

# *Town of Dover Board of Adjustment*

- ↘ Michael Scarneo - **Chairman**
- ↘ **William Cook – Vice-Chairman**
- ↘ Cephas Bowles
- ↘ Robin Kline
- ↘ Joseph Corsetto
- ↘ Charles Franco

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- ↘ LuAnn Mizzoni
- ↘ Walt Michalski (Alternate I)
- ↘ Carlos Matias (Alternate II)
- ↘ Kurt Senesky - Board Attorney
- ↘ Michael Hantson - Town Engineer/Planner
- ↘ Regina Nee - Clerk/Secretary

## **REGULAR MEETING OF THE BOARD OF ADJUSTMENT**

**June 9, 2004**

### **CALL TO ORDER**

Chairman Scarneo called the meeting to order at 7:30 PM.

### **ROLL CALL**

**PRESENT:** Commissioner Bowles, Kline, Corsetto, Mizzoni, Alternate II Matias,  
Vice-Chairman Cook, Chairman Scarneo

**ABSENT:** Commissioner Franco and Alternate I Michalski

**ALSO PRESENT:** Board Attorney Kurt Senesky and Town Engineer Michael Hantson

**PLEDGE OF ALLEGIANCE:** was recited by all

**ADEQUATE NOTICE OF MEETING** was read by Clerk/Secretary Nee.

**APPEAL TIME** was read by Clerk/Secretary Nee

**APPROVAL OF MINUTES:** May 12, 2004 Meeting

A motion to approve the minutes for May 12, 2004 was made by Vice-Chairman Cook, seconded by Commissioner Corsetto, and followed with a Roll Call vote.

**ROLL CALL:** Ayes: Commissioner Kline, Corsetto, Mizzoni,  
Vice-Chairman Cook and Chairman Scarneo  
Noes: None

### **RESOLUTION**

**17-03-** Stanley Votruba; Block 1217, Lot 5, also known as 8 West Blackwell Street located in the C-1 Zone. The application is a Preliminary and Final Major Site Plan and Use Variance to construct a two (2) story, 2,280 square foot addition to the rear, for a laundromat use and two (2) additional dwelling units, and any other variances and waivers that may be required.

A motion to approve the Resolution of Denial was made by Commissioner Corsetto, seconded by Commissioner Kline and followed with a Roll Call vote.

**ROLL CALL:** Ayes: Commissioner Corsetto, Bowles, Kline, and Chairman Scarneo  
Noes: None

## **CASES**

**01-04-** Manuel & Luz Maria Gonzalez; Block 1211, Lot 3, also known as 45-47 East Blackwell Street located in the C-1 Zone. The application is a Use Variance and Minor Site Plan for the operation of rooming or boarding house with 12 single room occupancy units on the second floor, and any other variances and waivers that may be required.

Abraham Axelrod of Lovas, Axelrod, & Joseph, was present representing the applicant. Manuel Gonzalez, owner of the subject property was present along with Mr. Michael Bengis, Architect. Mr. Manuel Gonzalez and Michael Bengis were sworn in. Mr. Gonzalez has been living in Dover since 1959 and bought his property in 1985. He described the uses on the property at the time of purchase. The building sits on the corner of Blackwell Street and North Bergen. There is a furniture store, condos and a church in the neighboring buildings. The basement was once used as a bowling alley and was then used by a church. Some of the apartments were rented by parishioners. The rooms in the existing apartments were previously altered by the renters. The offices were once used. The top floor is vacant. There are two bathrooms on the second floor with bath tubs and showers. The basement is currently being used by a church. A sprinkler system and an alarm system have been installed by Mr. Gonzalez. The first floor consists of eight stores. The second floor consists of twelve rooms. Mr. Gonzalez visits the building daily and has never had any problems with the tenants in this building or any outside disturbances. Mr. Gonzalez gave the ages of his tenants; none are students, none have cars. They use mass transportation. There is access to five bathrooms. The tenants enter through the front door; they are all Hispanic and they pay approximately \$300.00 per month. There is no on site parking. Mr. Gonzalez would be willing to use his side lot to his house as a parking lot if it were allowed. Mr. Axelrod presented a letter from the NJ Department of Community Affairs dated November 12, 2003 that was marked S-1. Mr. Gonzalez reviewed the pictures that were presented as evidence of various rooming homes around Dover, taken from the state's registry. Mr. Hantson asked if the applicant has any evidence to submit as to whether or not any or all or none of these properties that you are indicating are licensed by the state, have valid Zoning Certificates or Certificates of Compliance from the Town of Dover. Mr. Hantson asked Mr. Axelrod if he had any knowledge of the fact that the State of New Jersey started their investigation based on information provided to them by the Town of Dover's Multi-Dwelling Inspector. He advised that he did not. Until recently, the State of New Jersey gave out licenses for rooming and boarding houses regardless of having prior zoning approval. Mr. Axelrod advised that he did not know. Mr. Hantson stated that the state did not require prior approval and in this case was brought to the state's attention by the Town of Dover's Multiple Dwelling Inspector who does not have jurisdiction, but the DCA does, who he reports to. Mr. Hantson stated that the town

