**CITY OF DOVER BOARD OF ADJUSTMENT**
**AGENDA**
**Wednesday, January 17, 2018 at 9:00 AM**

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

ROLL CALL

APPROVAL OF AGENDA

APPROVAL OF MINUTES of December 20, 2017 Meeting and November 15, 2017 meeting

COMMUNICATIONS & REPORTS

1. Reminder: The next Board of Adjustment regular meeting is scheduled for February 21, 2018 at 9:00am in the City Council Chambers.

OLD 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%. Decision on this application was deferred from the December 2017 meeting pending provision of additional information by the applicant and planning staff. 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.

**CITY OF DOVER**
**BOARD OF ADJUSTMENT MINUTES**
**November 15, 2017**

A Regular Meeting of the City of Dover Board of Adjustment was held on Wednesday, November 15, 2017 at 9:00 A.M. with Chairman Sheth presiding. Members present were Chairman Sheth, Mr. Keller, Colonel Ericson, Mr. Hufnal and Mr. Senato.

Staff members present were Mr. Dave Hugg, Mrs. Purnell, Mr. Diaz, Mr. Swierczek, and City Solicitor Mr. Rodriguez.

## APPROVAL OF AGENDA

*Mr. Hufnal moved to approve agenda as submitted. The motion was seconded by Mr. Senato and unanimously carried 5-0.*

## APPROVAL OF THE REGULAR BOARD OF ADJUSTMENT MEETING MINUTES OF JULY 19, 2017

*Mr. Keller moved to approve the meeting minutes of July 19, 2017 with any necessary corrections. The motion was seconded by Colonel Ericson and unanimously carried 5-0.*

## OPENING REMARKS CONCERNING DEVELOPMENT APPLICATION

Mr. Dave Hugg, Interim Planning Director of Planning and Inspections stated that the meeting today will be conducted in accordance with the agenda. There is one (1) application on the agenda under New Business. The Application file will be read, and the floor will be opened for questions of the applicant by the Board and for public testimony. If the Board needs to consult the City Solicitor, they will recess to discuss legal matters. If the applicant must leave, they can contact the Planning Office at 736-7196 to learn of the Board's decision. A formal notice of the decision will be mailed to the applicants. Approved variances expire after one year if the approved project has not commenced.

All public notice for the new applications on this agenda was completed in accordance with Code requirements. The meeting agenda was posted in accordance with Freedom of Information Act requirements.

## NEW BUSINESS

### Applicant #V-17-16

545 North DuPont Highway. TLM Realty has requested a variance from the requirements of the *Zoning Ordinance,* Article 5 §4.7 pertaining to permitted signs. Specifically, the applicant seeks to permit two additional (2) wall signs over the maximum two (2) wall signs allowed for a building with a single street frontage. 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.

Exhibits for the Record: Staff Report, Zoning Exhibit, statements and plans submitted by the applicant. Legal Notice was published in the Delaware State News on November 5, 2017. The public was notified in accordance with regulations.

Mr. Diaz gave a brief overview of the application.

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

**Representative:** Mr. Raymond Thomas, Lemek LLC

Mr. Ray Thomas was sworn in by Mr. Rodriguez.

Mr. Thomas testified that as stated by Mr. Diaz the north side of the building is totally lacking any kind of signage at all. If you are driving south on North DuPont, you are not aware that the restaurant is there. There is an exhibit in the package showing the Panera Bread drive-thru sign (which is the same that is on the south and west side he believed) that would go on the north side in the corner. The other sign that is being proposed is a painted sign; it is not illuminated. The sign will go on what he calls a blank wall facing the hotel. He noticed that Mission BBQ has a similar type of mural sign painted on the side of their building. He would like to go with that also.

Chairman Sheth mentioned when the applicant applied to the Planning Commission, Mission BBQ they did not come before the Board of Adjustment. In this case, it did not go through the Planning Commission and you had a choice to adjust the sign. Chairman suggested that historically the Board had the same issue with Grotto Pizza that was disapproved. It was the same question for Holiday Inn hotel for the north side on the north bound road. The Residence Inn had the same issue. None of them were approved by the Board of Adjustment. He recommended that they all go to Planning Commission.

Mr. Diaz stated that he did not recall the process that the Mission BBQ went through. He stated that the application was before he was employed by the City.

Mr. Keller stated that he recalled several applications that the Board had addressed in the relatively recent past and Grotto Pizza was one that was in his mind as well that was denied. Basically, with the positioning of this building on the site he did not see it unlike just about every property that in fact fronts on US13 north and/or south bound. The large majority of which are somewhat contrary to the applicant's position in the written portion of the package. A large number appear to have only their front sign placement upon their land and/or buildings.

Mr. Keller questioned whether the applicant was with Lemek LLC. Mr. Thomas replied yes.

Mr. Keller questioned that because of some recent applications submitted the Board had a question whether the application was in fact supported by the owner. The Board did not have within their packet a Board of Adjustment application. The Board has expressed some interest in receiving once again the Board of Adjustment application in their packet from the City if that is possible. In any event this ownership is Dover Delaware Retail, LLC. With the Limited Liability Company, he

was wondering if the Board had the appropriate sign off as to the application from Dover Delaware Retail, LLC. If you recall recently on South Little Creek Road, the Board had a sign applicant to place a sign upon the top of a building and the Board had no indication that the owner of that land was even aware the applicant had submitted an application. Somewhat during or after the hearing someone was dispatched to inform the owner that there was an obligation to consent to the applicant making an application for a variance upon his property. He was just wondering if the Board was in good standing with the application having been signed by a representative of the owner LLC.

Chairman Sheth mentioned that he did recall that application.

Mr. Diaz mentioned that they do have the signed application. His colleague Mr. Swierczek will retrieve the information (signed application) and distribute it to the Board members. He apologized that it was not included in the packet(s). Mr. Keller replied that he appreciates that information so that in fact the Board has the confidence that it was in fact done.

Mr. Senato questioned if in looking at the view from the northwest whether the sign on the building of Panera Bread Bakery Café drive-thru is facing Route 13. Mr. Thomas replied yes.

Mr. Senato questioned whether the applicant was requesting a sign to be put over the awnings in the corner building. Mr. Thomas replied yes, in that area.

Mr. Senato questioned whether there was already a sign to the left rear of the entrance. Mr. Thomas replied no. He assumed that Mr. Senato was talking about the painted mural. He stated that he was applying for that sign.

