CITY OF DOVER BOARD OF ADJUSTMENT
AGENDA
Wednesday, June 21, 2017 at 9:00 AM

City Hall Council Chambers
15 Loockerman Plaza, Dover, Delaware

ROLL CALL

APPROVAL OF AGENDA

APPROVAL OF MINUTES of May 17, 2017 Meeting

COMMUNICATIONS & REPORTS

1. Reminder: The next Board of Adjustment regular meeting is scheduled for July 19, 2017 at 9:00am in the City Council Chambers.

OLD BUSINESS

Applicant #V-17-09

1310-1324 Forrest Avenue. Margaret H. Johnson has requested a revision of the variance granted on March 15, 2017 from the requirements of the *Zoning Ordinance*, Article 3 §27.66 pertaining to the maximum allowed number of stories and allowable height of buildings located with the COZ-1 (Corridor Overlay Zone). Specifically, in its motion to approve the variance, the Board of Adjustment voted that the provisions of Article 3 §27.66 remain in force for the first 200 feet of depth of the property, as measured from the front property line. The applicant seeks to revise this restriction to the first 150 feet of depth. The revision is sought because the previously approved 200 feet is too deep to accommodate the previously proposed building. The position of the building has not changed. Subject property is zoned C-2A (Limited Central Commercial Zone) and subject to the COZ-1 (Corridor Overlay Zone). Tax Parcels are ED-05-076.10-01-01.00-000, ED-05-076.10-01-02.00-000, ED-05-076.10-01-03.00-000, ED-05-076.10-01-04.00-000, ED-05-076.10-01-04.01-000. The owner of record is Margaret H. Johnson.

ADJOURN

29 Del. C. § 10004(e)(2)
THE AGENDA ITEMS MAY NOT BE CONSIDERED IN SEQUENCE. THIS AGENDA IS SUBJECT TO CHANGE TO INCLUDE THE ADDITION OR THE DELETION OF ITEMS, INCLUDING EXECUTIVE SESSIONS.

MINUTES OF

BOARD OF ADJUSTMENT MEETING

OF MAY 17, 2017

- The Meeting Minutes of the May 17, 2017 are still being prepared. These Meeting Minutes will be distributed to the Board of Adjustment via email or hand delivered.
- Adoption of the Meeting Minutes will be considered at the June 21, 2017 meeting of the Board of Adjustment.

City of Dover

Board of Adjustment

June 21, 2017

V-17-09 Revised

Location:	1310/1324 Forrest Avenue
Applicant:	IDE^3 Associates, Inc.
Owner:	Margaret H. Johnson
Tax Parcels:	ED-05-076.10-01-01.00-000, ED-05-076.10-01-02.00-000, ED-05-076.10-01-03.00-000, ED-05-076.10-01-04.00-000, ED-05-076.10-01-04.01-000
Application Date:	June 6, 2017
Present Zoning:	C-2A (Limited Central Commercial Zone) COZ-1 (Corridor Overlay Zone)
Present Use:	Vacant
Reviewed By:	Eddie Diaz
Variance Type:	Area Variance
Variance Granted:	To allow an increase in the maximum permitted height in the COZ-1 (Corridor Overlay Zone) from two stories and 35 feet to 3 stories and 41 feet, in the portion of the property beyond the first 200 feet of depth as measured from the front property line.
Variance Requested:	To allow an increase in the maximum permitted height in the COZ-1 (Corridor Overlay Zone) from two stories and 35 feet to 3 stories and 41 feet, in the portion of the property beyond the first 150 feet of depth as measured from the front property line.

Project Background

This variance application was originally submitted as application V-16-06, first reviewed by the Board of Adjustment on June 15, 2016. In its first review of V-16-06 the Board of Adjustment opted not to approve or deny a variance, instead giving the applicants the opportunity to present an alternative project design or further evidence in support of their case at a future meeting. Board action was deferred until the October 19, 2016 meeting of the Board of Adjustment, at which the applicants requested to withdraw the application. The Board accepted the request to withdraw, and discussion at the meeting indicated that future re-application would be permitted if the applicants later decided a variance was still desired.

The application was resubmitted for review at the March 15, 2017 meeting as application V-17-09. The major difference between V-16-06 and this new application was that the new application requested a variance for three stories rather than four stories. At the March 15 meeting, discussion between the Board members and the applicants led to the Board asking if the applicants would accept an alternative granting of the variance, where the height of buildings would remain restricted to two stories for an area of the property thought not to include the proposed three-story building (See Exhibit B for minutes of the March 15 meeting, and Exhibit C for the Notice of Decision from that meeting.) The applicants said that they would accept such a restriction, and the variance was granted.

However, the restriction the applicants accepted did not allow them to construct the three-story building as proposed. The restriction accepted placed the first 200 feet of depth of the property under the two-story height limit, and the building then proposed was set back only 180 feet from the front property line (See Exhibit D for the March 15 plan submission). The first 20 feet of the apartment building was still therefore limited to two stories.

The origin of this confusion appears to be the position of the front property line itself. For most properties in the City, the front property line is immediately adjacent to the street. The applicants believed a 200-foot restriction for two stories would be acceptable because the building is 235 feet away from the street, as measured from the curb. However, for this property and others nearby along Forrest Avenue, there is a 55-foot distance between the curb and the property line, which was enough to create the 20-foot deficit (235 feet – 55 feet = 180 feet).

The applicant currently seeks a revision of the previously-granted variance so that all of the proposed three-story building may be built to that height. To remove the deficit, the applicant proposes the area restricted to two stories be revised to 150 feet in depth as measured from the front property line.

Project Description

The applicants requested a variance from the *Zoning Ordinance,* Article 3 §27.66(a), pertaining to the maximum permitted building height in the COZ-1 (Corridor Overlay Zone). The applicable provisions state “Buildings shall be limited in overall height to 35 feet and shall not exceed two stories.”