insisted that the state not consider granting this license until zoning approval was attained; as we would take the position with anyone of these other properties that are on this list. The request was made approximately two years ago and the state's response was they have no legal obligation to recognize that, however, they have received enough complaints from enough communities within the state that they are going to make that their practice.

A motion to recess until Mr. Hantson can obtain information was made by Commissioner Kline, seconded by Commissioner Corsetto, with all in favor at 8:15pm. The meeting reconvened at 8:27pm.

**ROLL CALL:** Present: Commissioner Bowles, Kline, Corsetto, Mizzoni, Matias, Vice-Chairman Cook, and Chairman Scarneo

Still present is Town Attorney Kurt Senesky and Town Engineer Michael Hantson

During the break, Mr. Hantson did a review of the addresses that were testified to by the applicant in terms of their zone. He marked up a copy of T-1 which listed the zones for each address and this was marked T-1A. The listing indicates that there are five properties in the C-1 zone of the nineteen. The current zoning in the Town of Dover permits rooming houses for three or more roomers or boarders in the R3A zone; a zone that was specifically created to recognize the need to accommodate rooming houses. The state has not considered zoning in regard to an application. The comparisons are being made to show that Mr. Gonzalez has a compelling case for a use variance. Currently, on the second floor of this building, there are twelve units that have existed for seven years. In the basement a bathroom with a tub exists which was constructed for the boxing club years ago. There are two bathrooms on the second floor. Mr. Bengis did a study to determine if the second floor could be converted to apartments. Mr. Gonzalez stated he sent it out for three bids, to convert the twelve units into four apartments; the lowest of the three bids was \$250,000.00. He said he was unable to rent them out as offices. Mr. Axelrod asked to submit into the record two letters that show Mr. Gonzalez's credibility and his charitable and civic contributions to the Town of Dover. Attorney Senesky advised that they are not relevant to any of the issues. Mr. Gonzalez stated that if his tenants were forced to leave they would end up under the bridge.

Commissioner Kline asked the applicant if when this building was purchased, did the second floor have two apartments and she was advised in the affirmative. Mr. Gonzalez stated that the tenants changed the configuration of the apartments. Mr. Axelrod stated that what Mr. Gonzalez meant was that the rooms were isolated and getting in and out of each room was through the corridor. Commissioner Kline asked when Mr. Gonzalez knew about this additional tenancy occupying this floor. Commissioner Kline also asked on what basis Mr. Gonzalez was making the statement that there were too many offices in Dover and that the office space is difficult to rent. She asked if the applicant has an expert present to back up this information. A two minute recess was taken by the applicant. Mr. Gonzalez stated that any applicant wanted the use of an elevator and also available parking and that is the problem with this space. Vice-Chairman Cook asked when Mr. Gonzalez started collecting rent from twelve rooms as opposed to the two apartments; when did it change? Original testimony was that there were eight offices and two apartments on the second floor. Rent was received from five or six offices and two apartments. Two apartments were used when the church rented the basement about seven years ago. Mr. Hantson presented a sketch, (O-1) of the second floor, which was done by William Isselin 11/05/02. There are eight businesses on the first floor; a video, a restaurant, barbershop, deli. This is a four story building, three above ground and one below. The sketch represents the