Mr. Hufnal commented that Staff had concurred that due to the site location of the building, Panera Bread was not permitted to put up a free-standing sign that would have been permitted by Code. In place of that, he could certainly see that Panera Bread would want a sign on the north side over the two (2) awnings that would show the location verses having the pylon sign out front because you cannot have it with the location.

Mr. Thomas mentioned that while driving south on DuPont Highway you are almost in front of the building before you realize there is a Panera Bread Restaurant in that location.

Mr. Hufnal questioned whether there was a name on the owner's pylon sign that is not readable due to the size. Mr. Thomas replied yes and right.

Mr. Senato questioned whether the sign that was being requested was going over the awnings on the south side. Mr. Thomas asked if he was referring to the west elevation.

Mr. Hufnal questioned whether the sign that was being installed on the north side would be the same size as the 35.67 square feet, the same as what is on the south side of the building. Mr. Thomas replied right. Mr. Hufnal commented that the sign in the front is a little larger because it has drive-thru written on it. Mr. Thomas replied that the other sign will also have drive-thru written on it.

Colonel Ericson questioned whether the south side sign was visible or that it was no good. Mr. Thomas replied not really. It's not that it is no good. Because of visibility normally their signage would go over the entry but because of the new Longhorn Steakhouse they moved the sign down to the left towards DuPont Highway only because once the restaurant goes up the visibility would be poor coming north.

Colonel Ericson questioned whether the one sign that states Panera Bread would be sufficient because that is what is located on the south side. Mr. Thomas stated that it would, but the reason behind adding the mural on the one blank wall is to dress up the wall and make it look good. At the current time, it is just a blank brick wall.

Colonel Ericson questioned that instead of advertising, it is basically decoration. Mr. Thomas replied that it is still advertising because it is their Panera Bread logo.

Colonel Ericson questioned if the Board denied the sign, what hardship would it cause. Mr. Thomas replied none to the business.

Mr. Hufnal mentioned that for directional purposes the 35.67 square foot sign that is being requested to put up over the awnings would be sufficient to give the location. Mr. Thomas replied yes.

Mr. Keller questioned whether the speed limit going north and south on DuPont Highway in that immediate area was 40 m.p.h. (which is a relatively slow movement of traffic). Mr. Diaz replied that he believed it was 40 m.p.h. and it may be 45 m.p.h. in some areas, but not as high as 50 m.p.h.

Colonel Ericson mentioned that Mr. Thomas stated that there would be no hardship regarding the large sign, it was basically for decoration. Therefore, it does not meet the requirements of the statue.

Mr. Keller concurred with Colonel Ericson comments.

Mr. Keller stated that in any event while searching for a place to eat if you are southbound for this property as the City map depicts you are obligated to go (continue south) at least to Townsend Boulevard to make a U-turn to access the Panera Bread site. Even at that point if the restaurant is missed you could go to the next turn around area which would be in front of the entrance to Kohl's (south bound) to make the U-turn to return north to go to Panera Bread. He did not think that visibility was not totally blocked from south bound until you get immediate opposite that building structure.

Chairman Sheth mentioned that Panera Bread has a pylon sign.

Mr. Keller agreed with Mr. Hufnal regarding that the Panera Bread logo on the large pylon sign for that shopping center is relatively small, almost insignificant as you are looking for the Panera Bread sign which is upright on the pylon sign. In his estimation, the Panera Bread sign (on both the south bound and west bound) view of the building that the west bound sign can be depicted from a south bound movement. He noted that with the addition of the structure in that location he

has viewed a large number of cars often participating in trying out Panera Bread. With that, he is not necessarily convinced that there appears to be an Exceptional Practical Difficulty to the owner and/or the tenant.
Mr. Thomas stated that if you are coming south bound there is nothing that tells you that there is a Panera Bread until you get almost in front of it. At night you can tell there is a sign but it is not legible.

Mr. Keller questioned whether the applicant was referring to the sign on the building. Mr. Thomas replied yes.

Chairman Sheth stated that everyone was in agreement that the sign cannot be seen from the south bound traffic.

Mr. Keller stated that he was aware that the point was brought up in previous cases as well as to put something on a blank wall on any given property. Grotto's was one perfect example of the same type of request.

Mr. Senato stated he travels the road 3-4 times a day heading south. In his estimation, when driving 40 m.p.h. or slower heading south, the sign facing the highway is visible. He also agreed with Mr. Keller.

Mr. Thomas stated that you have to be at a certain point before you can see the sign. It cannot be seen if you are farther down the road.

Mr. Senato stated that as a driver he would say that if he is coming down the highway and he is 50-70 yards up and if he is looking in that direction he can see the sign on the side of the building.

Mr. Thomas stated that Ruby Tuesday has three (3) signs plus a huge pylon sign in front of their building.

Mr. Keller questioned the location of Ruby Tuesday. Mr. Thomas replied further down heading south on the left. He thought that Mission BBQ and Ruby Tuesday are in the same area.

Chairman Sheth questioned if Mr. Thomas meant Applebee's. Mr. Thomas replied perhaps Applebee's.

Mr. Hufnal questioned whether Panera Bread was limited because they do not have a pylon sign. Mr. Thomas replied not one that is visible.

Mr. Senato questioned whether it would give a frontage sign coming north in front of the building and heading south the sign facing the highway. He believed there was a sign facing the west side (which is the parking lot side). Mr. Thomas replied yes. There are currently (2) signs and the third sign is the one they are requesting.

Mr. Diaz stated that Applebee's would only have three (3) signs if you consider the neighborhood and the Grill and Bar to be two (2) separate signs as opposed to one (1) sign together.

Chairman Sheth questioned whether the Big Lots sign was additional and qualified as an institution, because it is a shopping center it can have more signs. Mr. Diaz replied yes. The whole shopping center in Capital Commons would qualify for Unified Comprehensive Sign Plan. If they chose to apply for one, it would allow all of the establishments in that shopping center to gain more signage which would be evaluated by the Planning Commission. At the current time, no application has been received despite the City recommendations.

Chairman Sheth commented and questioned that they had a choice to go that route and they could apply for a bigger pylon sign and it would solve the problem as previously stated. Mr. Diaz replied correct, yes.

Chairman Sheth stated that the issue may arise again with Longhorn Steakhouse.