The applicants propose two new buildings on the site:

- A one-story retail building located at the front of the site facing Forrest Avenue.
- A three-story apartment building located behind the proposed retail building and extending to the rear of the property.

Since the project last appeared before the Board of Adjustment in March 2017, there have been some design changes to the site and building, including alterations to the layout of driveways and minor changes to the footprint of the building. The proposed number of units has increased from 37 to 44, possibly by decreasing the size of individual units. However, the overall position of the building has not changed. It is currently 178 feet away from the front property line, two feet closer than it was previously.

Exhibit D shows the site plan previously presented to the Board of Adjustment in March 2017, dated February 6, 2017.

Exhibit E shows the updated site plan, dated June 6, 2017.

Any site development would be subject to the Planning Commission Site Development Plan review processes and would require a parcel consolidation plan. The content of the exhibits shown should still be considered preliminary as they relate to the site plan elements.

Adjacent Land Uses

Refer to the Zoning Map (Exhibit A). The property is located on the south side of Forrest Avenue between June Lane and Independence Boulevard, across from Greentree Village shopping center. The area is primarily a mix of commercial uses facing Forrest Avenue, including restaurants, retail uses, and services. Within the immediate area residential uses are typically located on streets feeding to Forrest Avenue and behind the commercial uses that front Forrest Avenue.

The subject properties are the site of former residences which have since been demolished. Former residences (now zoned commercial) can be found at various points along Forrest Avenue, including the properties located immediately west of June Lane. Some other nearby residential structures still used as residences, while others are occupied by commercial uses.

Code Citations

C-2A (Limited Central Commercial Zone)

The *Zoning Ordinance,* Article 3 §14 outlines uses permitted in the C-2A Zone, which include apartments and multi-family dwellings. The "Zoning Bulk and Parking Regulations" in *Zoning Ordinance* Article 4 §4.14 state that maximum permitted building heights in the C-2A Zone are:

- 75 feet and shall not exceed six (6) stories.

COZ-1 (Corridor Overlay Zone)

The subject properties and surrounding properties are within the COZ-1 (Corridor Overlay Zone). This overlay zone includes additional provisions related to building design, landscaping, parking layout, and height among other criteria.

- Within the COZ-1, building heights are limited to 35 feet and shall not exceed two (2) stories.

As with parking regulations, there are instances where bulk standards or other dimensional criteria (such as height) are stated in various sections within the *Zoning Ordinance,* such as in the base zoning, overlays, or supplemental regulations. In cases where multiple standards are given, the more stringent standard applies.

Building Height

Zoning Ordinance Article 12 provides the following definitions related to height:

- *Height:* The vertical distance measured from the average elevation of the finished grade at the front of the building to the highest point of the roof for flat and mansard roofs and to the mean height between [the] eave and ridge for other types of roofs.
- *Story:* That part of any building, exclusive of cellars but inclusive of basements, comprised between the level of one finished floor and the level of the next higher finished floor, or if there be no higher finished floor, then that part of the building comprised between the level of the highest finished floor and the top of the roof beams.
- *Basement:* A story in a building having a floor below the finished grade at any point on the periphery of the building and having a structural ceiling level at least four feet above the average finished grade along each side of the building facing a street (see Cellar and Story).
- *Cellar*: A space in a building with a structural ceiling level less than four feet above the average finished grade along any side of the building facing a street.

Exceptional Practical Difficulties Tests

Zoning Ordinance Article 9 §2 dictates the specific powers and duties of the Board of Adjustment with regard to granting variances. Specifically, the Board must determine:

2.1 Variance **–** The board shall have the authority to authorize variances from provisions of the Zoning Ordinance that are not contrary to public interest where the board determines that a literal interpretation of the Zoning Ordinance would result in undue hardship or exceptional practical difficulties to the applicant. In granting variances, the board shall determine that the spirit of the Zoning Ordinance is observed and substantial justice is done.

2.11 Area Variance. A variance shall be considered an area variance if it relates to bulk standards, signage regulations, and other provisions of the Zoning Ordinance that address lot layout, buffers, and dimensions. In considering a request for an area variance, the board shall evaluate the following criteria and document them in their findings of fact:

(a) the nature of the zone in which the property lies;
(b) the character of the immediate vicinity and the contained uses therein;
(c) whether, if the restriction upon the applicant**'**s property were removed, such removal would seriously affect neighboring properties and uses; and
(d) whether, if the restriction is not removed, the restriction would create unnecessary hardship or exceptional practical difficulty for the owner in his efforts to make normal improvements in the character of that use of the property that is a permitted use under the provisions of the Zoning Ordinance.

Review of Application
As a part of the original application, the applicants were asked to state how the requested variance relates to the above four criteria. The applicants' original responses are provided below, along with a staff assessment of the current requested revision in accordance with the required criteria.

1. The nature of the zone in which the property lies.

   Applicant Response:
   Section 27. - Corridor overlay zone 1 (COZ-1)
   Base Zone C-2A
   A. The base zone permits apartments and Multi-family dwellings.
   B. C-2A zone permits building heights of 75 feet but not to exceed 6 stories.
   C. The COZ limits building heights to 35 and shall not exceed two stories.
   D. To foster coordination and linkage among corridor properties and with adjacent lands; Taken from Zoning Ordinance Article 3
   E. To preserve the functionality and efficiency of the roadway for traffic movement; Taken from Zoning Ordinance Article 3
   F. To achieve a visually balanced streetscape environment which is friendly to the pedestrian and motorist alike. Taken from Zoning Ordinance Article 3"

   Staff Response:
   The applicants' response accurately states some of the major objectives of the Corridor Overlay Zone as well as the limits on height set by the C-2A Zone and the Corridor Overlay Zone. The project will be evaluated for its relationship to the major objectives of the COZ when it undergoes review for application to the Planning Commission.