second floor, was done by Bill Isselin, Assistant to the Engineer, and currently is the Chief Code Enforcement Officer. The drawing is not to scale; it is a schematic based on walking through, no specific measurements were taken. Mr. Gonzalez stated that the drawing is representative of the second floor as it currently exists. He was asked where the original apartments were and showed the location on the sketch, but said it was not an apartment but an efficiency apartment. Mr. Hantson advised that he has an application to the Board of Adjustment from a number of years ago that contained a sketch, actually, an architectural plan of the second floor which was marked O-2. He asked the applicant if this is what the floor looked like prior to closing the doors up and this sketch was passed around. It was determined that the applicant collects approximately \$78,000.00 a year in rent from the commercial tenants. He was asked if he applied for financing to renovate the second floor for the \$250,000. Mr. Gonzalez stated that he owes \$325,000.00 in mortgages on this property. He stated that he was denied. He purchased the building in 1995 and re-mortgaged. He has had medical expenses in the past. Vice-Chairman Cook stated he does not understand how the applicant did not realize what was going on with all the changes. Mr. Gonzalez stated that Frank Dill, the Construction Inspector, said it was all right to make the alterations without a construction permit. The applicant was asked if there was an official from Dover that saw what he was doing and said it was okay. The applicant replied that Frank said it was okay. He said this was about three years ago. Mr. Hantson showed Mr. Gonzalez certificates that the applicant said he recognized. The certificates, dated May 19, 1999, were for four dwelling units, 47A, 47B, 47C, and 47D that would include sleeping facilities, sanitary facilities, and cooking facilities, and living facilities as opposed to a rooming unit. These were provided to Mr. Gonzalez by Mr. Dill because Mr. Gonzalez did not have any paperwork legitimizing what was on the second and third floors that was conforming originally. There was no construction permits issued. The papers that Mr. Gonzalez is making reference to are Certificates of Compliance for four dwelling units in the building. Listing to his testimony, Mr. Hantson got the impression that there was a Town official there that looked at all of the rooming units and said that it was okay for them to be there and he wanted to clarify that. The first floor had Certificates of Compliance for the commercial tenants that were there which legitimizes their existence. There has been some turnover of the units over the years. The certificates were marked into the records as O-3, A, B, C & D. The application is for twelve rooming units. A rooming unit consists of a bed or two, the numbers of which is controlled by state regulations based on square footage. The state regulates rooming and boarding houses. Mr. Hantson advised the Board that if they were to approve this as a twelve room rooming house zoning wise, they would have to submit construction plans and they would also have to get a certificate from the state that says this is capable of supporting twelve rooming units, maybe half with two beds, maybe all with one; Mr. Hantson stated that he did not have the answer to that. Mr. Hantson advised that based on our knowledge of the past history of the building and the Certificates of Compliance that he had in his hand, if he wanted to do modifications to the building to properly or better create two dwelling units on the second floor and two dwelling units on the third floor, we would accommodate him with building permits without any further zoning approvals. It is the opinion of Mr. Hantson that Mr. Gonzalez legitimately has the capability of and the zoning right to two dwelling units on the second floor and two dwelling units on the third floor based on research of the building. Vice-Chairman Cook felt that the applicant does have alternate use for the floors which are legitimate. Mr. Hantson stated that that would be for eight offices and two apartments on the second floor and two apartments and a dance studio on the third floor. The apartments are a little over five thousand square feet. Mr. Gonzalez can re-establish eight offices and two apartments. If he were to change that use, he would have to get board approval. Mr. Hantson stated that he previously met with Mr. Gonzalez and Mr. Axelrod with architectural plans and Mr. Gonzalez stated it would cost too much money. Mr. Hantson stated that he has

previously advised the applicant that any changes to what was existing would require him to come to this board. This application pertains only to the second floor.

This portion of the meeting was opened to the Public.

Sonia Noise came forward and asked if the current or previous tenants have written leases. She was advised that they did not. She asked Mr. Gonzalez what he based his statement on that the current tenants would end up living under the bridge. She asked if there were no other places for them to live. She asked if Mr. Gonzalez was aware of the fact that if there is an illegal boarding house and people have to be evicted as a result of that; that it is incumbent upon the landlord to assist them in finding subsequent housing. He stated he was not aware.

