CITY OF DOVER BOARD OF ADJUSTMENT
AGENDA
Wednesday, December 20, 2017 at 9:00 AM

City Hall, Council Chambers
15 Loockerman Plaza, Dover, Delaware

ROLL CALL

APPROVAL OF AGENDA

APPROVAL OF MINUTES of November 15, 2017 Meeting

COMMUNICATIONS & REPORTS

1. Reminder: The next Board of Adjustment regular meeting is scheduled for January 17, 2018 at 9:00am in the City Council Chambers.

2. Schedule of Deadlines and Meetings for 2018

OLD BUSINESS

Applicant #V-17-16
545 North DuPont Highway. Item of clarification: on November 15, 2017, the Board of Adjustment approved a third wall sign for this property (over a code maximum of two) with an area of 35.67 SF. The actual area of the sign the applicant requested was 47.27 SF. TLM Realty originally requested a variance from the requirements of the *Zoning Ordinance,* Article 5 §4.7 pertaining to permitted signs. The site is located on the east side of North DuPont Highway north of Townsend Boulevard. It is 0.86 acres +/- in size and is currently occupied by a Panera Bread Restaurant. Subject property is zoned C-4 (Highway Commercial Zone) and subject to the SWPOZ (Source Water Protection Overlay Zone). Tax Parcel: ED-05-068.09-01-34.01-000. The owner of record is Dover DE Retail, LLC and the applicant is TLM Realty Corp.

NEW BUSINESS

Applicant #V-17-17
299 College Road. Stephen E. Lumor has requested a variance from the requirements of the *Zoning Ordinance,* Article 4 §4.8 pertaining to maximum lot coverage for multiplex dwellings in the RM-2 (Medium Density Residence) Zone. Specifically, the applicant seeks to increase the maximum lot coverage on the site from 35% to 40%. The site is located on the north side of College Road west of Mishoe Street, and adjacent to Conwell Street. It is 0.42 acres +/- in size and zoned RM-2 (Medium Density Residence Zone). Tax Parcel: ED-05-067.00-02-26.00-000. The owner of record is Stephen E. Lumor.

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 NOVEMBER 15, 2017

- The Meeting Minutes of the November 15, 2017 are still being prepared. These Meeting Minutes will be distributed to the Board of Adjustment via email or hand delivered once completed.
- Adoption of the Meeting Minutes will be considered at the January 17, 2018 meeting of the Board of Adjustment.

CITY OF DOVER
BOARD OF ADJUSTMENT

Schedule of application deadlines and Board of Adjustment meeting dates for the year of 2018. The submittal procedures for the Board of Adjustment are outlined in *Zoning Ordinance*, Article 9, Section 3. Prior to application submission a pre-application meeting with Planning Staff is required.

MONTH	DEADLINE DATE	MEETING DATE
JANUARY	12/15/2017	01/17/2018
FEBRUARY	01/12/2018	02/21/2018
MARCH	02/9/2018	03/21/2018
APRIL	03/16/2018	04/18/2018
MAY	04/13/2018	05/16/2018
JUNE	05/18/2018	06/20/2018
JULY	06/15/2018	07/18/2018
AUGUST	07/13/2018	08/15/2018
SEPTEMBER	08/17/2018	09/19/2018
OCTOBER	09/14/2018	10/17/2018
NOVEMBER	10/12/2018	11/21/2018
DECEMBER	11/16/2018	12/19/2018
JANUARY	12/14/2018	1/16/2019

For Information Contact:

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MEMORANDUM

Department of Planning & Inspections
P.O. Box 475
Dover, DE 19903
Phone: (302) 736-7010 Fax (302) 736-4217

DATE: December 14, 2017

TO: Board of Adjustment Members

FROM: Eddie Diaz, Planner I

SUBJECT: Amendment of Board of Adjustment Application
V-17-16 Panera Bread Signage at 545 North DuPont Highway, Dover

Background for Requested Revision

Panera Bread originally applied to the Board of Adjustment on October 5, 2017 for a variance to permit two (2) wall signs over the maximum two wall signs permitted for a property with a single street frontage, in order to allow them four (4) wall signs total. The application appeared at the November 15, 2017 meeting of the Board of Adjustment, at which the Board approved a partial variance to allow one (1) 35.67 SF additional wall sign over the maximum two, resulting in an approved total of three (3) wall signs.