   The proposed three-story building is consistent with the C-2A zone, but inconsistent with the requirements of the COZ-1 and the currently granted variance.

2. The character of the immediate vicinity and the contained uses therein.

   Applicant Response:
   "The subject property is currently surrounded by commercial, retail, residential, apartment style dwellings. Immediately to the East of the property is the Betsy Ross and a retail business. Across the street is Greentree Shopping Center. The property directly behind the site is Woodmill Apartment. Woodmill Apartments are three story apartment buildings with a gable roof…yielding a roof height of approximately 40+ feet."

   Staff Response:
   The immediate vicinity of the subject properties, as seen from Forrest Avenue, is mostly commercial. The subject properties are south of and across the street from the Greentree Village shopping center. To the east of the subject properties is a restaurant (Betsy Ross Pizza) and a retail store (Salvation Army, formerly a drug

store). To the west are 1 ½ story residential structures of undetermined use. The subject site was previously occupied by similar structures. Farther west are a gas station, automobile service business, and small shopping center. The property abutting the subject property at the rear is Woodmill Apartments.

3. Whether, if the restriction upon the applicant's property were removed, such removal would seriously affect neighboring properties and uses.

   Applicant Response:
   "The proposed 3-story building is located in the center rear of site. It is 235' from the road with a proposed 1-story commercial building between it and the road. The east/west side property lines are 83.50' & 111.50' from the building. There is 120' between it and the 3-story apartment complex located adjacent to the rear (south) of the site. We do not see this having a significant negative impact on the local community. It should be noted that there are existing four story buildings within the COZ."

   Staff Response:
   The applicants argue that the proposed building would not negatively impact neighbors because there are already similar multifamily residential properties nearby, some taller than the subject building. Staff concurs that the building would not be out of character for the area based only on height. As some previous discussions have indicated, it may be undesirable for a three-story building to be built at the very front of the lot. However, the proposed position of the apartment building has not changed since the granting of the variance. Even if it were to change, a new restricted area 150 feet deep would only allow the building to be built another 28 feet closer to the front than the currently proposed 178 feet, and Staff does not believe a three-story building 150 feet away from the front property line would be any more of a detriment to neighbors than one 178 feet away from the front property line. Similarly, moving the apartment building 22 feet in the opposite direction toward the rear of the lot, so all of it is outside of the current 200-foot restricted area, would not provide significant benefit to neighbors.

4. Whether, if the restriction is not removed, the restriction would create unnecessary hardship or exceptional practical difficulty for the owner in his efforts to make normal improvements in the character of that use of the property that is a permitted use under the provisions of the Zoning Ordinance.

   Applicant Responses:
   "a. Site Geometry:

   The exceptional practical difficulty is in the site geometry, being long and narrow create design challenges while trying to maintain and adhere to all governing regulations pertaining to City, Del-DOT [sic] and Conservation District. The site restrictions do not provide for an easy balance of egress, circulation, parking and Stormwater management; therefore forcing the design of the building to go vertical.

We have listed Staff's previous comments regarding the footprint restrictions to the two story building:

"The limitation of two (2) stories would impose a challenge for this and other properties and uses as it relates to the building footprint and also for the provision and location for parking. However staff notes that while a two-story building height may force a building footprint to "spread" over the lot, a four-story building would have a similar effect if it can be assumed that a taller building would have more dwelling units or greater square footage. This would force a greater requirement for parking which would similarly consume lot area."

While we agree that constructing a three or four story building will yield additional parking requirements. We disagree that the overall effects of building the square footage vertically would have a similar effect to the two story building because the additional footprint square footage over the two stories does [sic] create any additional impervious area.

b. Competitive Disadvantage
    a. We site [sic] Competitive Disadvantage as an exceptional practical difficulty as we do economic competiveness.
    b. As Staff has pointed out there are numerous apartment buildings within the vicinity of this site that are over two stories
        i. The Grande which is a 4 story building, exceeding total heights of more than 55'. This building was approved by Planning Commission through a PND; however, no Board of Adjustment. This building is within the COZ and although we are not supposed to speak in terms of precedence, there has been a precedence set by allowing the four story building within the COZ
        ii. The Woodmill apartments are located directly behind our site are not within the COZ are 3 stories with a gable roof, placing the height to the ridge at about 45'. This set of apartments is visible from Forrest Avenue.
        iii. Dover Country Club is a 3 story apartment building
    c. It is our assumption that these apartments were constructed to maximize the site from a coverage perspective, addressing parking, Stormwater, Landscaping, open area to their advantage to remain competitive with surrounding apartment buildings. Unfortunately all of this effort is tied back to economic competitiveness
    d. There is specific case law that speaks to exceptional practical difficulty and categorizes variance requests into two categories, 'Use' and 'Area' . This case law is the Board of Adjustment of New Castle County vs. Kwik-Check Realty.
    e. Quote, 'we hold that the Superior Court correctly distinguished the two types of variances and prescribed less burdensome test where an area variance is in issue…'