Attorney Senesky advised that the purpose of this part of the proceedings is to ask this witness a question. There will be a time later on in the proceeding for people to give comments. This portion of the meeting was closed to the public.

Mr. Michael Bengis is a professional architect and planner and upon presenting his credentials were recognized as an expert. He did a study on the feasibility of converting its current use to four one bedroom apartments. The approximate figure to do this was \$300,000.00. It would not include the cost of land acquisition to cover the need for parking. If these were turned into one bedroom apartments as opposed to its current use, would you recognize any impact on the traffic flow? Usually one bedroom apartments would have a tenant with one car. As the number of bedrooms increase, it is impossible to imagine that there would not be some children that would go into the school system. Regarding parking, Mr. Gonzalez has testified that there is a vacant lot that he owns. Mr. Bengis advised that it is in the flood zone and an application would have to be made to the D.E.P. Mr. Gonzalez asked Mr. Bengis to create a rendering of what could be created on this property which is adjacent to his existing home. Mr. Gonzalez has been unable to find parking. The renderings of a house on a proposed piece of property are not relevant to this application. Mr. Bengis advised that there are certain people in town that are on the lower end of the economic scale, most do not have cars, most do not have a steady income, and there should be a place for them to live. This particular location provides certain transportation needs. Mr. Bengis advised that it is unlikely that the eight offices would be rented because there is no elevator. If the application were granted, Mr. Bengis stated that there would not be a negative impact. His opinion is that this is a benign operation and allows members of this town to live with a certain amount of decency. Mr. Hantson asked if Mr. Bengis read the 1999 Master Plan and the 1999 Re-Examination of the Town of Dover. He advised that he did not. Mr. Hantson advised that in it, the residents of the town were concerned with overcrowding in certain areas of the town and that the overcrowding seemed to be related directly to numerous rooming and boarding houses built legally and illegally and that the same plan reiterated that the 1993 Re-Examination recommended that a R3-A Zone be created in the Town of Dover to recognize the existence of rooming and boarding houses and that the Mayor and Board of Alderman subsequently changed the zoning to create a zone to allow rooming and boarding houses in Dover within a specific zone; and that the Master Plan indicates that a recommendation for rooming and boarding houses for more than two boarders or lodgers are restricted to the R3 Two Family residential zone and essentially, specifically addressed the issue and findings and regarding rooming houses in the Town of Dover and made a provision for them in a specific zone and acknowledged the importance of off-street parking associated with rooming and boarding houses. This is all taken from the 1999 Re-Examination Master Plan for the Town of Dover. Given the fact that the Master Plan Re-Examination reports provide those statements, how can you testify that it would not have a substantial detriment to the intent of this zoning

plan? If you have not read this plan, how can you testify that this proposed application for rooming units would not be a substantial detriment to it? Mr. Bengis advised that this already exists; he has not read the report. Mr. Hantson stated that it is the applicant, under the positive and negative criteria, that they have to prove to you that there is not a substantial detriment to this document. A zone was created to meet this need. "With respect to residential uses in the C-1 Zone, the ordinance still permits apartments as a conditional use on the second floor or successive floor as a conditional use provided one and a half parking spaces per unit are supplied." This Board should be guided by this document unless expert testimony is presented to you as to why, in this particular case, it should not apply.

Speaking to Mr. Bengis, Attorney Senesky advised that it is incumbent upon the applicant to reconcile the fact that this use has not been provided for in the Master Plan and the zoning ordinances; and is there any factor or development that has taken place since the Master Plan Re-Examination, that would make the language that Mr. Hantson has cited not applicable to this site. Are you aware of any such development? Mr. Bengis advised that he is not. Attorney Senesky advised that his is not a valid nor is it a legal situation. Attorney Axelrod responded: "The Supreme Court in our state has spoken and they have looked at the statutes that deal with ten to twelve reasons why you can have a "Special Reason". In Mine Hill, there was a junkyard that predated the zoning ordinance, the junkyard continued to grow, the neighbors opposed the junkyard, and the case went to court in Morristown. It was sent back to the Board of Adjustment, and they in turn proposed conditions on the junkyard to make it legitimate or rationalize it and created things such as hours of operation, noise requirements, etc., and they made conditions to make the junkyard an aesthetic improvement. Mine Hill approved the variance with the nineteen requirements. It ended up in the Supreme Court and it was approved." Mr. Axelrod said that this was a very unique use for this property. Mr. Gonzalez is trying to clean this up. We would hope that the Board will grant the use variance so that we can come back with a plan for the twelve spaces so that we can fulfill a very good purpose for the people of this community. Our expert testified that it is benign, it exists this way right now, it does not tax the school system, and it does not add cars and the tenants use mass transportation. Mr. Gonzalez has stated that he has never had trouble where police were called.

