CONSTRUCTION AND PROPERTY MAINTENANCE
CODE BOARD OF APPEALS

The Construction and Property Maintenance Code Board of Appeals meeting was held on October 24, 2018 at 4:00 p.m. with Mr. Neil presiding in the absence of Chairman Anderson (Arrived at 4:04 P.M.). Members present were Mr. Martin and Mr. Lewis. Staff members present were Mr. Hugg, Mrs. Mitchell (Left at 5:07 P.M.), Ms. Rodriguez, Ms. Devine, Mr. Coburn, Mr. Taraila, Mr. Brown, Mr. Osika, Mr. Akers, and Ms. Bowen.

AGENDA ADDITIONS/DELETIONS

Mr. Lewis moved for approval of the agenda, seconded by Mr. Martin and unanimously carried.

Code Violations (Chapter 70 – Offenses And Miscellaneous Provisions, Section 70-4 – Throwing And Kicking Objects And Playing Games In Streets And Public Places; And Chapter 98 – Streets, Sidewalks, Storm Sewers And Other Public Places, Article I – In General, Section 98-6 – Duty Of Persons Occupying Commercial Establishments And Premises To Keep Sidewalks Clear) – Appeal Of Decision To Remove Basketball Goal From City Right-Of-Way – 18 Baltusrol Court (Joseph P. Maier IV)

Mr. Hugg stated that this issue was brought to the Board in July and the matter had been deferred to allow time for himself and the Chief of Police to investigate the matter and provide information and recommendation to the City Manager, which they had done.

Mrs. Mitchell stated that after talking with the City Planner and the Chief of Police, they had agreed that they do not want this cul-de-sac to be used as a play area because of the precedent it sets. Mrs. Mitchell referenced an email that was handed out in the meeting from another constituent and stated that she felt similarly that this was a public safety concern and the City does not want to allow it for one then have to open it to everyone who wants the same.

Mrs. Mitchell stated it was her opinion if Council felt strongly about the matter, they should revisit the ordinance themselves and decide whether they wanted to change it or not and give everyone that had a cul-de-sac the opportunity to speak.

Responding to Mr. Maier, Mrs. Mitchell stated that "The kicking out of playing games in streets and public places is intended to protect the public," which is why the code was in place; for health and safety reasons.

Responding to Mr. Lewis' question, Mr. Anderson stated that he believed the email complaint received from a citizen was the result of a newspaper article that had run and not a direct complaint from one of Mr. Maier's neighbors. He explained that he had personally gone to Mr. Maier's neighborhood and spoke with his neighbors in the cul-de-sac and they all agreed that there was no traffic in the cul-de-sac, and they did not see any safety issue with the basketball goal.

Mrs. Mitchell stated that she had also gone to the neighborhood to assess the situation and felt that there was room in the driveway for the basketball goal to be used there. She stated that she

had received many calls recently from constituents that felt that some citizens were given preferential treatment while others were strictly held to the code. She felt that the City either needed to follow the code as was written, or Council needed to change the code.

Mr. Neil stated that his concern was that a rolling ball is usually being chased by someone, and while it was presumed that nothing would happen because of the limited traffic in the cul-de-sac, it could happen. He also felt that if this discussion were happening in a court of law, a judge would say, "Ignorance of the law is no exception". He stated it was not a matter of whether Mr. Maier could have the basketball goal on his property, the question was could he have it installed in a way that requires the game to be played in the street. Mr. Neil expressed his sympathy that Mr. Maier had spent the money to install the goal without checking with the City first.

Responding to Mr. Neil, Mr. Maier stated that he had gone to City Hall before installing the goal and there were no pamphlets regarding playground equipment or basketball hoops. He explained that he was not a builder or construction manager and did not have experience with filing for permits. He stated that he had asked staff at the front desk about regulations on playground equipment and nobody said anything.

Mr. Lewis stated that he agreed with Mrs. Mitchell's opinion that making an exception in this case could set a precedent.