Mr. Keller questioned whether the action would have to be taken by the underlying fee holder as opposed to one of the tenant sites, namely Panera Bread. Chairman Sheth replied right, the Board had the same problem with the Greentree Shopping Center. They chose not to go through the shopping center.

Mr. Senato questioned if there was an option to go before the Planning Commission for a pylon sign. Chairman Sheth replied that it is up to them to decide, but they have a choice.

Mr. Hufnal commented that they cannot get a pylon sign now because it has already been constructed. It should have been done with the Site Plan at the very beginning. So now, Mr. Thomas is requesting to put a sign on the north bound lane now because they did not prepare the building right to begin with to put up a pylon sign, because it would have been allowed. Chairman Sheth agreed, but stated that it was not the Boards fault; they could have applied to the Planning Commission.

Colonel Ericson questioned whether it was explained to the tenant that he had other options and could go before the Planning Commission. Mr. Diaz replied yes, it was explained to the applicant.

Colonel Ericson questioned why the applicant did not go that route. Mr. Thomas questioned the explanation and asked if it was regarding whether they could have gone with the pylon sign. Mr. Diaz replied that in speaking with Mr. Loiselle who wrote the responses to this variance application, he explained to him that a pylon sign would have been permitted for this property by right whether it is through a Unified Comprehensive Sign Plan or not. Mr. Loiselle stated that there was not a sign specific to the Panera Bread on the property because of the way the drive-thru was constructed. This was taken into account in this report. The other issue is whether the shopping center as a whole could have a Unified Comprehensive Sign Plan. If the underlying fee holder applies for the Unified Comprehensive Sign Plan, then all of the establishments existing in that shopping center could potentially have more signage than what is allowed by the sign regulations if the extra signage was approved by the Planning Commission. For example, Dover Town Center has an Outback Steakhouse restaurant in front. They were approved by the Planning Commission for a total of five (5) wall signs because two (2) of the signs are very small. If the shopping center went that route, both the Panera Bread and Longhorn Steakhouse could get more signage than they are currently permitted by code. This has been explained to both of them as well as to Big Lots

and Burlington developer when they went through the Site Development Plan process. It is not something that can be undertaken by one of the restaurants individually.
Colonel Ericson questioned whether they could go the other route. Mr. Diaz replied yes.

Colonel Ericson questioned if the Board rejected the application, then the issue is over and they could not go back to the other route. Mr. Diaz replied no, they could still go the other route if they were denied the variance.

Chairman Sheth mentioned if you look at the current pylon sign and look at the square footage it cannot accommodate the four (4) signs of Panera Bread, Big Lots, Burlington, and Longhorn Steakhouse.

Colonel Ericson questioned if Longhorn Steakhouse have been given information pertaining to what signage they can put on their building. Is it going to be according to the shopping center Unified Comprehensive Sign Plan or Planning Commission? Mr. Diaz replied that the Longhorn Steakhouse is currently installing signage in accordance with the base sign regulations. They originally applied for a variance, but after receiving the initial Staff Recommendations to deny the variance they withdrew the variance application and decided to go with the base sign regulations instead.

Mr. Keller stated that they were given information and were then later informed that Longhorn Steakhouse had withdrawn their variance request. Mr. Diaz replied that it was withdrawn last month.

Mr. Keller questioned for clarification whether an application for a pylon sign could in fact be made today or immediately thereafter. Are you aware of anything that would prohibit a pylon sign being placed? Mr. Diaz replied that the current site layout of the Panera Bread would prohibit a pylon sign. There is not an open space in front of the building that is large enough to accommodate it because of the presence of the drive-thru lane and based on the position of the building it would not set back far enough from the road to meet regulations.

Mr. Keller stated that he noticed in the regulations there would be a 15-foot setback from the right-of-way, but the Board has nothing to illustrate where the right-of-way line falls with regard to the amount thereafter which would be open space between there and the face of the building. He referred to Exhibit F (two photographs) submitted to depict which he believes is the currently existing condition. Mr. Diaz replied that is right.

Mr. Keller asked if Mr. Diaz could look at Exhibit F and reinforce his explanation as to why a pylon sign could not be constructed somewhere along the building frontage, opposite dimension, and a plan which depicts the distance from the existing right-of-way to the face of the building which requires at least a 15-foot setback. Mr. Diaz replied that he did not have anything at the current time with him that depicts the property line exactly, but he referred the Board members to Exhibit D on page 5 that shows the Site Plan of the property, the right-of-way line there is right between the sidewalk and Panera Bread drive-thru lane. If you are going 15-feet back from there, then the sign is either right in front of the (obstructing) existing wall sign that is currently there or if it is put further back it would be right in the middle of their patio area.

Mr. Senato questioned as he referred to Exhibit F (drive-thru) area, what is the distance between the wall up to that illuminating light pole (north side of the building). Mr. Diaz asked if he was referring to distance from the wall to the light pole. Mr. Senato replied yes. Mr. Diaz replied that he has not measured the distance, but based on the size of the cars on the Site Plan he would estimate about 45 feet.

Mr. Senato questioned whether Panera Bread property was part of where the lamp was located. Mr. Diaz replied no, it is the right-of-way.

Chairman Sheth asked what Mr. Senato was trying to prove. Mr. Senato replied that it was just a point of information whether it was owned by Panera Bread and if it was a possibility that it was a 45 feet setback from the awnings and the building that you could conceivably in the grassy area hypothetically put up a pylon sign closer towards the highway. Chairman Sheth replied if Panera Bread wanted to do something different they would need to go before the Planning Commission. Some of the information received may not qualify because we are not aware of the exact measurement or how they are going to apply. He referred back to the issue with Grotto's Pizza.

Colonel Ericson recommended as a solution that they go back and request as a shopping center a Unified Comprehensive Sign Plan before the Planning Commission.

Colonel Ericson questioned if the variance request was denied, would they be able to go before the Planning Commission or would they have to wait for a year or go to court to get it changed. Mr. Diaz replied if a variance is denied they cannot apply for a variance for another year, but if they went through the Planning Commission it would not be a variance.