f. The quote goes on to state that the rationale which we approve, is that a use variance changes the character of the zoned district by permitting an otherwise proscribed use…whereas an area variance concerns only the practical difficulty in using the particular property for permitted use. 'Accordingly, given the differing purposes and effects of the two types of variances .a lesser standard of the owner's 'exceptional practical difficulties is appropriate for obtaining an area variance.
g. 'The board also contends that even under the exceptional practical difficulties of ownership test, The Superior court erred in holding that economic consideration, standing alone, may be a sufficient justifications for the grant of an area variance. We decline to place such restriction on the meaning of the exceptional practical difficulties of ownership. The inability to improve one's business, or stay competitive as a result of an area limitations, may be a legitimate exceptional practical difficulty that would justify a grant of a variance. Such practical difficulty is present where the requested dimensional change is minimal and the harm to the applicant if the variance is denied will be greater than the probable effect on the neighboring properties of the variance is granted.
h. The ruling goes on to say…'the board should take into consideration the nature of the zone in which the property lies, the character of the immediate vicinity and the uses contained therein, whether, if the restriction upon the applicant's property were removed, such removal would seriously affect such neighboring property and uses: whether, if the restriction is not removed, the restriction would create and unnecessary hardship or exceptional practical difficulty for the owner in relation to his efforts to make normal improvements in the character of that use of the property which is a permitted use under the use provisions of the ordinance.
i. To us, this suggests that if the Board denies the variance request, we believe that the harm done to the owner for wanting to be competitive would be far greater than the harm imposed on the community because the variance request is within general character of the surrounding area. We simply do not see how the community would be negatively impacted by a three story apartment building when a +/- 46' tall apartment building exists directly behind this proposed apartment building and is visible from Forrest Avenue.
j. In Summary, we maintain that:
    i. The site is long narrow and difficult
    ii. The present design positively addresses the needs of the COZ by placing a less than two story building at the front of the parcel
    iii. The site is fully maximized and adheres to the code regulations
    iv. That there is precedence for a four story apartment building within the COZ
    v. That the owner has made an appropriate attempt at the design to bring the height down to using an attractive parapet design

element to keep the overall height in normal character of the surrounding

vi. That the owner has the right not to be competitively disadvantaged."

Staff Responses:
Staff previously made recommendation to the Board for a finding of exceptional practical difficulty based on "competitive disadvantage." Specifically, Staff noted that it is fairly common for multifamily projects to be unable to realize a return on investment for their developers unless a minimum number of units are constructed. If this project, as a whole, cannot be built unless a certain number of dwelling units are provided, then an exceptional practical difficulty may be found because the area and other proposed uses of the site would limit where the units can be built.

While the number of dwelling units has increased from 37 to 44, this may still be the number needed to achieve a reasonable return. If the area subject to COZ-1 height requirements remains 200 feet deep from the front property line, then part of the building will still be limited to two stories, and the number of units will similarly be limited beyond what may be reasonable.

Variance Recommendation
Staff recommends approval of a revision of the variance. The revision recommended is for the first 150 feet of the property, measured from the front property line toward the rear of the lot, to be subject to the height requirements of the Corridor Overlay Zone (Two (2) stories and 35 feet). The next area, measured from that 150 feet of depth to the rear property line, would be subject to a height limit of Three (3) stories and 41 feet. Staff recommends approval of the revision for reasons as follows:

- The proposed three story apartment building would not be out of character for the area.
- The proposed three-story apartment building 178 feet away from the front property line would be no more out of character for the area than one 150 feet or 200 feet away from the front property line.
- The development's requirement for a minimum number of dwelling units combined with the dimensions of the site presents an exceptional practical difficulty.
- Limiting part of the building to two stories and allowing the rest to be three stories would reduce the number of units that could be built and so contribute to the exceptional practical difficulty.

Staff notes that the Board of Adjustment may choose to grant a revision where the area of the site subject to COZ-1 height requirements is less than 200 feet in depth but more than 150 feet, such as 175 feet in depth. However, the 150-foot depth is specifically recommended because there may be changes required as a result of the Site Development Plan review process that could affect the position of the building. The 150-foot depth will allow the applicants more margin for error in future design changes to the site, making a

future visit to the Board of Adjustment to further revise the depth of the two-story area much less likely.

Advisory Comments to the Applicant

- If granted, variances become null and void if work has not commenced within one (1) year of the date the variance was granted. At present there is no provision for extension.
- Improvements to the property are subject to Site Development Plan approval processes and appropriate permits from the City of Dover Department of Planning & Inspections and other agencies.

GUIDE TO ATTACHMENTS

Exhibit	Description/Author	# Pages
A	Zoning Exhibit Map (Staff)	1
B	Excerpt from minutes of the March 15, 2017 Board of Adjustment meeting (Staff)	5
C	Notice of Decision for V-17-09 dated March 15, 2017	2
D	Site Plan dated February 6, 2017 (Applicant)	1 (11" x 17")
E	Revised Site Plan dated June 6, 2017 (Applicant)	1 (11" x 17")
F	Applicant's request for revision of Variance	1

City of Dover

Department of Planning & Inspections

Exhibit A

Application No.: V-17-09



Title: Lands of Margaret Johnson
Address: 1310/1324 Forrest Ave
Parcel ID: ED-05-076.10-01-01.00-000
ED-05-076.10-01-02.00-000
ED-05-076.10-01-03.00-000
ED-05-076.10-01-04.00-000
ED-05-076.10-01-04.01-000
Zoning: C-2A, Corridor Overlay Zone
Owner: Margaret H. Johnson
Date: 2/27/2017

N
W E
S

0 125 250 500 Feet

Legend

- Subject Property
- Dover Parcels
- Zoning
- Corridor Overlay Zone
- 2012 Buildings
- Kent County Parcels
- Wetland Areas

Mr. Keller questioned for clarification whether the City was contending that there is approximately 10% more than the allowable 50% coverage by the City's *Zoning Ordinance*? Mrs. Townshend replied yes.

Mr. Hufnal stated that in that extra amount is just measurement and there is still clear glass that you can see through. Mrs. Townshend replied yes, there is a lot of clear glass within that area. One of the differences between this window sign and others is the amount of little words so there is more white clear space within the text rather than if it was large lettering.

Chairman Sheth opened the public hearing.

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

Chairman Sheth questioned if there was any additional correspondence for the record. There was none.