As the *Zoning Ordinance* is silent on what size additional signs beyond the code maximum ought to be, the Board was asked to either approve the additional wall sign as presented or specify a different upper limit for the size of the sign; in either case the size approved would be the maximum size allowed that could be used by Panera Bread or any future tenant. The Board opted to approve the sign as presented, and therefore the maximum area for any third wall sign on this building was to be 35.67 SF.

However, on October 13, 2017, the Applicant submitted two revisions to their October 5 submission; one was a set of revised answers to the variance criteria questions, and the other was a revision to the size of the smaller of the two signs requested. Originally reading "Panera Bread" and 35.67 SF in size, with the October 13th Revision the sign now read "Panera Bread Drive Thru" and was 47.27 SF in size. Staff overlooked this revision as it only appeared on one page of the applicant's sign package, despite the applicant telling staff that there was a second revision when they made their new submission.

Planning Staff wrote the Report for V-17-16 and made recommendations believing the applicant still desired a sign 35.67 SF in size, and also gave to Board members copies of the applicant's sign package that did not contain the revision. The original and revised versions of the changed page in the sign package are attached to this memo.

The applicant has requested consideration of the 47.27 SF sign containing the additional "Drive Thru" text.

Staff Comments and Recommendation

Staff recommends approval of a revision to the originally granted variance in order to permit a 47.27 SF wall sign, for reasons as follows:

- In arguing that the new sign would not negatively impact neighboring properties, the applicant in their application stated that "The sign is the same size, finish and type as previously approved building signage, currently installed." This remains true. There is already one sign saying "Panera Bread Drive Thru" of the same size on the west side of the building. Note that the size of the west-facing sign was miscalculated as 42.44 SF in the original Report.

- Staff previously noted positively that the 35.67 SF sign was not much larger than 32 SF, which is the typical maximum size for wall signs on local streets. Although the 47.27 SF wall sign is no longer only slightly larger than this threshold, it is still a size small enough to be in character for an Urban Principal Arterial street.

- With regard to exceptional practical difficulty, the same logic applies to the "Drive Thru" portion of the sign as to the "Panera Bread" portion of the sign. Just as the north-facing "Panera Bread" lettering is needed to inform southbound drivers the restaurant is there, the north-facing "Drive Thru" letters are needed to inform them the restaurant has drive-thru capabilities. Drivers unaware of this fact may choose to dine elsewhere. The fact of the drive-thru might be gleaned from the west-facing sign, but only if drivers pay attention long enough to see both the sign on the north face and the sign on the west face.

The Board of Adjustment needs to take action to either revise the variance and allow a 47.27 SF sign, or leave the originally granted variance for a 35.67 SF sign as it stands.

Attachments:

1. North face elevation: October 5, 2017 submission
2. North face elevation: October 13, 2017 submission
3. V-17-16 Notice of Decision, November 15, 2017

City of Dover

Board of Adjustment

December 20, 2017

V-17-17

Location:	299 College Road, Dover DE
Applicant:	Stephen E. Lumor
Owner:	Stephen E. Lumor (Enyam, LLC)
Tax Parcel:	ED-05-067.00-02-26.00-000
Application Date:	November 15, 2017
Present Zoning:	RM-2 (Medium Density Residence Zone)
Present Use:	Vacant
Proposed Use:	Multiplex (3 residential units)
Reviewed By:	Eddie Diaz, Planner I
Variance Type:	Area Variance
Variance Requested:	To allow an increase in the maximum allowable lot coverage from 35% to 40%.

Project Description

The applicant proposes to build a residential multiplex with three two-story units of approximately 2,210 SF each. The requested variance is from the provisions of *Zoning Ordinance,* Article 4 §4.8, specifically the maximum permitted lot coverage for a multiplex building in the RM-2 (Medium Density Residence) Zone. In the RM-2 Zone, different kinds of residential development have different maximum lot coverages; multiplexes have a maximum lot coverage of 35%. The applicant is requesting that the maximum lot coverage for this property be increased to 40%.

This project has already been reviewed by the Planning Commission as Site Development Plan S-17-28. The project received Conditional Approval from the Planning Commission on November 20, 2017. At their meeting the Commissioners acknowledged that the application would have to address the lot coverage issue prior to the project receiving Final Approval. If a variance is not granted for lot coverage, the applicant will need to redesign the site so it respects the maximum of 35%. If the design changes are major the project may require a second review by the Planning Commission.