Mr. Keller mentioned that the large sign that depicts Big Lots, Burlington, as well as Panera Bread currently, what would be the process for Panera Bread to request of the entity which controls that very large pylon sign to simply request a larger portion of that sign dedicated to Panera Bread logo. He questioned whether that would require going back through the Unified Comprehensive Sign Plan before the Planning Commission. Mr. Diaz replied that at the current time he was not aware of the current size of the pylon sign. If they wanted to reallocate the space on the existing pylon between the panels to give some people less space and Panera more space, they would have to negotiate that internally and then submit an application to the Planning Office to revise the sign. If the overall area of the sign is not increasing, it would just be approved. If they wanted to keep the other tenants panels the same and increase the Panera Bread panel they would need to increase the size of the sign overall. This application would be evaluated as to whether the pylon sign with the expansion is still meeting the code limit of 150 square feet. If it is within that limit, then Planning Staff would also approve it. To get a pylon sign over 150 square feet then they would need to go through the Unified Comprehensive Sign Plan with the Planning Commission.

Mr. Keller mentioned that the outset of the two large box stores (Big Lots & Burlington) when the sign was erected perhaps there was not any anticipation of two (2) more sites being devoted to subsequent tenants such as (Longhorn & Panera Bread). He would think that his first plea might be to the owner (if he was a tenant) to get equal footing and size on the large pylon sign which depicts all of the tenants within that ownership.

Chairman Sheth questioned the applicant if there was an internal issue between the four (4) tenants and also if he was willing to compromise and move one (1) of the signs and put it in the back if he thought that one was more important. Mr. Thomas replied that he thinks that the 2 current signs and the proposed sign are all equally important because they cover different views of the building. As far as the landlord changing anything on the pylon sign, he has been doing this for 30 years and the landlord is locked in a lease with Big Lots and Burlington as far as the size of the signs that are allotted on the pylon sign. He did not know what that would accomplish because they would lose signage and one or two other important sides of the building.

Chairman Sheth mentioned that he thought it was suggested by the Planning Commission that Panera Bread could have the mural signage. Mr. Thomas replied if that was done then the two signs plus the mural would be three (3) signs.

Chairman Sheth questioned if this was suggested. Mr. Diaz replied that there is a distinction in the code between what is a sign and a mural. Public Art is allowed without a Sign Permit. To be considered Public Art then we look at whether it is containing names, slogans, or logos, because really otherwise anyone can claim their sign is art. As mentioned in the Report if this was considered for the aspect of the north face of the building then they should consider some sort of other architectural treatments such as a mural. Mr. Thomas has been calling the larger sign in this meeting a mural, but the City would not consider the sign a mural.

Mr. Hufnal stated that the applicant has already expressed if he was given the sign on the north side of the building which was the 35.67 square feet, then the other sign would not necessarily be needed. So the Board's question is do they want to allow the sign on the north side of the building that is the exact size as the one on the south side.

Mr. Hufnal mentioned that he thought the Board was getting off the subject with the fact that we are talking about the landlord sign and this has nothing to do with their particular problem. Chairman Sheth agreed.

Mr. Keller stated that the Board of Adjustment application form has been distributed that was inadvertently omitted from the packet. He sees where TLM Realty Corporation is indicated as a managing member of Dover Delaware Retail, LLC. This will put to rest his concern about whether or not the fee holder in fact is represented in this application process.

Mr. Keller stated that he would hope that Staff takes what he views as a relatively simple matter of verifying with regards specifically to LLCs. Perhaps Mr. Rodriguez could lend greater advice, but at least with the Division of Corporation you can discern managing members of any LLC or other corporate entity. Mr. Rodriguez concurred.

Mr. Keller stated that his concern is always that the variance once granted runs with the land. Chairman Sheth agreed because the variance goes with the property and not with the owner.

*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 member present who had a conflict of interest and there was none.*

*Chairman Sheth questioned if there was any additional correspondence for the record. There was no correspondence from the public.*

*Mr. Hufnal moved to approve Application V-17-16. Sign #3 to permit the 35.67 square feet on the north side of the building. The sign would not appear to be excessive and would be in character with the surrounding neighborhood. The north sign would be in place of a free-standing sign which would have been permitted by code if the Site Plan was set up differently. Relying on the north sign of the pylon sign for the owner of the land would be effectively too small to be read and therefore the sign for the north side of the building would at least give southbound traffic the direction of that location. So based on this information and testimony today he would recommend approval of Sign #3. The motion was seconded by Colonel Ericson.*

*Chairman Sheth asked if there were any questions.*

*Mr. Keller questioned that this did not include within this motion with any regard to the large display signage which almost looks like a mural on that north side of the building, but is set further back towards the turn of the drive-thru lane. He asked if this was correct. Mr. Hufnal replied correct. Mr. Thomas stated that he wanted to keep that a separate motion.*

*Colonel Ericson questioned that this is defined as Sign #3 and based upon the square foot of 35.67 square feet sign. Mr. Hufnal replied that is correct. He is referring to the sign over the two (2) awnings on the western side of the north side of the building.*

*Chairman Sheth had concerns regarding the motion. Mr. Hufnal replied that he considers his motion basically of how they designed the building has created a hardship of having a sign read by southbound drivers with not being able to put up a pylon sign, and that was in their initial application with the Site Plan. He really did not think it has anything particular with the other application that the Board denied previously because if he recalls some of those had the pylon signs. Chairman Sheth stated that Mr. Hufnal motion concurs with what Staff recommended. Mr. Diaz stated right.*

*Roll Call Vote: to approve Sign #3 (35.67 square feet)*

***Mr. Keller** – No – with what has been represented both by testimony this morning as well as information, photographs, and exhibits he still views the current building as basically a rectangular structure not uncommon, not unlike any number of them up and down US 13. He fails to see substantive enough reasoning to allow signage when somewhat of a historical nature applications have been in the past made and denied. He did not see enough to warrant approval of this motion.*

***Colonel Ericson** – Yes*

***Mr. Senato** – No- based on all of the testimonies heard today.*

***Mr. Hufnal*** *– Yes*

***Chairman Sheth*** *– Yes, because it answers the question recommended by Staff.*

*Motion carries three (3) yes and (2) no.*

*Colonel Ericson moved to deny Sign #4 based upon Staff Recommendations and testimony given, that is the sign that is 94.74 square feet on the north face of the building. Mr. Thomas testified that there was no hardship for having the sign present or not present, it is really for decoration purposes. He could go back to the Planning Commission and request for the shopping center a Unified Comprehensive Sign Plan and have the sign installed. The motion was seconded by Mr. Hufnal.*

*Roll Call Vote for variance request of Sign #4: to be denied.*

*Mr. Hufnal- yes for denial*
*Chairman Sheth – yes for denial*
*Mr. Keller – yes for denial*
*Mr. Senato – no for denial*
*Colonel Ericson – yes for denial*

*Vote 4-1 in favor of denial. Motion carries. Mr. Senato was not in favor of the denial.*

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

Meeting adjourned at 10:20 A.M.