Mr. Anderson moved to uphold the findings of the code staff and require the pole be brought into compliance by being removed from the street. The motion was seconded by Mr. Martin. The motion was carried with Mr. Anderson voting no.

Mr. Anderson assumed the Chair.

Property Maintenance Code Citations (Chapter 22 – Buildings And Building Regulations, Article XII – Vacant Buildings, Section 22-403 – Registration And Registration Fee) – Appeal Of Registration Fee – 201 West Loockerman Street (*Matricia McCoy)*

Mr. Ron Coburn reviewed the case history for 201 West Loockerman Street. Mr. Hugg reviewed the waivers for vacant buildings including active restoration, reconstruction, and active listing.

Ms. McCoy stated that she was asking for a ninety (90) day extension because she was in the process of working with Dover's Downtown Unlock the Block Program to lease the property as a café within ninety (90) days. She explained that she was also working with the Secretary of Labor in Dover and the proposed tenant to conduct workshops for senior citizens with diabetes and teenagers sixteen (16) and up at risk of developing diabetes at the property during non-restaurant business hours. Ms. McCoy stated that she had North Iowa's prints that she believed met the code but had not submitted these prints to the City yet. She explained that she had a couple of people interested in leasing the building, but she was working with one person in particular, and a second person perhaps, but it seemed like the individual would open a café.

Mr. Hugg confirmed as a member of the DDP Board, that Ms. McCoy was working with the Unlock the Block Program and was actively working on a lease.

Responding to Mr. Hugg, Mr. Byler stated that he did not know that this appeal would be happening that day and was unprepared to discuss it but believed he could have final prints ready within ninety (90) days. He stated that he was basically done, while he did not know what the new client would need to have made, he could look at it and attempt to complete it in that timeframe.

Mr. Neil stated that if after ninety (90) days if the permit is not in place, he felt that the penalty should be enforced because this problem had spanned twelve (12) years already.

Responding to Mr. Anderson, Mr. Rodriguez stated that the date this would be imposed would be on the anniversary date of the original registration which was August 25, 2007. Mr. Rodriguez stated that he saw nothing wrong with putting the ninety (90) day requirement on it.

Responding to Mr. Martin's question of what would happen in the ninety (90) days, Ms. McCoy stated that a lease would be started within ninety (90) days.

Mrs. Mitchell stated that she agreed with Mr. Martin and feared that nothing proposed was definite. She felt that the board could be in the same place in ninety (90) days. She felt that the board would need to keep in communication with staff to stay on top of how it was going because there had been no follow up from Ms. McCoy in the past when staff had sent notices.

Ms. McCoy stated that she would be willing to keep staff informed on a week to week basis.

Responding to Mr. Lewis, Mr. Coburn stated that it was his recommendation that a full lease be in effect during the ninety (90) days as well as construction started. At any point after the ninety (90) days, it was his suggestion that the $5,000.00 vacant building penalty be imposed. He stated that he also felt that the $5,000.00 vacant building penalty should also be enforced if for any reason the work stops before completion after the ninety (90) days.

Mr. Lewis moved to grant the ninety (90) day extension with the understanding that there be a full written lease within ninety (90) days, construction is started within ninety (90) days, and there is continuation of construction after the ninety (90) day period. If these conditions were not met, the fee would be enforced by staff. The motion was seconded by Mr. Neil and unanimously carried.

Appeal Of Requirement For Places Of Assembly To Be Sprinklered (Chapter 46 – Fire Prevention And Protection, Article IV – Public Occupancies, Section 46-162 – Sprinkler Requirements) – 144 Kings Highway (Governors Café) (*Raymond Searles)*

Mr. Lewis stated that he had been contacted by a patron of Governors Café who was concerned that it was being closed. He stated that he did not have any information on the subject and immediately contacted Mr. Hugg for an explanation of the situation. He stated that he had no intention of favoring anyone in the meeting and did not like the insinuation that he may commit an impropriety.