Mr. Diaz added that when he met with Mr. Reeves upon applying for the variance he told him that he did not think that the owner needed to sign the application. This is the reason the application was not signed by the owner.

Mr. Keller moved to table application V-17-07 until the Board is in receipt of acknowledgement and proper authorization by signature of the current property owner. The motion was seconded by Mr. Senato and was unanimously carried 5-0.

The Board discussed the order of application(s) should there be an attorney or engineer present representing the applicant due to cost. Mr. Rodriguez stated that he would recommend if the applicant is represented by an Attorney that it would be a good idea for the Board to consider that application to go first on the agenda.

Mr. Keller questioned how does staff otherwise prepare the agenda? Mrs. Townshend replied that it is done in order of applications received and sometimes if they presume the application is going to be easy then it will be first on the agenda. Staff is not always aware that an attorney will be present, but can determine if an attorney is present which case he is representing.

Mrs. Townshend mentioned that the applicant from application V-17-07 that was tabled has contacted the property owner to come in and sign the application today.

Applicant #V-17-09

1310-1324 Forrest Avenue. Margaret H. Johnson has requested a variance from the requirements of the *Zoning Ordinance*, Article 3 §27.66 pertaining to the maximum allowed number of stories and allowable height of buildings located with the COZ-1 (Corridor Overlay Zone). Subject property is zoned C-2A (Limited Central Commercial Zone) and subject to the COZ-1. Tax Parcels are ED-05-076.10-01-01.00-000, ED-05-076.10-01-02.00-000, ED-05-076.10-01-03.00-000, ED-05-076.10-01-04.00-000, ED-05-076.10-01-04.01-000. The owner of record is Margaret H. Johnson.

This application represents a resubmission of application V-16-06, initially reviewed by the Board of Adjustment on June 15, 2016 and withdrawn on October 19, 2016.

Exhibits for the Record: Staff report, zoning exhibit, and plans and renderings submitted by the applicant. Legal Notice was published in the Delaware State News on March 5, 2017. The public was notified in accordance with regulations.

Chairman Sheth questioned if there was any member present who had a conflict of interest and there was none.

Representative: Mr. Constantine Malmberg, Attorney

Mr. Malmberg stated that the property is located across from Greentree Village Shopping Center, Betsy Ross Pizza is to the east of the subject property, and Ms. June Schamp owns property to the right of the subject property. Ms. Schamp is in support of the project and submitted something in writing to that regard. Owner Margaret Johnson of Betsy Ross Pizza has been a fixture in the City of Dover for over 40 years. A letter supporting the project was submitted.

Mr. Malmberg stated that the property is located in the C-2A and COZ-1 and they are not asking for any variance from the underlying zoning, because it is in the COZ-1 zone that imposes some more requirements on the property absent the variance that brings them before the Board today. There are basically four (4) tests for this application. This is an Area Variance and not a Use Variance. An Area Variance is generally regarded as more favorable because the use is already a permitted use in the underlying zoning district.

Mr. Malmberg stated that the property is zoned commercial with apartments permitted in the zone. The nature of the zone is appropriate for the application. The character of the immediate vicinity and the contained uses therein are basically retail and multi-family. The single-family residences that had previously existed along that corridor are falling by the wayside one by one. There are hardly any left because it is turning into a commercial corridor. He would suggest that this particular application for this property is about as a compatible use as could be for the property. The front portion of the 7,000 square foot retail center is in keeping with the look of both the shopping center and similar properties up and down the corridor. This property backs up to multi-family residential so that you could argue that is a much softer and compatible use then to not have it completely retailed throughout this property, but to have a multi-family that roughly matches what it backs up to. Woodmill Apartments are three story apartment buildings with a gable roof yielding to a roof height of roughly 45 feet. The requested variance for this project is roughly 41 feet. The proposed apartments will be shorter than the Woodmill Apartments. The acid test which asked if the limitation is removed does it cause any pain or suffering or diminishment to the surrounding properties. In this case, the applicant would suggest that this use is probably the most perfect possible use for this piece of property as far as the surrounding properties; it matches the neighbors to the rear and various streetscapes to the front. He did not think a case could be made that it diminishes anyway or otherwise negatively impact the neighboring properties. It probably enhances the other properties in some respect. With regard to the hardship, it is primarily economic and the project will not work unless it can go three stories. The number of units is like the threshold of what works from an economic point of view and from the Engineer's standpoint. Without that

the project would not get built. The property has already been vacant for a number of years. It seems to be a good economic investment in the City. Staff is in agreement with the first three points. They could not spread the remaining twelve (12) units across the rest of the property because the property is subject to DNREC control over bio-infiltration (as he pointed out) and the subterrian infiltration area. To properly treat stormwater which is good for everyone, the area has to be preserved as open space. There is no real way to spread out the additional units. The other point, even if there was a way to do it, this property in this zoning district requires twenty-five open space. This design as presented requires twenty-seven. With the 2% margin, it could not be spread out. Since the Board has been through this application numerous times, he thinks that the Board understands where they are with the significant reduction in the previous request. He hopes the Board will consider the application favorably.

Colonel Ericson questioned whether the new plan dealt with the previous objectives? Mr. Malmberg replied that the only people present today are the supporters of the application. He presumes everyone is happy as he has not spoken directly with Mr. Garfinkel, but he assumed if this was offensive to him, he would have been present at today's meeting.

Mr. Keller questioned whether the Corridor Overlay Zone extends through the full depth of this property? Mrs. Townshend replied yes.