Sincerely,

Maretta Savage-Purnell
Secretary

**CITY OF DOVER**
**BOARD OF ADJUSTMENT MINUTES**
**December 20, 2017**

A Regular Meeting of the City of Dover Board of Adjustment was held on Wednesday, December 20, 2017 at 9:00 A.M. with Chairman Sheth presiding. Members present were Chairman Sheth, Mr. Keller, Colonel Ericson, Mr. Hufnal and Mr. Senato.

Staff members present were Mrs. Purnell, Mr. Diaz, and City Solicitor Mr. Rodriguez. Mr. Hugg was not present due to a Department Head meeting.

## APPROVAL OF AGENDA

*Mr. Senato moved to approve agenda as revised whereas Application V-17-17 would be heard first and V-17-16 would follow afterwards. The motion was seconded by Mr. Hufnal and unanimously carried 5-0.*

## APPROVAL OF THE REGULAR BOARD OF ADJUSTMENT MEETING MINUTES OF NOVEMBER 15, 2017

*There was no approval of the meeting minutes of November 15, 2017 as there were still being prepared. Adoption of the meeting minutes will be considered at the January 17, 2018 meeting of the Board of Adjustment.*

## OPENING REMARKS CONCERNING DEVELOPMENT APPLICATION

Mr. Eddie Diaz, Planner with the Department of Planning and Inspections stated that the meeting today will be conducted in accordance with the motion of the Revised Agenda. There is one (1) application on the agenda under Old Business and one (1) application under New Business. The Application file will be read, and the floor will be opened for questions of the applicant by the Board and for public testimony. If the Board needs to consult the City Solicitor, they will recess to discuss legal matters. If the applicant must leave, they can contact the Planning Office at 736-7196 to learn of the Board's decision. A formal notice of the decision will be mailed to the applicants. Approved variances expire after one year if the approved project has not commenced.

All public notice for the new applications on this agenda was completed in accordance with Code requirements. The meeting agenda was posted in accordance with Freedom of Information Act requirements.

## NEW BUSINESS

### Applicant #V-17-17

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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.

Exhibits for the Record: Staff Report, zoning exhibit, and statement and plans submitted by the applicant. Legal Notice was published in the Delaware State News on December 10, 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. Mark Strickland PE, Century Engineering

Mr. Strickland was sworn in by Mr. Rodriguez.

Mr. Strickland testified that he was present on behalf of his client Mr. Steven Lumor who was a former professor at Delaware State University. He purchased parcel on College Road not far from Delaware State University and he is looking to develop it into a what will look like a townhouse. It will be a three (3) dwelling unit rental property for college students not far from the campus. Mr. Lumor purchased the property because of the close proximity to the university as well as a walkable corridor to Route 13 and all the businesses there for any students or anyone that lives there, but it is primarily geared toward the students. The site (a small parcel only 0.42 acres in size) was originally designed and they did everything they could to adhere to the 35% maximum impervious coverage. The entire site was designed to be under 35% impervious just by a hair. It was down to the square feet and parking area in order to do so. They went through the DAC process with the Planning Commission and had a few comments with DelDOT and the Fire Marshal. Just to improve the safety of the site the entrance was widened and the parking area increased for Fire Marshal accessibility. Those adjustments to the site have bumped up the impervious coverage to exceed the 35% threshold. The variance they are looking to request is to allow an increase in the maximum allowable lot coverage from 35% to 40%. The parcel with all the recommendations by Planning Commission, Fire Marshal, and DelDOT now has the impervious coverage at 39.05 %, just a little under 40%. The 40% would allow for any minor future modifications. The primary reasons why they feel this is an acceptable variance according to the four criterias. The four (4) reasons this variance would be an acceptable adjustment: (1) The nature of the zone in which the property lies: This is intended to be a residential structure and is surrounded by primarily residential zoned buildings along College Road. Across the street to the east is a large apartment complex owned by the university as well as to the north of the parcel there is another small apartment complex. There are various types of residential land uses surrounding the project area. This would be in the nature of the zone that the property lies. (2) The character of the immediate vicinity and the contained uses therein: They think this would enhance the character and the uses surrounding the area because they would be providing additional residential space and a new entrance that will hopefully keep some of the parking off of Conwell Street. Conwell Street is largely an unmaintained road. There has been a lot of debate regarding the ownership and at the current time it is still not clear. We do know that it is a public right-of-way. We will have a new entrance and keep parking off the street. They think they will be improving the immediate vicinity because they will be bringing the sidewalks up to ADA compliance and meeting code requirements in front of the site. (3) Whether, if the restriction

upon the applicant's property were removed, such removal would seriously affect neighboring properties and uses: They do not see any impact on neighboring properties, or if so, it would be insignificant. The total going from 35% to 40% increase the impervious coverage is roughly 829 square feet (±0.02 acre) that would be largely unnoticed by any neighbor. (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*: Failure to remove the 35% maximum lot coverage limit and not increasing it to 40% would mean changes as they have continued to adhere to DelDOT, City, and State Fire Marshal requirements. The only other option in order to develop the site would be to shrink the footprint of the building or cut off one of the rental units of the building. In the long run, it would hurt the rental prosperity of the property. They do not feel that it is going to be economically viable to continue pursuing the development of the site if there are only two parcels or two rental units on the property. That will incur significant financial hardship for the client. Just to put it into perspective, the building was roughly reduced by 25% to meet the impervious coverage limit and to meet the unit coverage or perhaps taking out a whole unit which would reduce it by 33%. Again, they do not think it is economically viable to reduce the footprint of the building. For comparison, the site itself is being classified as a multiplex through the Planning Commission, but the Fire Marshal codes do not have a multiplex definition so it is being considered an apartment for those zoning purposes. If you look at it from the street, it is going to look like a townhouse. Comparatively, the impervious coverage specification is 35% for multiplex and 50% for townhouses. If we were able to consider a townhouse, which we cannot because then we would have to subdivide the parcel and the parcel is simply not big enough, the townhouse is already at 50%. That is really what the building is going to look like. With all that in mind, they are requesting to increase the impervious coverage from 35% to 40%.