Attorney Senesky responded that in the case of the junkyard, it existed, and existed as a valid use, it was just an expansion on it. This is not what we have here. There is a different standard of proof applies when you have a pre-existing, non conforming use. Secondly, with regard to this proposed use and providing, in effect, a place for people to live who have not had a place to live; Dover has certainly done that, it has created a zone for rooming houses and boarding houses and has a number of those types of facilities that are in use. The parking that is called for under the ordinance; it is not the function of the Board to doubt the wisdom of the ordinance, the Board is charged with the obligation of enforcing the ordinance where it is appropriate. It is difficult to disregard the parking requirement that exists. The applicant has a tough burden of proof with regard to the negative criteria.

Attorney Axelrod stated that Mr. Gonzalez was helping the people who have fallen through the cracks. It is also not economically viable to do anything else. Commissioner Kline asked what makes this property unique. She was told that Mr. Gonzalez is helping a certain class of people who have fallen through the cracks.

Mr. Hantson asked if the need that is being provided for, the elderly, lower income, people, the Town of Dover has a Housing element of the Master Plan, adopted in 1996, required the Town of Dover to provide for three low income units. The town has just given CO's to a ninety unit,

low income, senior housing project that would more than accommodate what the Master Plan and COAH would recognize as our fair share. The town has met the needs of the community, we have a plan, and we exceeded the requirement. There is always someone in greater need, but the town has provided.

This portion of the meeting was opened to the public. Seeing no hands and hearing no voices, this portion of the meeting was closed to the public.

The C-1 Zone specifically does not require parking for permitted non-residential uses. Commissioner Kline said that since the existing use is not legal, and the use would become legal with certain approvals, would the American Disabilities Act play any role in the rehabilitation? Mr. Hantson stated that a law was passed a number of years ago, called the Re-Hab Code that was put into place to provide exceptions to all of the new construction regulations recognizing older buildings. He would not have to provide as high a level as a new building would require.

Commissioner Corsetto asked for a recap of the permitted use in the zone and was advised any retail use, any office use, dance studios, music studios, and a conditional use would be an apartment with provisions for on site, off-street parking. Presently, we recognize eight offices and two apartments on the second floor and a dance studio and two apartments on the third floor.

This portion of the meeting was opened to the public.

Marge came forward and voiced concern regarding single-room occupancy. Manuel Gonzalez, son, stated that there is a church next door to this building. It is a much respected corner, my dad is like a sergeant in the building, and no one gets away with anything. There is never a crowd of people hanging out. He has improved the building dramatically. Ishmael Gonzalez, son, spoke on behalf of his father. He stated that his father has become a mentor to these people.

Sonia Noise is a resident of Park Plaza. She is concerned with the parking situation and the applicant not wanting to supply it. There is not enough parking on the street as it is. This should be denied because a zone has been established and Mr. Gonzalez has not provided an over-riding interest to that particular reason.

Ishmael Gonzalez stated that he has a friend who buys a permit for parking and that could be an alternative for a tenant.

This portion of the meeting was closed to the public.

Commissioner Kline was advised that a Certificate of Compliance is issued that indicates that the property meets the Property Maintenance Code and Zoning Code. The certificates that were passed around before are the only certificates that we have on file for residential. The first floor commercial uses have changed hands and we do have a turnover in certificates there. An inspection was done, a summons was issued a few years ago, Mr. Gonzalez pled guilty, paid the fine in court, and subsequent summons was issued a short time ago and that is pending before municipal court in July. Commissioner Kline was concerned that there is no documentation that legitimizes the tenancies in the building. She is concerned that the tenants changed the configuration of the second floor and the landlord did not take responsibility for it or even knew that it happened. She felt that there are too many things going on at this location. If the application is denied, all current tenants would have to relocate. The applicant could also appeal the decision. The vote by this Board would have a direct impact on the current tenants.