Mr. Keller questioned whether the variance application was approved as submitted and if there was anything to prevent 5-15 years from now that the front retail portion could be demolished redesigned, or reconstructed at the same height of the rear multi-family units proposed. Would there be any objection from the applicant/owner to have a variation of the variance requested to only allow the increase height proposed from a depth of 200 feet to the rear property line or something of that sort? Mr. Malmberg replied yes. He believed the apartments are planned for 234 feet from the front property line, so a 200 feet setback would be fine and welcomed the restriction. Mrs. Townshend agreed.

Mr. Keller stated that he put that forth in consideration that ownership, building design and ideas change as far as construction. It is his understanding that the COZ allows for somewhat of a corridor entrance from the westerly part of the City into Dover, and its purpose was to preclude an upright alleyway of construction. His suggestion would be to continue the original purpose of the COZ, at least with the 200 feet. Mrs. Townshend agreed. Mr. Malmberg welcomed the limitation.

Mr. Senato questioned the location of the entrance? Mr. Malmberg replied that the entrance is on the left as you are facing the site. Mrs. Townshend replied that DelDOT will ultimately tell the applicant where the entrance is going to be. This is where it is planned at this point, but based on their interaction with DelDOT it could move. Mr. Malmberg replied that the entrance does not get designed unless the application is approved by the Board to build. The neighboring properties have had to give up some right-of-way to create right hand turn lanes.

Mr. Keller questioned whether the front retail section exceeded the 35 feet height? Mr. Malmberg replied no.

Mr. Hufnal questioned whether the architecture and site layout is still subject to further review by the Planning Commission? Mr. Malmberg replied yes, at the current time the only request is for the apartments variance to be 6 foot taller in height.

Chairman Sheth stated that the only disagreement that he had was it is not economical to the City. The City has to many apartments.

Mr. Malmberg stated that the smaller apartment buildings are easier to control.

Chairman Sheth questioned the number of units? Mr. Malmberg replied thirty-seven units.

Chairman Sheth opened the public hearing.

Ms. Schamp was sworn in by Mr. Rodriguez.

Ms. Schamp testified that she owns the property at the southwestern corner of Ms. Johnson's property. She did call the City and spoke with Mr. Diaz for clarification regarding the new changes. Mr. Diaz was very helpful. She has stayed informed with the process for roughly a year. She feels that the plan is in harmony with the surrounding environment. She supports the plan.

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

Chairman Sheth questioned if there was any additional correspondence for the record. There was none.

Mr. Diaz stated that his conversation with Ms. Schamp was concerning whether the road that leads to her property (June Lane) would need to be widened in order for her property to be sold and redeveloped in the Commercial and Professional Office zone. If the street were to be widened, it would impact the site and further narrow it. This is the reason it is pertinent to this variance because it is cited with potential Exceptional Practical Difficulty.

Mr. Keller stated that in the Staff Report (guide to attachments) the header relates to application V-16-06 and he would like to make sure it reflects application V-17-09.

Mr. Keller asked for clarification whether" renewal" of the restrictions on the applicant property would in no way negatively affect the surrounding areas and properties, he was in hopes that Mr. Malmberg meant "removal" of the restrictions on the applicant's property. Mr. Malmberg replied yes.

Mr. Senato moved to approve variance application V-17-09 as proposed. The motion was seconded by Mr. Hufnal.

The motion was amended by Mr. Keller to include that existing restrictions within the COZ-1 Corridor Overlay Zone on this property remain in full force and effect to a depth of 200-feet, and the variance requested otherwise hereby extends from that point to the full depth of the property. The amended motion was seconded by Chairman Sheth and was unanimously carried 5-0.

Mr. Senato moved to lift application V-17-07 from the table.

Mrs. Townshend stated that the representative of Tudor Enterprise LLC, Linda Shufelt, Legal Representative came in and signed the application.

Mr. Senato moved to approve application V-17-07 as proposed. The motion was seconded by Mr. Hufnal and was unanimously carried 5-0.

Mr. Senato moved to adjourn the meeting, seconded by Mr. Hufnal and unanimously carried 5-0.

Meeting adjourned at 11:18 A.M.

Sincerely,

Maretta Savage-Purnell
Secretary

Exhibit C

CITY OF DOVER, DELAWARE

BUILDING ZONE ORDINANCE DECISION

Case No. V-17-09 Dover, Delaware

Applicant/Owner: Margaret H. Johnson, Owner
IDE 3rd Associates, Inc., Applicant

Date: March 15, 2017

Decision of the Board of Adjustment on the Application:

STATEMENT OF FACTS

This property is located at 1310/1324 Forrest Avenue, presently zoned C-2A (Limited Central Commercial Zone). It is in the COZ-1 (Corridor Overlay Zone). The property is currently vacant. A previous variance application was submitted to the Board and reviewed on June 15, 2016, No. V-16-06, and Applicant was asked to present an alternative project design, and the application was continued and deferred until October 19, 2016, at which time, Applicant requested a withdrawal of the application which was accepted by the Board.

Applicant proposes to erect two new buildings on the site: a one-story retail building located on the front of the site facing Forrest Avenue; and a three-story apartment building located behind the proposed retail building and extending to the rear of the property. The variances requested are from the requirements of the COZ-1 Zone which limits building heights to 35 feet and restricts a building from exceeding two stories. Applicant seeks a variance for a building height of 41 feet and for three stories for the rear apartment building which is located 235 feet from the property line on Forrest Avenue.

In making its application during the hearing, Applicants agreed to comply in the future with the requirements of the COZ-1 Zone for 200 feet in depth measured from the front property line on Forrest Avenue.

DECISION

It was the unanimous decision of the Board to grant the two variances (Chairman Sheth; Col. Ericson; Mr. Hufnal; Mr. Keller; and Mr. Sonato).

In reaching the decision on this the area variance, the Board first considered the nature of the Zone in which the property lies which is C-2A Zone which permits building heights of 75 feet but not to exceed six stories and the COZ-1 Zone which limits building heights to 35 feet not to exceed two stories. The Board noted that the project will be evaluated for its relationship to the major objectives of the COZ-1 Zone when it undergoes review for application before the Planning Commission.