Mr. Keller questioned Mr. Strickland's representation of the owner. Mr. Strickland replied that he is with Century Engineering and he is the Engineer for the project.

Colonel Ericson questioned the definition of a townhouse/multiplex. Mr. Diaz replied that it is defined as a "multiplex" under the *Zoning Ordinance*. It is currently being defined as an Apartment under the Building & Fire Code. It looks like townhouses. Mr. Strickland replied that there is no clear definition that well defines this property. Between the different agencies that is the best way to describe it because it is confusing.

Chairman Sheth questioned if the term "townhouse" is used where would you go wrong. Mr. Strickland replied that the parcel is not wide enough in order to subdivide and provide the required lot width. In order to be considered a townhouse, they would have to subdivide the parcel and there is simply just not enough width on the property to divide it into three (3) individual units. According to the *Zoning Ordinance,* it fits a multiplex building the best. A multiplex consists of 2-5 dwelling units and have all of their own entry points. It fits the definition of a "multiple dwelling" as a building containing more than two dwelling units. The standards applying to "multiple dwellings" apply. We are not able to

subdivide the parcel without requesting more code variances for the lot widths on the subdivided parcels.

Colonel Ericson asked Mr. Rodriguez if he was comfortable with this determination. Mr. Rodriguez replied yes. The Planning Commission has recommended if it is passed that it be specifically designated as "multiplex".

Chairman Sheth questioned if there is no wording describing the ordinance and the Board have to legally vote for a multiplex that has no definition anywhere. How would the Board pass it as a multiplex or should the Board state as proposed none as a multiplex with the subject of the conditions? If City Council approved the word, would the Board be legally okay? Mr. Rodriguez replied yes the Board would be fine if they decided to pass it. He would write the decision to that affect so it will be limited to multiplex and use the definition that Mr. Strickland has referred to which was given to the Board by the Planning Staff.

Mr. Diaz gave a brief overview of the application.

Chairman Sheth questioned without any description of the multiplex and if it is passed this time and anyone comes in without any description of the multiplex and the Board has no idea of any restrictions or something else that restricts them one against another (apartment complex or townhouse) some will call it a multiplex. It is approved, but the Board has no idea of a multiplex, because this is his first time hearing the word "multiplex". If you want to get through the public, you would have to come up with some legal term and Mr. Diaz will need to give the Board some guidance as to "what is a multiplex". He does not want to vote for something and not know what he is voting for.

Colonel Ericson stated that he totally agreed with Chairman Sheth that the Board needed a definition of "multiplex" because some people will take advantage of the Board's decision if approved.

Mr. Diaz stated that the definition of a "multiplex" under the *Zoning Ordinance* is "a detached structure containing three to five attached dwelling units, with each unit having independent outside access and at least two exposures." The difference between a multiplex and townhouses under the code is that townhouses are supposed to each have their own independent lot, whereas multiplexes cannot. Townhouses are generally set up for one family ownership while a multiplex could be a condo unit or apartments. This is the reason they could not give this building a townhouse definition to allow a 50% lot coverage. It is not set up for a one family ownership with independent lots for each unit.

Mr. Keller questioned whether there was anything to preclude a subsequent sale of these individual units much like a townhouse development and subsequent sale would otherwise be. Mr. Diaz replied if so, they would have to sell them as condo units, because the property as is cannot be subdivided.

Mr. Keller asked if the Board would concur to encourage Mr. Diaz to carry this message to Mr. Hugg and undertake a review of the code as it relates to multiplexes and attempt to formalize if you will a more satisfactory definition, usage, etc. in the rewrites and reviews of the ordinances in the future. Mr. Diaz replied he could certainly do that. Mr. Keller stated that it would be helpful because there was a lot of doubt in his mind as to exactly what the ramifications of subsequent use and/or sale of that property would entail. He knows that the owner has indicated in his submission that he intends to rent, but that does not preclude tomorrow him perhaps desiring to sell the property or units. He did not know how subsequent unit sale would take place.

Chairman Sheth questioned if this could be sold as a separate unit or as one title. Mr. Strickland replied that the unit will remain as one parcel under one title. Upon speaking with the owner he has never once indicated any intention on selling the building. If he did so he is not 100% sure how that process would go, but he is assuming you would have to sell the building as one entire unit.

Mr. Hufnal stated that as working in Real Estate for many years unless you can subdivide it and get a separate deed, you cannot sell that property individually, it has to be sold as one unit. He asked Mr. Rodriguez if that was correct. Mr. Rodriguez concurred.

Mr. Keller questioned the status of the owner being listed as a dual status, he wanted to clarify if the current fee holder of that property is Mr. Lumor because the paperwork reveals that there is also an Enyam LLC. Is the property held title wise by Enyam LLC or Mr. Lumor as a single individual? Mr. Strickland replied that he believed it was under Enyam LLC ownership but Mr. Lumor is Enyam LLC. It's not like it is a large corporation, it is just Mr. Lumor.

Chairman Sheth questioned if Mr. Strickland was sure. Mr. Strickland replied that was not 100% sure. The property was brought and owned under Enyam LLC with Mr. Lumor taking all ownership and rights to the property.

Colonel Ericson questioned whether Mr. Rodriguez could contact the owner to confirm that he is the owner. Mr. Rodriguez replied that he would ask Mr. Strickland to give him that information and perhaps a deed reference. When he writes the final decision, if the Board decides to pass it, he will include the legal owner.

Mr. Rodriguez questioned if Mr. Strickland could find this information out pretty quickly. Mr. Strickland replied yes, right after the meeting or he could call him now.

Mr. Hufnal stated that Mr. Lumor was listed as the property owner on the application.

Mr. Keller stated that he checked the County property records and they listed the owner as Stephen E. Lumor of 314 Topaz Circle, Dover, Delaware 19904. The property was listed as 145-146 of College settlement subdivision. He asked Mr. Strickland if he had any familiarity. Mr. Strickland replied he had never heard of either one of those.

Mr. Keller questioned if any title work or title search, etc. was done before embarking on a commission to do the engineering work for an owner. Mr. Strickland replied he personally did not.

Mr. Keller stated that the property is otherwise referred to as a 0.46 of an acre lot and he saw this in the property records of the County. He also heard Mr. Strickland comment about the uncertainty of the width of Conwell Street. Part of it still appears to be a paper street and half is fully paved on the southerly side. When he saw the reference to settlement lots 145-146 being in Mr. Lumor ownership, it raised a question in his mind if it was in fact a record subdivision and if there were any restrictions on the settlement for development, any conditions, or prohibitions with regard to that subdivision plan.

