

PROPERTY MAINTENANCE CODE BOARD OF APPEALS

The Property Maintenance Code Board of Appeals met on September 8, 2015 at 3:30 p.m. with Mr. Scott Koenig, City Manager, presiding. Mr. Martin and Mr. Perza were present.

Staff members present were Mrs. Townshend, Mr. Coburn, and Mrs. McDowell.

Mr. Martin moved for approval of the agenda as presented, seconded by Mr. Perza, and unanimously carried.

Property Maintenance Code Citation (Vacant Building) - Appeal of Decision (Annual Vacant Building Registration and Registration Fee) - 206 Nimitz Road (Robert J. Pocius)

Mr. Ron Coburn, Code Enforcement Officer, stated that this matter was the result of a citizen's complaint to the office. When he received the complaint, he investigated by running the utility usage. He explained that electric usage was very low, with nothing much over 156 kilowatts reflected in about a two (2) year period. Mr. Coburn then ran the water usage from the July 14, 2015 billing back to the April 12, 2012 billing. He explained that during that time frame, no water had been used, indicating to him that it was a vacant building, since typically if a building is not vacant some there is some type of water consumption. Mr. Coburn advised members that there was also a note in the system that owner R. Pocius had called and stated that the property was not a rental. There was also a note that in 2007 B. Dickerson was living at the house and not paying rent, and no license was required. Mr. Coburn stated that this indicated to him that somebody besides the owner had lived there previously. On July 14, 2015, Mr. Coburn sent Mr. Pocius a letter outlining the requirement to register the property as a vacant building. On August 7, 2015 he received a registration form from Mr. Pocius, along with a letter requesting that the fees be waived due to a hardship with his fixed income and his intention for the house not to appear vacant. Mr. Coburn explained that, unfortunately, this did not meet any of the requirements in the City ordinance for exemption. He advised members that the City allows exemptions if the house is for sale or for lease, if there are active building permits, if the property is in probate or the owner has entered a long-term care facility, or if it is involved in an environmental cleanup or assessment. Since Mr. Pocius's situation did not meet any of those requirements, Mr. Coburn turned Mr. Pocius's correspondence over to the City Clerk's Office as an appeal.

In response to Mr. Koenig, Mr. Coburn stated that October 14, 2010 was the last date that he could see that any water was used at the property, and Mr. Coburn put this date on the registration form.

Ms. Mary Davis, Mr. Pocius' daughter, stated that Mr. Pocius's letter did not say that they intended not to have the property appear vacant; it was their intention not to have the property be vacant. She advised members that her father was disabled and did not feel confident staying in the house overnight. Ms. Davis explained that Mr. Pocius goes to the house nearly every day, receives his mail there, and tends to the house. She indicated that the house was not really very different from any other house on the street, stating that she had pictures that could show this. Ms. Davis indicated that her daughter was currently making arrangements to move back to Dover, and her daughter's intention was to live in the house with Mr. Pocius. Ms. Davis indicated that their letter stated that they understood that the house had to be registered but would like to have the fee waived because her father was on a fixed income. She advised members that they were not trying to create any kind of a eyesore or problem in the neighborhood and were doing their best to keep the house to the level

that the rest of the neighborhood is kept. She stated that she did not know what the real issue was, stating that she understood the registration process but not the fee. Ms. Davis said that she could understand if the house looked significantly different from any other house on the street, but it did not. She reiterated that someone comes and goes from the house almost every single day.

Responding to Mr. Koenig, Ms. Davis confirmed that she had pictures of the area. At the request of Mrs. Ann Marie Townshend, Director of Planning and Community Development, Ms. Davis agreed to email photos to the Clerk's Office, and forwarded photos of 206 Nimitz Road (*Attachment #1*), the house next to 206 Nimitz Road (*Attachment #2*), and the house diagonally across from 206 Nimitz Road (*Attachment #3*).

Mr. Martin informed members that he had been past the house a couple of times since receiving Mr. Pocius's letter and it certainly appeared from the outside to be well kept. Bushes were trimmed and the grass was cut. He stated that a silver-colored car was in the driveway when he went by today, noting that he was unsure if this was their car or if a neighbor had parked there.

Ms. Davis reiterated that they keep the house in equal repair to the rest of the neighborhood.

In response to Mr. Koenig regarding the time frame for her daughter moving back, Ms. Davis stated that her daughter was coming to Dover today on a job hunt and her intention was to move this fall, noting that she would like to be here by the holidays, and by Thanksgiving would probably be her goal. Ms. Davis reiterated that her father was not confident, that was not to say competent, to stay by himself, so her daughter would be there to make sure that someone would be with him if he were to hurt himself in the night, etc.