The Board considered the character of the immediate vicinity and the contained uses therein and found that, in the immediate vicinity of the property as seen from Forrest Avenue, the property present use is mostly commercial. The second property is south and across the street from Greentree Village Shopping Center; to the east are a restaurant and a retail store; to the west are one and one-half-story residential structures, and farther west are a gas station, an automobile service business, and a small shopping center. To its rear, the property abuts Woodmill Apartments.

The Board next considered whether, if the restriction upon the Applicant's property were removed, such removal would seriously affect neighboring properties and uses, and noted that the proposed three-story building is located in the center rear of the site and is 235 feet from Forrest Avenue with the proposed one-story commercial building between it and Forrest Avenue. The building would not be out of character with the area based only on height. Overall impact based on architecture and site layout would be subject to further review by the Planning Commission and evaluation of a Site Development Plan. Also, there are existing, four-story buildings within the COZ-1 Zone.

The Board lastly considered whether, if the restriction were not removed, the restriction would create unnecessary hardship or exceptional practical difficulty for the Owner in its efforts to make normal improvements in the character of the use of the property that is permitted under the provisions of the Zoning Ordinance. In this regard, Applicant pointed out that it would be impossible economically to limit the apartment building to two stories or to a height less than 41 feet, because this would limit the number of units to a number that would be too small to make the project economically viable. Further, regarding the three-story variance for the apartment building, no other area on the site would permit the erection of additional rental units which would be limited by open-space requirements, parking requirements, and impervious surface coverage. Applicant clearly stated that construction could not be commenced without the variances being granted.

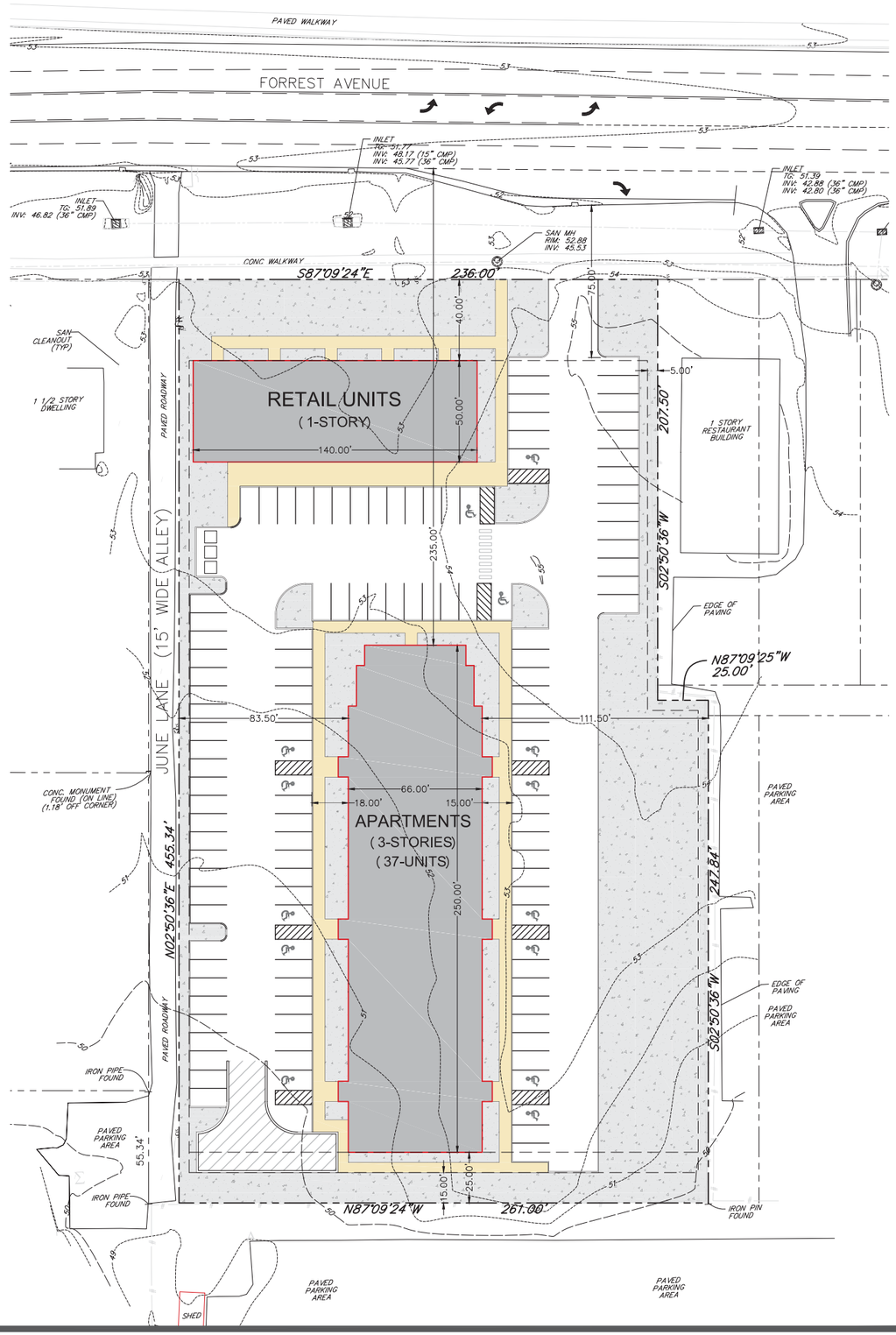
In summary, the variance granted for the COZ-1 Zone was to permit the three-story apartment building to be erected to a height of 41 feet with the provision that Applicant would comply with the COZ-1 Zone for the property for the distance of 200 feet measured from the front property line to the rear of the lot.