Mr. Rodriguez mentioned that he could check it out for Mr. Keller.

Mr. Rodriguez asked Mr. Strickland if he knew the attorney that was representing the owner. Mr. Strickland replied that he was not aware. They had a boundary survey provided to them by another engineering company (Mountain Consulting) and that is what they have been using for all of their right-of-way references. All of the plans have been diverting any kind of right-of-way responsibility or boundary determinations towards the Mountain Consulting survey. They never performed a boundary survey or did the right-of-way or deed research beyond what was provided by the owner and provided on the boundary survey. Mr. Rodriguez stated that it would have had to be presented to the Planning Commission, if not, it would not have come before the Board of Adjustment. Mr. Strickland concurred.

Mr. Strickland mentioned for clarification on the 0.46 of an acre lot compared to what he mentioned 0.42 of an acre lot, the right-of-way was dedicated along College Road in the mid 80's. Therefore, it reduced the lot size to 0.42 of an acre lot.

Mr. Senato stated that in order to make a wise decision on a motion and for point of information there are a lot of questions and doubts going back and forth. He asked if it would be advisable at this point to defer this to the next meeting and present the questions that Board members and have them answered for the next meeting so that a decision can be made with all of the information. Chairman Sheth replied that it was up to the Board members. He also asked if the Board felt that there were a lot of unanswered questions.

Mr. Diaz stated that City records has the property as one (1) parcel. It is possible that it may have been two (2) parcels in the past and there was and there was a parcel consolidation. But at this point, unless there was a subdivision under no circumstances would they be treating it as two (2) lots.

Chairman Sheth suggested that the hearing could continue and then when the motion comes the Board can suggest to table it or not, or freeze the hearing. Mr. Senato replied that was fine.

Chairman Sheth also suggested to Mr. Diaz to please provide as much information as possible in the future so the Board can make the right decision. For example, the question that came about regarding the definition of a multiplex. Mr. Diaz replied that he could not give a definition of multiplex that is different from the one he gave that is in the *Zoning Ordinance.* Chairman Sheth stated that Mr. Diaz did his best, but in the future give the Board the writing to follow. Mr. Diaz replied that the definition of multiplex was in the Report given to the Board members.

Mr. Senato stated that what the Chairman was referring to was not for this meeting because Mr. Diaz had given the explanation as to what the definition is, but in the future reevaluate what is a multiplex? What is a townhouse in reference to what is being discussed today so that this problem does not rise again. We will have more of a definitive definition as to what a townhouse and a multiplex is in the future. He asked Mr. Diaz if he understood.

Mr. Diaz reiterated that he could not give a definition of multiplex that is different from the one he gave that is in the *Zoning Ordinance*. He could not give another definition of something that is not in the code. Mr. Senato replied he understood, but reiterated that he was not talking about this meeting.

Mr. Hufnal stated that he was satisfied with what was discussed because under the circumstances of the way the lot is set up and the way it was recorded; it cannot be subdivided anyway. If it were to be sold or everything burnt down it would have to be reconstructed the same way.

Chairman Sheth questioned whether someone could apply for a multiplex on the next lot (Lot 145). Mr. Hufnal replied that it would be up to the applicant as to how they wanted to procede with building.

Mr. Keller stated that he had uncertainty as to the reference to a subdivision and the specific lot numbers assigned to this property. He was not certain how or what would be the best path for tabling for a 30-day period to undertake some sort of look into the actual fee holding and if there is in fact a subdivision of record, etc.

Chairman Sheth stated as he referred to Mr. Keller's comments that Mr. Rodriguez had already mentioned that he would take care of it so the Board would not have to worry about it.

Mr. Hufnal asked Mr. Rodriguez if he was right on if this was two (2) lots that was combined into one (1) then it cannot be reversed and go back to two (2) lots. Mr. Rodriguez replied that he thinks Mr. Hufnal is right on that. He did not think this could be done. He would believe that the restrictions or development that were in question by Mr. Keller would have been ironed out by the Planning Commission. If you are really concerned about that he would suggest the Board asking the owner to submit some title information showing who the owner is and are there building restrictions for this development that

would affect the Board's decision in anyway.

Mr. Keller stated that although they are fair questions to be asked, he did not want to delay any progress with subsequent actions that are necessarily actions of the owner to forward his project. But at the same time could those questions or requests be made of the owner to provide that information in advance of a motion for approval or denial. He did not want to have a motion potentially for approval to be dependent upon the submission of that information and then have it only perhaps come to light. The action taken would have been precluded by the information the Board found from the title work.

Mr. Rodriguez stated that they are fair questions and no question about it, the Board should have the answers. He would feel a lot more comfortable postponing it to a later date when the Board meets on January 17th and have that information submitted so that the Board would know. The public hearing could be held today and then the application could be tabled if it is the Board's desire.

Mr. Strickland stated for clarification that for the entire time since they were handed the boundary survey it has been declared as one parcel. Until today he never had any indication that it was ever previously subdivided at least under this current ownership.

Chairman Sheth commented that it would have been much easier if the owner was present. Mr. Strickland replied that the owner was in Chicago.

Chairman Sheth questioned if the owner was aware of the meeting. Mr. Strickland replied yes.

Mr. Keller stated that he was not finding any fault with Century Engineering. At the same time, he hopes that the way it was stated that the survey was not received carte blanche without a review or subsequent step of clarification for what the Board is talking about, namely the true ownership. There is a distinction between a corporate ownership and/or individual that has to be clarified as well as some title representation whether or not there is in fact an established subdivision known as College Settlement there and whether or not Lots 145/146 as indicated in the ownership records of the County are in fact in existence and whether or not they have been combined or not. Those are the various questions that should be clarified. Mr. Strickland replied that he understood and they should have had that information. He did not want to say for certainty with the ownership. He knows that they built Enyam LLC. They are paying us to produce a site plan for it and it was under his assumption that he was also the owner. Again, he did not want to say without 100% certainty.

Chairman Sheth recommended that the owner be present at the next meeting if this application is tabled. Mr. Strickland replied okay.

Mr. Keller recommended that the information be provided in total prior to the scheduling of the next appearance by Mr. Lumor or his representative. Chairman Sheth concurred, and

at the same time asked for the necessary information from the people who are helping.

