

**DELAWARE BOARD OF ADJUSTMENTS**  
**January 21, 2020**

The scheduled meeting for the Delaware Board of Adjustments was held on January 21, 2020 at Town Hall. Those in attendance were Delmar, Delaware Mayor Michael Houlihan, Director of Public Works Jerome Reid, Town Attorney James Waehler, Community Development Coordinator William Hardin, and Clerk of Council Fisher. Guests: Planning and Zoning Chairman Bill Boyan and John Paredes.

***Called To Order***

Mayor Houlihan called the meeting to order at 7:30 p.m.

***Approval of Minutes***

Town Attorney Waehler made a motion to approve the October, 2018 minutes. Public Works Director Reid seconded the motion which passed with 3 ayes and 0 absent.

***New Business***

Mayor Houlihan stated that a Public Hearing is scheduled for this evening. He introduced all members of the Delaware Board of Adjustments; himself as Delmar, Delaware's Mayor, Town Solicitor Jim Waehler and Public Works Director Jerome Reid. Also in attendance is the Planning and Zoning Chairman William Boyan, the Community Development Coordinator and Town liaison for Planning and Zoning William Hardin, recording the meeting and taking the minutes is Clerk of Council Cindy Fisher and petitioner John Paredes.

Mayor Houlihan continued by stating that this Public Hearing has been advertised in the local paper and the property has been posted as required. Mayor Houlihan read the posting in its entirety. He asked anyone who would be testifying to stand and be sworn in. Town Attorney Waehler administered the Oath to petitioner John Paredes, Community Development Coordinator William Hardin and Planning and Zoning Chairman William Boyan.

Mr. Paredes introduced himself and stated that he lives at 108 N. Paula Lynne Drive in Seaford Delaware and owns the property in question, 207 N. 8<sup>th</sup> Street, Delmar, Delaware.

Town Attorney Waehler stated that in an R-2 zoning district, a Special Exception may be granted for allowance of a duplex with certain conditions which have to be met. He wanted to make sure that Mr. Paredes understood that under Section 32 of the Delmar Zoning Code, he (Mr. Paredes) has the sole burden to prove that he is entitled to a Special Exception. The Board will listen to what he has to say along with testimony from other witnesses.

Mr. Paredes stated that this property is 2652 Sq. ft. When he purchased the house in 2017, there was already an addition in the back. Originally he began fixing up the front part, doing mainly painting, fixing the floor and providing appliances. His step-son was living there for about 8

months. The back part of the house needed some upgrading. The more he thought about it, he thought it was an opportunity to make it a duplex. He did not get or knew he needed to get any approvals from the Town. There is parking in front of the house and in the back. He created electrical work for the back of the house with different electrical boxes and installed a water meter. Mr. Paredes stated that none of his neighbors has had anything bad to say. One of his neighbors has been helpful in the remodel. He has also done work on the outside of the house with working on the deck and the shed. He keeps the grass mowed.

He is asking for a Special Exception to make this house a duplex.

Mayor Houlihan stated that Mr. Paredes already has put in an investment into the property. He said that he sat on the Planning and Zoning Commission back in 2002. At that time there was some discussion about duplexes. It was a verbal discussion about making it so duplexes would only be allowed with new home construction. But there is nothing in writing. Mayor Houlihan said that taking a single family home and dividing it up mandates 2-fold for everything; parking, use of utilities, etc. As he discussed with Chairman Boyan, Mayor Houlihan doesn't think Mr. Paredes did this maliciously without getting any permitting from the Town. As he understands it, the Fire Marshal would not give his approval without a building permit from the Town. Mayor Houlihan said what really needs to be done is to revise the zoning code and turn that verbal discussion into something in writing.

Town Attorney Waehler questioned where the parking was on the property. Mr. Paredes stated that the parking for the front portion of the house would be on-street parking and for the portion in the back, there is a space for 3-4 vehicles to park. He stated that he wanted to kill the grass and put in stones for parking. In response to another question by Town Attorney Waehler, Mr. Paredes stated that he has made no additions to the home. The addition to the house was pre-existing to his purchase in 2017. The only work that he has done is internally.

When questioned on how Mr. Paredes knows the work that has been done to the house to make it a duplex has been done correctly, he responded that the front section already had an electrical box. For the back of the house, he had an electrician do the work. DP&L provided the 2 boxes that were installed. The rest of the work was cosmetic such as insulation and sheet rock. Mr. Paredes stated that he and 2 other guys did that work. No one consulted with any building code or had a license to do any of the work. Currently the house is not occupied, but in the early 2017-2018, his step-son lived in the front section.

Town Attorney Waehler asked Mr. Paredes if he knows of any other duplexes on his street. Mr. Paredes stated that he did not know. At some point, he stated that he was instructed by a realtor to get the house inspected by the Town. He spoke with Mr. Hardin and that's when he was informed that he should have gotten approval first.

Town Attorney Waehler said that this Board wants to help people coming to Town and fixing up properties but the Board also has to act within the boundaries of the Ordinances. When looking

at the survey of the property, it shows that every set-back is not correct to the zoning code. Mr. Paredes said that he thinks the house was built in 1987 and that he did have an attorney help with settlement but he's not sure if a title search was done. The Town and County taxes have been paid and he owns the property outright with no mortgage.