At the request of Mr. Koenig, Mr. Coburn reiterated that the conditions for waiving the vacant building registration fee, according to ordinances, are if the property is actively being offered for sale or for lease for a maximum period of five (5) years, if the owner has obtained a building permit and is progressing in an expedient manner to prepare the premises for occupancy, if the property is in probate or the owner has entered a long-term care facility within six (6) months of the building being vacant, or if the property is currently undergoing environmental cleanup or assessment.

Mr. Koenig questioned if any inspections would be required from the City if Mr. Pocius and his granddaughter were to move in. Responding, Mr. Coburn stated that inspections would be required if the property would be a rental but not if it were owner occupied.

Mr. Perza questioned whether the property could remain vacant for up to six (6) months until an application could be filed to declare it vacant and have it exempted from payment if someone were to go into a long-term care facility. He asked, for example, if Mr. Pocius were to go into a nursing home tomorrow, whether he would have six (6) months from tomorrow to file. Responding, Mr. Coburn stated that the ordinance states that the exemption applies when the owner has entered a long-term care facility within six (6) months of the building being vacant. He stated his belief that if something were to happen to the owner of a property and they ended up going to the hospital for a while, if they were to go into long-term care within six (6) months of it being vacant, they would be exempt as long as they were in that long-term care facility.

In response to Mr. Koenig, Mr. Coburn stated that the complaint that he referenced previously came to Mr. David McGinnis, Code Enforcement Officer, who covers that area. Someone had stopped Mr. McGinnis, they began talking about vacant buildings, and the individual pointed out that this building was vacant. Mr. McGinnis told Mr. Coburn that he was aware of a vacant building, and Mr. Coburn started his investigation.

In response to Mr. Koenig, Mr. Coburn stated that the only thing that indicated the building was vacant was the lack of utilities and not a lack of maintenance, and the maintenance on the property was fine.

Responding to Mr. Martin, Mr. Coburn confirmed that if a neighbor had not told an inspector this was a vacant property, there would have been no reason to investigate.

Mr. Martin questioned if utility usage is looked at to try to find vacant properties or if staff is usually alerted because they are not being maintained. In response, Mr. Coburn stated that staff is usually alerted when properties are not being maintained. In this case, if it had not been for the complaint, staff probably would never have known. Mr. Coburn indicated, by looking at water usage, it probably had been vacant for some time.

Mr. Perza questioned how the City defined occupied or unoccupied. He noted that Sec. 22-400 of the Code defines a vacant building as “a building, structure or dwelling that has been unoccupied for more than three consecutive months”, but does not reference maintenance. Mr. Perza questioned if this was defined elsewhere in the code. Responding, Mrs. Townshend stated that she did not believe this was defined. She indicated that, for a residential building, staff has indicated that no one was living there.

Mr. Perza noted that he had looked at pictures of vacant buildings over the years, and usually they are horrible looking buildings with broken windows, holes in the drywall and floors, and are dilapidated eyesores. He expressed his assumption that this house had furniture, carpets in it, and no holes in the ceiling, and this was confirmed by Ms. Davis.

Responding to Mr. Perza, Ms. Davis stated there was running water at the property. She stated that her father does not bathe there but goes to the property and tinkers with his things, reads the newspaper, or hangs out. Ms. Davis advised members that he was not comfortable spending a lot of time by himself but goes there to do what he needs to do to maintain the house. He does not sleep, shower, or wash clothes there, and that is why there is no real water usage. Ms. Davis stated that they did not agree that the building should be called unoccupied because, to her, unoccupied meant no one ever goes there. They filled out the registration form because there was not a choice, since the City's letter stated that the registration form must be filled out by such and such date or the City would do it for them; however, they did not believe that the building could fairly be labeled unoccupied.

Mr. Perza stated, from his perspective, not necessarily in this specific situation, the condition of the property should not be an issue. The property was intended to be vacant, and he stated his understanding that neighborhoods like properties to be owner occupied, or at least for somebody to

be living in them for the safety of the neighborhood and to keep property values up. Mr. Perza indicated that he also understood that fact that the property was in spick and span condition and that it could be asked why the City was picking on this property. From his perspective, the condition and appearance may be a factor, but was not the overriding concern, noting that if a property was vacant, it was vacant. However, Mr. Perza also stated that the code did not define what occupied means, noting that occupying may mean using it for storage of clothes and valuables, and it may be thought of as a safety deposit box. He indicated that the same thing happens with residential commercial properties, noting that there are commercial properties that are used for various things; however, that does not mean that things are sold in the front storeroom and the public is coming in and out. Mr. Perza indicated that there are multiple ways to define what occupied and unoccupied are.