Vice-Chairman Cook made a motion to deny the application, seconded by Commissioner Corsetto and followed with a Roll Call vote.

**ROLL CALL:** Ayes: Commissioner Kline, Corsetto, Mizzoni, Matias, Vice-Chairman Cook and Chairman Scarneo  
Noes: Commissioner Bowles

A break was taken.

Chairman Scarneo called the meeting back to order at 10:49PM.

**Roll Call:** Present: Commissioner Bowles, Kline, Corsetto, Mizzoni, Matias, Chairman Scarneo  
Absent: Vice-Chairman Cook had a conflict with this application and stepped down.

Still present is Kurt Senesky, Board Attorney and Town Engineer, Michael Hantson

**04-04-** Town Square Industrial Center LLC; Block 603, Lot 1, also known as 22-40 Richboynton Road Street located in the IND Zone. The application is a Use Variance and Minor Site Plan approval for retail sales of damaged goods in the Industrial Zone, and any variances and waivers that may be required.

Richard Brady, Attorney, was present to represent the applicant. He had three people to testify; George Gloede, Engineer, Gary Marcello, owner, and Richard Dacy, owner, and they were all sworn in simultaneously.

Mr. Dacy operates a warehouse facility in Dover on Richboynton Road that is a warehouse for Dacy Ventures that does business as Bassett Furniture. Mr. Dacy explained that in the course of doing business in a retail environment, we run into occasions where we have furniture that is either returned or damaged and is offered to the public below retail at wholesale pricing that we accumulate throughout the year. The facility would be open Friday, Saturday, and Sunday between the hours of 10:00AM – 5:00PM on Friday and Saturday, and from Noon to 5:00PM on Sunday. There are about fifteen employees employed Monday through Friday from 9:00AM to 5:00PM. There are forty-two parking spaces in our area which would provide sufficient parking. George Gloede, Engineer, and was recognized as a qualified expert. Based on the current use and the proposed use, the ordinance requires that there be one space for two hundred square feet of retail space. In this case, we have 7,729 square feet of retail which would require thirty-nine parking spaces. The warehouse requirement is one per five thousand square feet. Since there is thirty thousand square feet of warehouse, that would only require five spaces. Thus the requirement for parking for the two uses would be forty-four spaces. We are shy by two spaces. The existing site plan, as approved prior, will remain the same. The positive reason to approve would bring more economic element into Dover in this area. There would be no substantial detriment to the area.

The proposed area already exists. There are two containers for refuse, one for garbage and one for cardboard. They use a reputable company to have the waste removed once a week. The items in the retail establishment would not generate additional trash. There is no outdoor storage. There are two large thirty yard containers that we use for recycling. There are no deliveries during the weekend. The retail space is an area separate from the warehouse space. Currently, there is a temporary sign out on Richboynton Road. They would request permission for a sign at a later date. Mr. Hantson advised that the ordinance allows him to install a free



standing sign without site plan approval as long as it is constructed with what zoning permits. Consideration of a variance for an additional free standing sign, because of the size of the property, can be given. Commissioner Kline did not want to see a sign with a bunch of placards.

Attorney Senesky stated that the conditions should be added to any acceptance of this application.

Commissioner Bowles made a motion to accept this application with the conditions as discussed, seconded by Commissioner Mizzoni, and followed with a Roll Call vote.

**ROLL CALL:** Ayes: Commissioner Bowles, Kline, Corsetto, Mizzoni, Matias, and Chairman Scarneo  
Noes: None

**OLD BUSINESS:** None

**NEW BUSINESS:** None

**COMMENTS:** None

**DATES:** Next Regular Meeting is July 14, 2004 at 7:30PM.

**ADJOURNMENT** A motion to adjourn was made by Commissioner Mizzoni with all in favor. The meeting adjourned at 11:13 PM.

**IF ANY MEMBER CANNOT ATTEND THE MEETING, PLEASE CALL CLERK/SECRETARY NEE AT 366-2200 Ext. 115.**

Respectfully submitted,



Regina Nee  
Clerk/Secretary  
Board of Adjustment