CDC Hardin said on December 6, 2019, Mr. Paredes came to Town Hall to speak with him about single family dwellings being converted to a duplex. This particular property is zoned R-2 Residential and a duplex is allowed by Special Exception. CDC Hardin said that at the time of this discussion, he was not aware that duplexes had been restricted to new home builds only. He presented Mr. Paredes a building permit. Once CDC Hardin was made aware of the restriction, he contacted Mr. Paredes, who had already started the work on the property. He informed Mr. Paredes that he could not receive a building permit until such time the duplex is approved by special exception. Mr. Paredes said that most of the work done has been internally and he had about 90% of the work done by the time Mr. Hardin contacted him to stop work on the house. Mr. Hardin also had informed Mr. Paredes that he would need a Sussex County permit.

CDC Hardin believes that since every aspect of the house is out of code; all the set-backs, lot size, that the house was built prior to the zoning regulations being in place. The original house is grandfathered in as a non-conforming use. All the setbacks are in violation of the Code which matches all the other houses on 8<sup>th</sup> Street. So the original building permit predated the zoning code.

In reference to the Comprehensive Plan- CDC Hardin stated that the property is only for single family homes. The Code states Residential.

Planning and Zoning Chairman Bill Boyan stated that the complication arises with this verbal conversations of stopping the conversion of single family homes into duplexes. He stated that he believes that you can't do anything with just a verbal conversation that supposedly happened quite a few years ago. He stated that he doesn't have anything against duplexes when the property is large enough. If he contacted some of his neighbors to see if they had any issues with the property being a duplex. The Planning and Zoning Commission did not have a problem with it.

Town Attorney Waehler asked P&Z Chairman Boyan if the Planning and Zoning Commission did any research on the property. P&Z Chairman Boyan responded that the property is zoned R-2 and the property was grandfathered in.

Town Attorney Waehler asked P&Z Chairman Boyan if he was aware of the Section in the Zoning Code on non-conforming use. P&Z Chairman Boyan read that section of the Code for non-conforming use out loud. Town Attorney Waehler said that Planning and Zoning Commission should have taken this under consideration. P&Z Chairman Boyan said that we all know that there are many discrepancies in the Code.

CDC Hardin stated that at all times, the Town indicates that even if there is an approval given to the property, it must meet all local and state regulations. Each of these units would have to be 1,100 square feet to meet the Code, which they are not. There are other requirements that would have to be met, to get a Certificate of Occupancy. CDC Hardin also stated that there are no other duplexes on 8<sup>th</sup> Street.

Town Attorney Waehler spoke about being detrimental to the neighborhood. The property sits across from the school. As far as parking on the street, it probably doubles the number of cars needing parking when school is in session. Mr. Paredes stated that there is a yellow line on the curbing where parking is not allowed and then there is a section where 2 cars can be parked.

CDC Hardin stated that to the rear of the house, there is a curb cut suggesting a driveway could be there. In the pictures he provided, it is by the shed. The grassy area is what Mr. Paredes said he would be using for parking. Per Code, either the parking area would need to be paved or use compacted dust-free crushed stone.

CDC Hardin also indicted that parking in the school area is already a nightmare. There have been steps taken to control parking in that zone. The width of the street and the number of vehicles using that street creates for heavy traffic and back-ups. Residents use off-street parking up and down the street even when school is not in session.

Town Attorney Waehler stated that he would like to give deference to the Planning and Zoning Commission, but the Board has to comply with the Ordinance. Non-conforming use; with all setbacks and the Lot size being out of compliance. No building permit issued. He feels that Mr. Paredes has not met the criteria of Section 32 for converting single family homes into duplexes. The section of the zoning code that specifically states that under non-conforming use- alterations and additions are not permitted. To approve this would be in violation of the Zoning Ordinance.

Town Attorney Waehler made a motion that since the Special Exception requirements have not been met, the non-conforming use with the alterations not being permitted, that this application for a Special Exception be denied. Maybe there is a different path in which to get an approval but this is not it. Town Attorney Waehler suggested the possibility of renting the house to one family. The Town will explore, in the future, to change the regulations or not. Town Attorney Waehler stated again that he is making a motion for this application to be denied. Public Works Director Reid seconded the motion. He stated that there already is a lot of traffic congestion in the area of the school. He also said that it is a shame that Mr. Paredes started and has expenses without a building permit. But we have to stand by the Regulations.

Mayor Houlihan said that we have heard a lot this evening. Everyone on the Board is very sympathetic but he has a responsibility and the more he heard this evening, he has to respect the other property owners. Even if you split the square footage in half, there would still not be enough room for the duplexes. Mayor Houlihan stated that he has to deny the application as well.

The motion for denying the application for Special Exception for a duplex is carried with 3 ayes and 0 absent.

***Adjournment***

Public Works Director Reid made a motion for adjournment which was seconded by Town Attorney Waehler.

Submitted by:

Cindy Fisher  
Clerk of Council