Adjacent Land Uses

The property is zoned RM-2 and is located on the north side of College Road west of Mishoe Street. It is also adjacent to an unimproved public right-of-way, not owned by the City, known as Conwell Street. It is bound on the north and east by an enclave of land in Kent County which is used as a residential area. To the west of the property across Conwell Street is a one-family residence zoned R-8 (One Family Residence Zone). To the south across College Road is another section of Conwell Street which serves the Delaware State University's Courtyard Apartments. These apartments are zoned RG-2 (General Residence Zone). Other land uses in the area include mostly one-family residences, apartments, and manufactured homes, all zoned RM-2. There is also a transitional housing complex further to the east of the site, zoned IO (Institutional and Office Zone), and a cemetery southwest of the site, zoned ROS (Recreation and Open Space Zone).

A Zoning Map Exhibit (Exhibit A) showing adjacent zoning districts and the boundaries of the Kent County enclave can be found in the attachments to this Report.

Code Citations

According to *Zoning Ordinance,* Article 3 §7.1(d), multiplexes are a permitted use in the RM-2 Zone. Multiplexes are given a definition in *Zoning Ordinance,* Article 12 to distinguish them from similar uses such as duplexes, townhouses, and apartments, which are all also permitted in the RM-2 Zone and have differing bulk standards requirements. The below definition *only* exists in the *Zoning Ordinance,* so while the building is permitted as a "multiplex" for zoning purposes, under the City's building and fire codes the building is considered an apartment use.

Zoning Ordinance Article 12
Multiplex: A detached structure containing three to five attached dwelling units, with each unit having independent outside access and at least two exposures.

Zoning Ordinance, Article 4 §4.8 lists the bulk and area standards for different types of residential uses in the RM-2 zone. Multiplexes are not listed specifically. However, the format of the multiplex fits the definition of a "multiple dwelling" as a building containing more than two dwelling units, the standards applying to "multiple dwellings" apply. Table 1 below summarizes the requirements applying to "multiple dwellings" and compares them to the applicant's proposed project. The standard requiring a variance is highlighted.

Table 1: Zoning Requirements and Requested Bulk Standards
V-17-17 College Road Multiplex at 299 College Road

	RM-2 (Medium Density Residence Zone)	**Applicant's project**
Residence Type:	***Multiple Dwellings***	***Multiplex (Multiple Dwellings)***
Standard:	***Requirements***	***Proposed***
Minimum requirements per dwelling unit:		
Lot area (sq. ft.)	3,000	6,098 +/-
Lot width (ft.)	--	33.33
Lot depth (ft.)	--	183.25
Off-street parking spaces	2	2
Minimum requirements per building:		
Lot area (sq. ft.)	--	18,295 +/-
Lot width (ft.)	100	100
Lot depth (ft.)	120	183.25
Front yard (ft.)	30	75.25
Side yard (ft.)	10	19
Total side yards (ft.)	30	N/A (corner lot)
Rear yard (ft.)	20	42
Maximum permitted:		
Building Height (stories)	3	2
Building Height (ft.)	35	unknown
Lot coverage	35%	39.54% (rounded up to 40%)
Number of dwelling units per building	5	3

The actual impervious coverage proposed is slightly below 40%, but rounding the requested coverage up allows for some flexibility for minor revisions to the design of the site in the future.

In addition to bulk standards, the RM-2 has maximum density standards, specified in *Zoning Ordinance* Article 3 §7.4. The maximum density for all unit types is eight (8)

dwelling units per acre. As the subject property is 0.42 acres in size and has three units, the project complies with the density requirement. A fourth unit would not be permitted for a property this size.

Applicant's Proposed Project

The applicant proposes three residential units in a single building, as well as a six-space parking area, a front entrance walk, and a rear patio for each unit. The units are oriented to all face College Road, and architecturally appear similar to townhouse units. According to the applicant, the units are intended as student housing.

The latest version of the applicant's proposed project, received November 15, 2017, can be found in in Exhibit B. There are a number of small but significant differences between this latest version and the original one submitted for Planning Commission review, which was received on October 6, 2017. The original version of the plan can be found in Exhibit C.

As initially submitted, the project had a lot coverage of 34.99%, just meeting the maximum under code. However, upon review by the City and State agencies that are part of the City's Development Advisory Committee, the agencies found a number of required changes to the site design that pushed the lot coverage over the limit. Specifically, DelDOT required that the site entrance be widened from 20 feet to 24 feet. DelDOT also required dedication of a 15-foot-wide permanent easement at the front of the property, which meant the driveway length had to be increased by 5 feet to place the parking area outside of the easement. The applicant needed to add a turnaround at the end of the parking area to allow a car in the rearmost space to properly leave it. Finally, it appears the applicant put a pad and enclosure for trash and recycling at the front of each unit, to address Planning Office comments about storage of trash receptacles. All of these changes together were enough to change the lot coverage from 34.99% to the current 39.54%.