Mr. Perza stated his understanding of the City's concern that this was in a residential neighborhood but nobody was sleeping there, and of phone calls coming from neighbors saying they did not want somebody breaking in the house and using it for drugs, prostitution, and all kinds of weird things that happen in the City, which can happen if properties are not occupied. On the other hand, Mr. Perza stated that this would not necessarily prohibit what Mr. Pocius and Ms. Davis were trying to do, assuming that they were at the property every day reading the paper, drinking coffee, and things like that.

In response to Mr. Perza, Mr. Coburn confirmed that there was minimum electric usage at the property.

Ms. Davis advised members that all of her father's things were there and he could return at any time.

Mr. Perza expressed his opinion that if the property had been empty for seven (7) years and nobody was living there, this would defeat the purpose of allowing an exception, because having people living there was exactly what was wanted. However, on flip side, he noted that Mr. Pocius was going into the house, and all of the houses in Dover are unoccupied half the day because people are at work.

Concurring, Ms. Davis stated that her house was unoccupied right at this minute.

Mr. Perza noted that those who work the night shift are home during the day. He equated this to Mr. Pocius being there during the day but sleeping somewhere else at night.

Responding to Mr. Perza, Ms. Davis confirmed that her daughter would be coming back to Dover because she had dropped out of college and did not want to live with her. Her daughter had indicated that her grandfather would feel good if she was there at night so he could stay in his own house, and this was the plan.

Mr. Perza stated that, as a lawyer, he was looking at the exemption stated in Sec.22-405 (b)(1), which referenced a building actively being offered for sale or lease for a maximum period of five (5) years. He questioned if the property would be leased to Ms. Davis's daughter. Responding, Ms. Davis stated that father would be there and, since he was a good grandfather, her daughter would be allowed to stay there with him. She confirmed that Mr. Pocius would be able to stay there all the time because if he were to fall at night, there would be someone there.

Mr. Koenig questioned whether 90 days or six (6) months would be enough time to resolve the issue and Ms. Davis stated that this would work.

Mr. Perza suggested a six (6) month period. He stated that if Mr. Pocius were to go to a nursing home, the time frame would not start until six (6) months from the time he entered the nursing home. In his opinion, the code allowed six (6) months wiggle room.

Mr. Koenig suggested allowing six (6) months from today to occupy the building.

Mr. Perza questioned what occupying would be, noting that one could argue that Mr. Pocius was occupying it now. He noted that utilities would spike when Mr. Pocius's granddaughter moved in with him. Mr. Perza questioned if utility data would satisfy the City's inspection crew as evidence that somebody was at the property. He noted that apparently there would not be a lease, noting that the lease was the loophole stated under Sec. 22-405 (b)(1).

Mrs. Townshend advised members that a lease would require another application for a rental property. She stated that if the property was occupied by the family, this would be fine.

Mr. Perza questioned if a change of address notice from the daughter or other evidence was needed. In response, Mrs. Townshend stated that Mr. Coburn could check the utilities.

Mr. Coburn stated that the utilities would increase, and at that point staff would know that the property was being occupied.

In response to Mr. Koenig, Mr. Coburn stated that the water usage had been at zero for some time.

Mr. Perza stated that he would agree with revisiting this matter in six (6) months and asked if the matter could be suspended for that length of time.

Mr. Coburn recommended waiving the fee for six (6) months and seeing what happens, noting that they had filled out the registration form, so the property was registered.

Mr. Perza moved to accept the vacancy registration but waive the fee for the first year of unoccupied vacancy for 12 months. At the conclusion of the year, no further action is necessary unless sufficient evidence presents itself to suggest that the property is no longer occupied, such as no utility use. The motion was seconded by Mr. Martin.

Mr. Pocius advised members that he had a hard time trying to go along with the property being vacant. He indicated that basically it was being said, in essence and in a nutshell, that the City of Dover has a minimum amount of water and electric usage and a minimum or maximum amount of time that a resident has to be in his house. He questioned if he was at liberty to know who had complained.

Responding, Mr. Coburn stated that he did not know since the complaint came in through another inspector.

Mrs. Townshend stated that the City could not share this information.