Mrs. Mitchell confirmed that Mr. Lewis was not the only Councilman that had been contacted regarding the café.

Mr. Anderson stated for the record that there was no issue and everything was handled appropriately.

Mr. Jason Osika reviewed the case history for 144 Kings Highway.

Mr. Osika stated that the occupant load for the Governors Café was based on the first floor including the deck.

Responding to Mr. Neil, Mr. Osika stated that the sprinkler system would need to be on the outside deck as well.

Mr. Searles stated that they had initially mixed up the square footage of the building with the seating in the original expansion. He stated that the owners were more than willing to cut back the seating in the restaurant. Mr. Searles explained that the proposed structure would be suppressed, hooded, and vented as opposed to what was currently there which he felt would be much safer.

Responding to Mr. Searles, Mr. Osika stated that per the code he had to calculate the occupancy by square feet.

Responding to Mr. Neil, Mr. Osika stated that the City Code was stricter than the National Code (NFPA). He explained that municipalities could not change a code to lower any safety, but they could make them more stringent.

Responding to Mr. Hugg, Mr. Osika stated that the City Code was adopted with this revision around 2005 after the Station Night Club fire which raised the concern of alcohol consumption in relation to fire safety.

Responding to Mr. Martin, Mr. Osika stated that the only thing currently in place in terms of fire suppression was a fire alarm system. He stated that the cooking equipment that the café currently had did not require a hood enhancement but what they were proposing would require a hood enhancing system. He stated that everything was based on what they had seen, nothing had been submitted for what was being proposed.

Mr. Byler stated that he was the architect for the project and that the proposed addition would not increase seating at all, it would just be expanding the kitchen. He stated that they were surprised when they received word that the space would need to be sprinklered because around 2010 there had been a permitting and approval process for the property and since the same space was being dealt with, they did not understand why it was being calculated by square footage now when it was not in 2010.

Mr. Osika stated that the problem was that he was not sure how the occupancy was calculated in 2010, but he felt that it was probably calculated incorrectly. He stated that the odds were the deck area had not been calculated as occupiable space though it should have been. With the

small addition proposed, the correct calculation would put the occupancy over one-hundred (100) at three-hundred and forty-four (344).

Responding to Mr. Anderson, Mr. Osika stated that the deck counts as occupiable space because people would be eating there. He stated that if something were to happen on the deck, it would be blocking the exit for everyone inside who would then have to try to use another exit. Exits are based on how many occupants are in the building. He stated that was why it is considered occupiable space, because an incident could occur there which would affect the rest of the building.

Mr. Lewis moved to afford up to sixty (60) days for the appellants to resolve the matter with staff. If after sixty (60) days, the matter had not been resolved it would come back before the Board. The motion was seconded by Mr. Martin and unanimously carried.

Mr. Neil moved for adjournment, seconded by Mr. Lewis and unanimously carried.

Ms. Devine stated that there was another item on the agenda. Mr. Anderson stated that it could not be addressed because the meeting had already adjourned.

Meeting adjourned at 5:20 p.m.

David Anderson
Chairman

RRC/TM/jt
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Attachments
Attachment #1 - Correspondence from Mary Merritt

Devine, Denise

From: Devine, Denise
Sent: Monday, August 06, 2018 11:21 AM
To: Mitchell, Donna; Hugg, Dave; Charles Martin (cmartin@harringtonera.com)
Cc: City Clerks Office
Subject: Citizen Concern Ordinance Chapter 14 Offenses-Miscellaneouse Sec 14-7
Attachments: city ordinance concern.pdf

Attached please find correspondence from Mary Merritt related to an appeal considered by the Construction and Property Maintenance Code Board of Appeals during their meeting of July 31, 2018.

Thank you,
Denise L. Devine, MMC
Assistant City Clerk
City of Dover
e-mail: ddevine@dover.de.us
(302) 736-7008 phone
(302) 736-5068 fax

This e-mail has been blind copied to the Mayor and Council.