The applicant was given the choice of redesigning the site so it met the 35% lot coverage requirement as well as all the requirements listed above, or making application to the Board of Adjustment for a variance. The applicant chose to submit an application.

If the Board of Adjustment chooses to increase the maximum lot coverage for this site to 40%, they should specify whether the increase is only applicable to a multiplex use, or whether any other use in the RM-2 Zone with a lot coverage limit of 35% would also be able to take advantage of the increase. This would potentially impact the project if it is changed to another kind of residential unit. The Board's specification will also be important if the multiplex is replaced with some other kind of residential use in the future.

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 application, the applicant was asked to state how the requested variance relates to the above four criteria. The applicant's responses are provided below, along with a staff assessment of the application in accordance with the required criteria. These responses may also be found in Exhibit D together with additional background information provided by the applicant.

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

Applicant Response:

"The existing nature of the zone where the property lies is predominantly residential properties with apartments to the north and another large University-owned apartment complex to the east. The proposed development of the site will be appropriate for the surrounding area given that the structure will appear as a townhouse from the street and thus reflecting characteristics of the existing residential structures nearby. The Owners' desire to rent the dwelling units further supports the nature of the zone in which the property lies as the proximity to Delaware State University will make these units a practical alternative to on-campus housing for college students seeking additional independence. The additional impervious coverage required to construct the buildings and site will be an asset to the zone where the property lies as the entrance to the property will be realigned with the intersection of College Road and the southern portion of Conwell Street enabling safer access to the site when compared with the existing driveway location."

Staff Response:

The RM-2 Medium Density Residence Zone permits one family detached houses; one family lot line homes; duplex dwellings; multiplex dwellings; 22 Ft. townhouses; rooming houses for 5 or less people; garden apartments; certain agricultural uses; and public buildings, as well as certain residential and institutional conditional uses. Residential uses are capped at a density of eight (8) units per acre. The type of residential units allowed in the RM-2 Zone includes housing types that can be

utilized for owner occupancy and as well as for rental properties. The *Zoning* Ordinance does not include provisions prescribing or limited the ability for the units to function as rental dwellings. The use as a multiplex building consisting of multiple dwelling units is allowed in the RM-2 Zone. If the property owner wishes to rent the units, they must comply with the provisions of the City's Rental Dwelling licensing program found in the *Dover Code of Ordinances.*

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

Applicant Response:
"The additional impervious coverage will enhance the character of the immediate vicinity and the contained uses therein in several ways. The impervious area will allow for the building to remain as originally planned with three (3) units which will aid to ensure that the dwelling units are affordable for college students. Furthermore, the additional impervious coverage allows for the incorporation of a 24'-wide entrance along College Road to meet DelDOT's requirements for a commercial entrance and provides improved safety when entering/exiting the parcel. Other impervious areas on site consist of the sidewalks and parking facilities to support the tenants' access to the building and ensure that no vehicles are parked along Conwell Street on the west side of the site as observed during multiple site visits. Lastly, the additional impervious coverage will enhance the safety to the building through providing a 24'-wide drive aisle to the parking area which will meet requirements of the State Fire Marshal to accommodate emergency vehicles."

Staff Response:
The character of the immediate vicinity is residential, with a mix of housing types. Between the mix of one-family dwellings, manufactured homes, and garden apartments, no one type of residential building dominates. Building a multiplex would introduce a new building type into this mix, but not one that would be out of character for the area.

Staff concurs that the various required site improvements will reduce the project's overall impact on the immediate vicinity. Having on-site parking will mean cars do not have to park on Conwell Street. DelDOT's required entrance design will mean the site entrance is aligned with the entrance to the apartments across the street, improving traffic flow. But as these are typical improvements that could come with any new development, they do not necessarily impact the character of the vicinity one way or the other.

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

Applicant Response:
"If the restriction upon the property that limits the proposed lot coverage to 35% were removed, there would be no serious impact to the neighboring property

owners. Sufficient landscaping to meet all City requirements will be provided to ensure the natural appearance and aesthetic beauty of the property. The increase in impervious coverage from 35% to 40% will result in a maximum permitted increase of ±0.02 Ac, a relatively minor amount, and likely unnoticeable by neighbors. The neighboring properties are consistent with the intended residential use further minimizing the likelihood of any negative impact to the adjacent parcels."