Mr. Pocius indicated that he had an idea of who it might be. He advised members that his daughter tried to keep the place up and he had a hard time keeping watch. Mr. Pocius stated that he was dealing with stress and felt that this was totally unnecessary. He stated that when people jump on these situations, the City should investigate, but not through water or electric usage, although he did not know exactly how. He felt that the way the City was going about this was wrong.

Mr. Koenig stated that the City writes codes mainly to protect long-term property values and to maintain a sense of community, but this does not address every single case and that is why there is a Property Maintenance Code Board of Appeals. He explained that staff is given some latitude, but not a significant amount of latitude. Mr. Koenig stated that this is why these cases come to the Board, so that the Board can give the latitude that the staff does not have. He noted that it is very difficult to for code to be written that addresses every single case. Mr. Koenig indicated that there was a minimal amount of electricity being used, and if 1,000 gallons of water was being used every quarter, this probably would not raise that many flags. Because there was no water usage, it seemed consistent with what the City had dealt with in other instances. Mr. Koenig stated that the other instances that had come before the Board previously had very low or no utility use but actual code violations. He reiterated that the code is not perfect and does not address every situation, and that is why there is an appeal process.

Noting that Sec. 22-405 lists exemptions from the registration fee, Mr. Perza questioned if the City had the authority to just waive the fee if it did not fall under Sec. 22-405 (b)(1), (b)(2), (b)(3), or (b)(4), noting that this was not probate. Responding, Mrs. Townshend stated that the Property Maintenance Code Board of Appeals Board has this authority, but it is not present at the staff level. She stated that it appeared vacant when evaluated based on the information that staff had, and the only way to not require fee was to come before the Board. She confirmed that part of the Board's role was the ability to waive requirements.

Mr. Perza stated his understanding that staff must request permission to do anything other than the code exemptions, and this was confirmed by Mrs. Townshend. She explained that if staff goes beyond what is there, then staff gets in the position of being inconsistent or unfair to people. From staff's perspective, there is a need to be consistent. If there is a case where the code should not be applied, this would be for the Board to decide.

Mr. Perza stated that he had been drifting toward the property owner and that maybe he was occupying the property, but if he really cannot move around and if it is so hard for him to show up at these type of hearings because of the pain, it is going to be difficult to get in this property. In Mr. Perza's opinion, the property probably was within the meaning of what the City was looking for. However, on the flip side, he did not want to "ding" Mr. Pocius under the circumstances, provided his granddaughter was going to be moving in, since that is what was desired to happen, and this would benefit Mr. Pocius as well. Mr. Perza felt that both sides had good points and was torn on what to do; however, if the Board had the ability to waive it, he felt a bit better. He indicated he was

unsure if he would wait a year, noting that he would probably say with six (6) months, which is what the code states. Mr. Perza expressed his assumption that the City would not go out to the property independently and evaluate it unless somebody else made a complaint and that it was possible that nobody would go out there again.

Mrs. Townshend stated her thought that utilities would be looked at in six (6) months.

Mr. Coburn stated that the property was now registered now as vacant, and that he tries to physically visit vacant properties once a month and see that the grass is being maintained and items of that nature.

The motion to accept the vacancy registration but waive the fee for the first year of unoccupied vacancy for 12 months, and at the conclusion of the year, no further action is necessary unless sufficient evidence presents itself to suggest that the property is no longer occupied, such as no utility use, unanimously carried.

In response to Mr. Pocius regarding the meaning of the property being vacant, Mrs. Townshend stated that staff drives by any properties registered as vacant on a monthly basis to make sure that there is not tall grass or vandalism and that they do not look as though anyone has broken in.

Mr. Koenig suggested that if the property becomes occupied full time, that Ms. Davis or Mr. Pocius let Mr. Coburn know.

Mr. Perza questioned if the property would come off the vacant building listing and be discharged by the City and if the property owner would receive a letter. Responding, Mr. Coburn stated that a letter would not be sent, but the case would be closed, the case file scanned, and the matter would basically be done. He confirmed that once it is occupied, it would come off the list and the owners would not have to go through the re-registration process every year.

Mr. Martin moved for adjournment, seconded by Mr. Perza and unanimously carried.

Meeting adjourned at 3:58 p.m.

Scott D. Koenig
Chairman

SDK/TM/js

Attachments

Attachment #1 - Photograph Provided by Ms. Mary Davis - 206 Nimitz Road

Attachment #2 - Photograph Provided by Ms. Mary Davis - House Next to 206 Nimitz Road

Attachment #3 - Photograph Provided by Ms. Mary Davis - House Diagonally Across from 206 Nimitz Road



ATTACHMENT #2
Property Maintenance Code Board of
Appeals of 09/08/2015