K. C. Sheth Chairman

cc: Building Inspector

NHR:chz







LOCATION MAP

Exhibit D

SURVEY :
KERCHER ENGINEERING INC
(2015)

TAX PARCEL #'s
2-05-07610-01-0100-00001
2-05-07610-01-0200-00001
2-05-07610-01-0300-00001
2-05-07610-01-0400-00001
2-05-07610-01-0401-00001

REVISION	DATE

CONSULTING ENGINEERS
CONSTRUCTION MANAGERS
P.O. BOX 498
SMYRNA, DE 19977
Tel: 302 659-9090
Fax: 302 659-9909
Email: ed@i3allc.com

PROJECT#: ---
DRAWN: D.F.S.
CHECKED: E.H.I.
SCALE: 1:30
SUBMISSION:
DATE#: FEBRUARY 6 2017

PROJECT DATA:

SITE DEVELOPMENT

1310/1324 FORREST AVE
DOVER, DELAWARE 19904

KENT COUNTY, DE

DRAWING TITLE:

EXISTING CONDITIONS / PROPOSED SITE

DRAWING NUMBER: C-1

FORREST AVE– ROUTE 8 (80' MINOR ARTERIAL)

220.00'
165'
115'
R15.00'
14.50'
STOP SIGN
R15.00'
S87°09'24"E 236.00'
CO
R3.50'
6.00'
LANDSCAPE BUFFER
25.00'
40.00'
5.00'
5' SETBACK ALONG NON-RESIDENTIAL
40' SETBACK ALONG FRONT
Up
HkB
12.00'
10.00' (TYP)
4" SDR26
3" C900
METER
RETAIL
±7000 SF
(1-STORY)
50.00'
178.08'
150.00'
140.00'
24.00'
207.50'
S02°50'36"W
8" C900
R15.50'
10'x10' CONCRETE PAD & DUMPSTER ENCLOSURE (CHAIN LINK FENCE W/ SOLID SLATS & (2) 5' GATES)
PAVED ROADWAY
N/F
TUNG CHING LIN
2-05-07610-01-5200
ZONED: C2A
JUNE LANE - (15' WIDE ALLEY)
R14.50'
CROSS ACCESS
24.00'
R5.50'
R14.50'
29.34'
6" SDR26
SS
CO
11.00'
R14.50'
7.50'
METER
R10.00'
24.00'
R10.00'
N/F
KATHERINE N. THEODORAKOS
2-05-07610-01-5500
ZONED: C2A
N87°09'25"W
25.00'
CROSS ACCESS
6.00'
NO CURB ALONG EDGE OF PAVING (TYP)
PROPOSED 3 STORY
150' SETBACK LINE FOR COZ
6.00'
APARTMENTS
±18,325 SF
FF EL 54.00'
(3-STORIES)
(44-UNITS)
24.00'
24.00'
11.72'
11.56'
77.72'
74.73'
108.55'
250.00'
S02°50'36"W 247.84'
5' SETBACK ALONG NON-RESIDENTIAL
N/F
KATHERINE N. THEODORAKOS
2-05-07610-01-5700
ZONED: C2A
N/F
GAYLE ANN CHADWICK
2-05-07610-01-5300
ZONED: C2A
455.34'
N02°50'36"E
PAVED ROADWAY
STORMWATER MANAGEMENT AREA
R13.50'
PAVED PARKING AREA
CROSS ACCESS
20.00'
15' SETBACK ALONG RESIDENTIAL
5.00'
27.00'
N/F
JUNE D. SCHAMP TRUSTEE
2-05-07610-01-5400
ZONED: CPO
N87°09'24"W 261.00'
N/F
WOODMILL TOWNHOMES–VARIOUS OWNERS
VARIOUS TAX PARCELS
ZONED: RG2

Exhibit E

PROJECT:

1310/1324 FORREST AVE
PROPOSED SITE DEVELOPMENT
DOVER, DELAWARE

TAX PARCEL #'S
2-05-07610-01-0100-0001
2-05-07610-01-0200-0001
2-05-07610-01-0300-0001
2-05-07610-01-0400-0001
2-05-07610-01-0401-0001

DATE 06/06/17
SCALE 1:40
SHEET# C3

IDE³ ASSOCIATES
CONSULTING ENGINEERS
CONSTRUCTION MANAGERS
106 W. COMMERCE ST
SMYRNA, DE 19977
Tel: 302 659-9090
Fax: 302 659-0909
Email: ed@i3allc.com

Exhibit F

IDE³ ASSOCIATES

Consulting Engineers Construction Management

P.O. Box 498 Smyrna, DE 19977 Ph: 302-659-9090 Fax: 302-659-0909

June 6, 2017

Mr. Eddie Diaz
Planner
City of Dover
P.O. Box 475
Dover, Delaware 19903

RE: Forrest Avenue DIYA Apartments
Board of Adjustment Action

Dear Mr. Diaz:

As requested, we are writing to request to be heard at the next Board to Adjustment to correct the 3 story building set back line that was established at the March 15, 2017 Board of Adjustment Meeting. Our plan submission showed a three story building set back point of 235 feet as measured from the edge of travel lane to the face of building. During the meeting it was suggested that the setback line be established at 200 feet which would have allowed the building position. However, the interpretation made suggested that the 200 feet start from the property line. Given that the property line and Del-DOT R.O.W. is very deep at this site, the 200 feet from the property line would encroach on the building.

Therefore, if the setback line is to be measured from the property line, we request that the new setback for this property be established at 150 feet.

As always, please do not hesitate to call should you have any questions or require any additional information.
Respectfully Submitted,

Edward H. Ide, III, P.E.
President
i3a Consulting Engineers . Construction Managers