Staff Response:
Staff concurs that the increase in maximum lot coverage is not likely to negatively impact neighbors. Although the parking area where most of the increase is coming from is larger than it was in the initial submission, it is still small overall. It is not large enough to officially be considered a parking lot under the *Zoning Ordinance,* which defines a parking lot as parking for ten or more vehicles out in the open. Parking lots typically have extra landscaping requirements to provide some low screening between them and nearby residential uses, reducing their impact. Given that there are only six spaces in this parking area, this is not needed. The landscaping in the form of tree planting is required by other sections of the *Zoning Ordinance*.

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:
"Failure to remove the 35% maximum lot coverage limit would result in a design that must eliminate approximately 829 SF (±0.02 Ac) of impervious area. The site is currently designed to minimize impervious coverage as-is and any further reductions in coverage would compromise the current site design. To meet minimum DelDOT & State Fire Marshal requirements, the entrance and drive aisles must remain at 24' in width. The parking provided (6 spaces) is the minimum allowable for three (3) dwelling units. The sidewalks are required to provide access from the parking areas as well as to connect to the existing sidewalk network along College Road and meet the City's connectivity goals. A waiver for the removal of curb could be requested from the areas outside of the DelDOT right of way, which would reduce the coverage by approximately 521 SF; however, this is not consistent with the intent of the City's goals for development of this usage. Reducing the building from a three (3) unit structure to a two (2) unit structure would result in significant financial hardship to the applicant and possibly prevent the construction of the building as the long-term economic prosperity would be severely impacted. This would also reduce the usability of the building in terms of providing potential off campus housing options for college students as the Delaware State University continues to expand as demonstrated by recently setting a new record for enrollment (announced November 8th, 2017)."

Staff Response:
Staff concurs that the various required site elements, including drive aisles, parking spaces, curbing, and sidewalks, are currently reduced to the very minimum size they could be to serve three residential units constructed as a multiplex building. The only way to meet the 35% coverage requirement in this case would be to either remove a unit or reduce the footprint (size) of each unit. The applicant states above that removing a unit would create significant financial hardship for the project. In such cases where cumulative code requirements may prevent the construction of a project altogether, a hardship meeting the standards for a variance may be found.

The applicant does not address above the possibility of reducing the size of each unit rather than removing a unit, but it is likely this could also result in financial hardship for the applicant. To achieve the required 829 SF reduction, each unit would have to have its footprint reduced by 276 SF. This would reduce the floor area of the two-story units from 2,210 SF each to 1,658 SF each, a 25% reduction in size. Such a size reduction could impact the marketability and rental price of the units.

The applicant also does not directly address the possibility of revising the type of housing (dwelling units) proposed for development on the property. Each type of dwelling unit in the RM-2 Zone, such as detached dwellings, townhouses, garden apartments, etc. has different requirements for setbacks, lot coverage, parking, and other bulk standards. The financial viability of these types of units may be different. However, aside from garden apartments, for which this lot is too small, other residential uses permitted in the RM-2 Zone are one-family dwelling types, which would require subdivision of the land and are not necessarily appropriate for renting out.

Variance Recommendation
Staff recommends approval of a variance to increase the maximum lot coverage for a **multiplex specifically** on this site from 35% to 40%, for reasons as follows:

- The proposed use as a multiplex is in keeping with the nature of the RM-2 Zone and the residential character of the surrounding area.
- A 5% increase in the lot coverage of the site is not expected to significantly impact neighboring properties. Most of the increase from 35% to 40% comes from increasing the size of the access into the site and its parking area.
- To meet the 35% coverage requirement, the applicant would have to either remove a unit or reduce the size of the units, in both cases potentially leading to financial hardship and the project not being able to be constructed.
- The potential positive or negative impacts of giving a 40% maximum lot coverage to a one-family dwelling use, duplex use, etc. on this site are unknown and unaddressed. Therefore, Staff recommends that this variance apply only if the use of the property is a multiplex.

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 through the Planning Commission, and appropriate permits from the City of Dover Department of Planning & Inspections and other agencies.

GUIDE TO ATTACHMENTS

Exhibit	Description/Author	# Pages
A	Zoning Map Exhibit (Staff)	1
B	Current Site Plan, received 11/15/17 (Applicant)	1 (24”x36”)
C	Original Site Plan, received 10/6/17 (Applicant)	1 (11”x17”)
D	Applicant Statement (Applicant)	2