can continue to provide the necessary supportive services to the residents of the Connections program.

Mrs. Pepper further stated that located in Country Village Apartments is a rental office and the rental office is there to further the activities of the rental staff which is part of the complex and is a model apartment that the rental office uses to conduct business. There is nothing in the Zoning Code that acknowledges the rental office as part of a permitted residential use. It is; however, necessary for the leasing agent and leasing management company to carry out its activities. Their staffed unit is a necessary component in order for the residential activities to be conducted in the residential units and is no different then a nursing aid that made come into the home.

Colonel Ericson stated that he is not sure that they have convinced him that this office must be located within this unit to be effective. He is unsure why they could not located this office at a different location and communicate through the phone while still providing the same level of service. Responding to Colonel Ericson, Mrs. Pepper stated to keep in mind that this is a 24/7 operation so they would have one to three Staff people at this location at any given one time and they are there to be quick crisis prevention staff so when someone has an emergency which could be in the middle of the night they have people there to do whatever would need to be done to assist the tenant. This service could not effectively be performed if they were off site. Staff checks on these residents on an hourly basis. This housing is affordable and a very important aspect of their program because they are low income individuals. The implications of not permitting the use is very devastating for their program and their clients.

Mr. Pepper stated that if this variance should be ruled in your favor that you would request that the application fee be refunded? Responding to Mr. Pepper, Mrs. Pepper stated that yes they would request this and that the violation notice be withdrawn administratively.

Mr. Sheth opened a public hearing.

Speaking for the application:

Ms. Aretha Meekins – 488 Country Drive, Apartment H – Stated that she supports this request. She feels that the staff should be allowed to remain at Country Village Apartments because she is one of the people that they have helped out in the past year. She has had surgeries and needed to go to the hospital with chest pains, medication, appointments, and this is things that they have helped her get since she came to this program because she was homeless. They have helped her get her life back together health wise to where she could move around. The apartment is on a bus route with stores that are convenient across the street. She feels supported because they are there and she feels safe in knowing that if anything happens, they are right there. They come throughout the day to make sure she is okay and she feels special because someone does that for her.

Ms. Kathy McKay – 500 W. Tenth Street, Wilmington, DE 19801 – Stated that she is the Executive Director of Connections and has been for twenty-two (22) years and have experienced a lot of issues over those twenty-two (22) years about where they should or should not be and what we should or should not do; however, there are a couple of items that are critical. First, Connections is not attempting to operate a business office at Country Village Apartments, we in fact have two business offices in the City of Dover, one on Forrest Avenue and one in the Wolfe Creek Condominiums. We are only operating this office here because the people who live there need this support twenty four hours a day. The second thing is that there are a thousand

homeless people in Kent County and there are very few services for them. This is the only permanent supportive housing program in Kent County and this benefits the residents of Kent County and of the City of Dover to have this program here which allows thirty (30) people to live more or less independently otherwise they would be living homeless in the streets.

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

Mr. Sheth questioned if there was any correspondence received regarding this application and there was none.

Mr. Sheth questioned if there were any members of the Board with a conflict of interest and there was none.

Colonel Ericson moved to approve application V-07-20 Country Village Apartments on South Little Creek Road, Connections, Community Support Program, Inc. to allow for the office to remain there for Connections to serve their clientele and to refund the applicant the filing fee submitted at the time of filing this application, seconded by Dr. Goate' and the motion was carried with Mr. Senato abstaining.

Applicant V-07-34

1111 S DuPont Hwy., Lands of Seok Hyun Yoon: Seok Hyun Yoon has applied to the City of Dover Board of Adjustment requesting a variance from the requirements of Article 5 §7.22 of the *Zoning Ordinance* pertaining to the landscape buffer portion of the opaque barrier requirements.

Subject property is zoned C-4 (Highway Commercial Zone) and the Tax Parcel ID #: ED05-077.18-02-68.00-000. The owner of record is Seok Hyun Yoon.

Representatives: Mr. Seok Hyun Yoon, Property Owner.

Mrs. Townshend stated that legal notice was published in the Delaware State News on November 18, 2007 and the public was notified in accordance with regulations.

Mr. Yoon stated that he uses this building for his business and has been teaching in the martial arts for twenty years and teaches children both old and young. He has had a business in this area for fifteen years with four or five people at each location. He would like to have this location as his main location.

Mrs. Townshend stated that the issue is that there is an Administrative Site Plan required for this because it is a change of use. There are no exterior alterations planned except for façade improvements to the building. There is no site disturbance and the requirement of the *Zoning Ordinance* is that the landscaped buffer be planted and is something that cannot be waived without the Board of Adjustment. The problem is that there is not space to do it so the applicant is essentially asking permission to do is to go in and establish a business in what is currently a vacant building and not have to have this requirement.

Ms. Cornwell stated that along the property line one of the pictures is showing the back of the building and then going into the residential area which is where the property line is located

where the concrete meets the grass. On his side of the property line he is required to put a six foot buffer of evergreen trees or hedge to block the view. On some portions of the site the building is located on the property line.

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

Mr. Sheth questioned if there was any correspondence received regarding this application and there was none.

Mr. Sheth questioned if there were any members of the Board with a conflict of interest and there was none.

Dr. Goate' moved to approve Application #V-07-34 1111 S. DuPont Highway lands of Seok Hyun Yoon, seconded by Colonel Ericson and the motion was unanimously carried.

Mr. Senato moved to adjourn the meeting, seconded by Colonel Ericson and the motion was unanimously carried.

Meeting adjourned at 11:03 AM.

Sincerely,

Diane Metsch
Secretary