From: mary MERRITT [mailto:mmerrittde@hotmail.com]
Sent: Monday, August 06, 2018 10:35 AM
To: City Clerks Office <CityClerk@dover.de.us>
Subject: Citizen Concern Ordinance Chapter 14 Offenses-Miscellaneouse Sec 14-7

To whom it may concern

Your consideration of my attached letter and shareing it will all appropriate departments will be appreciated.

Mary Merritt

August 6, 2018

To whom it may concern (Donna Mitchell, Dave Hugg, Denise Devine, City Council)

> ***RE: Chapter 14 OFFENSES–MISCELLANEOUS****
> *1) Sec. 14-7. Throwing and kicking objects and playing games in streets.*
> *It shall be unlawful for any person to throw, kick or project in any manner whatsoever, any stone, ball or other object in the city streets and public places, or to play or practice athletic games, quoits, pitching pennies and like games on the city streets and public places, unless those places are specifically designated for those purposes by lawful authority.* (Code 1968, § 20-20; Ord. of 5-12-75)

I am writing this letter to submit my concerns about your upcoming review of the above Ordinance. One would assume that this Ordinance was written for public safety to protect residents, drivers and property owners. I agree children need a safe place to play. But allowing "any person" - child or adult- to play games (including athletic games) in cul de sacs or any street may not be the answer. On the surface the list of games in the present Ordinance sounds antiquated. Residents desiring to put up a basketball hoop in their driveway with the net hanging in the street may appear benign. One or two children learning to shoot the ball or practice their skills in front of their home may sound reasonable. I believe, however, that any changes to this Ordinance should be considered carefully as they may affect the safety of children, drivers and home owners throughout the city.

Our story is a case in point. We have lived in a cul de sac in Dover for over 30 years. In full disclosure, like many of our neighbors, we have a basketball hoop in our yard with the net facing the driveway avoiding the street. Some of our neighbors have portable basketball hoops that they respectfully allow their children to play with in their driveways. Unfortunately, there have been periods over the years when there were groups of unsupervised pre-teens or older teens from other streets in the neighborhood who gathered in larger numbers to use the cul de sac as a "make shift playground". Children would use our driveway as a decline to propel their bikes and skateboards quickly into the street. We eventually had to replace our damaged garage door and mailbox as well as had to resurface our driveway. Team basketball games using a portable basketball hoop were held in the center of the cul de sac, some lasting for hours and some lasting well after midnight. Soft balls and other toys have been left in our yard for days and trash thrown in the street. There have been times when the language and behavior of older teens became loud and offensive. Some refused to move out of the street when traffic came into the circle even after drivers blew their horns. Approaching some of our neighbors about our concerns that their child could get hurt riding their bike down our driveway and into the street led to several uncomfortable conversations and proved futile. Eventually, asking for the enforcement of the Ordinance above was our only recourse.

There may be other city residents living in cul de sacs and in neighbors with narrow streets with similar stories that are real to them and deserve respect. I ask for consideration of the following:

- Having a safe place for children and adults to play is very important but allowing games that involve groups of people to be played in the streets of cul de sacs or any street may be dangerous. Many developments have "open areas" that would be safer and of course we need more availability and accessibility to public parks and play areas
- Any changes to the Ordinance will affect all housing developments throughout the entire city not just one; some cul de sacs may be smaller in size or have higher traffic volume
- It only takes one driver with one car to accidentally not see and strike a child playing or running across a cul de sac or street with a ball
- Activities that require space (including basketball, softball, skateboarding, bike racing, and throwing balls) could cause property damage to home owners and be distracting to drivers
- There should be consideration of all home owners within a cul de sac, including those who park their cars in the circle

I am available to speak with you about my concerns. Please feel free to contact me at 302/270-4159.

Sincerely,

Mary Merritt

Mary Merritt
24 Tam O'Shanter Court, Dover