Mr. Diaz asked to be certain that the information that the Board is asking for is: who owns the property (Stephen E. Lumor or Enyam LLC), who owns Enyam LLC and whether there is only one (1) fee hold for the property or multiple fee holds.

Mr. Diaz asked if there was anything else. Mr. Rodriguez replied, also if there were any deed restrictions for the recorded block that would affect the Board's decision.

Mr. Keller stated to clarify the recordation of that subdivision plan and its record source should be recorded by deed record book page and if there are any associated restrictions of whatever nature. He knew some years back with his previous employment at DelDOT with the widening of College Road, he can recall one other paper streets on the extreme easterly end of this area before you get to a river crossing at the bottom of College Road. He is aware that there was in fact a subdivision of record and that may very well also be why Conwell Street on this westerly end is still partially a paper street as it proceeds northerly from College Road. With that recollection in his mind, he thinks that there is possibly a record plan of that settlement that is supported by the indication that this ownership constitutes lot numbers 145 and 146, so it is worthy of looking at Mr. Diaz.

Mr. Diaz asked if it was Lots 145 and 146. Mr. Keller replied yes, it indicates that this property ownership consists of Lots 145 and 146 of "College Settlement".

Mr. Diaz asked of the specific source that was being looked at. Mr. Keller replied by saying you tell me because he did not go into a property search last night. They should be looking in subdivision records to see if there is a record plan of that subdivision. It would also be nice to see the present day deed record as to how the current ownership acquired title.

Chairman Sheth suggested that Mr. Diaz ask Mr. Hugg or Mr. Rodriguez to well define the definition of a multiplex and the requirements so the Board will have clarity.

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

*Chairman Sheth opened the public hearing.*

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

*Colonel Ericson moved to table variance application V-17-17 until the January 17, 2018 meeting. The motion was seconded by Mr. Senato.*

Mr. Keller commented that the tabling would be supported by the intention of the owner submitting the required information as the Board discussed regarding the subdivision plan, current ownership, and title sources (deed or subdivision plan).

Colonel Ericson commented that he would suspect if the required information is not provided the

Board would vote against the application. Mr. Strickland replied that he was satisfied with that.

Chairman Sheth reiterated that Mr. Diaz understood Mr. Keller's request and that it is provided at the next meeting.

*Motion passed 4-1 to table the application until the January 17, 2018 meeting. Mr. Hufnal was not in favor of the motion because he believed there was sufficient information in his mind.*

**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.

Exhibits for the Record: Staff Memo and plans submitted by the applicant. Legal Notice was published in the Delaware State News on December 10, 2017. The public was notified in accordance with regulations.

Mr. Diaz gave a brief overview of the application. Mr. Diaz stated that had Staff known about the change from the beginning Staff recommendations would still have been the same. Today he recommends that the Board approve revisions to the original granted variance in order to allow a 47.27 square foot sign.

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

**Representative:** Mr. Raymond Thomas, Construction Manager

Mr. Ray Thomas was sworn in by Mr. Rodriguez.

Mr. Thomas testified that Mr. Diaz pretty much said everything. They initially wanted the drive-thru portion of the sign to be approved along with the Panera Bread and for whatever reason he was not sure why it did not get included in the packet or brought to anyones attention.

Chairman Sheth mentioned that in past presentations the Board found out that new building was constructed and within 1-8 months asked for a variance. New building signaage could have been questioned by the Planning Commission or they should tell them how many they are going to have. If you have questions, then don't apply to the Planning Commission, start building and then ask for a variance. Chances are you will get approved. For example, that's what happened, there was a Wawa building, a housing development, Grottos Pizza, and now Panera Bread. They exactly

knew how many signs were needed. The engineers, marketing, and Planning Commission know the code and regulation information. There were questions with Wawa asking what will happen if they did not get a big sign. Are you going to stop building; and the answer was no we are going to continue building. Same with the others as previously mentioned. It is now becoming easier to get a variance afterwards. He mentioned the Walgreens on Route 8 and Saulsbury Road where he informed the Planning Commission to send them the variance before approving to avoid being turned down before the Board of Adjustment. Chairman would suggest that any new building (ask questions) regarding whether or not they will need a variance and if so, go before the Planning Commission first before building. There are other businesses coming into town. There will be questions regarding the signs and ordinances and whether they are existing or come back stating they have a hardship. Chairman stated that the Board should respect the creditability of Staff Recommendations because they have more knowledge because they deal with it on a daily basis. There have been cases where there has not been enough information.

Mr. Hufnal stated that this application was discussed thoroughly at the last meeting for the sign of 35.67 square feet. If the Board did that and the sign said Panera Bread why the applicant did not make comments to the Board that this was not what he presented. Mr. Thomas replied that he did not pick up on it, that was his fault. Mr. Hufnal stated that it was the Board's fault as well because he sees the "drive-thru" on the drawing, but they only picked up the part with the Panera Bread at 35.67 square feet. Mr. Thomas replied right.

Mr. Hufnal also commented that on the drawing the drive-thru is 6.77 square feet, but yet if you add the two (2), it only totals 42.44 SF, where did we get 47 SF? Mr. Diaz replied that it comes from the space in between the two lines. Mr. Hufnal said so, it is not two separate signs. Mr. Diaz replied right. The area of the sign is the addition of the two (2) geometric figures that can fully hold all of the text and be continuous. If we were to just add the two figures there, the drive-thru letters would have to be bumping up against the bottom of the Panera Bread letters. The extra space counts for about half letters with space between them.

Mr. Hufnal asked if it is the blank space between the two (2). Mr. Diaz replied yes.

Colonel Ericson asked if it would be considered two (2) separate signs. Mr. Diaz replied it can be subjective, but in this case they are close enough together that it can be considered one (1) sign.

Mr. Hufnal said you have a sign that faces Route 13 that is Panera Bread drive-thru, but the drive-thru is on the northern side where you want this sign. He asked why the sign on the front could not be placed on the side, and the one the Board approved be put on the front. Mr. Thomas replied they had never thought about it that way. They would probably like to have drive-thru everywhere only because it brings that attention to the restaurant. Mr. Hufnal stated that the drive-thru is specifically on the north side and apparently that is what you wanted this sign up there to indicate. Yet, the previously one the Board approved with the drive-thru is on the front. It seemed to him it would be better if that sign was on the side and the one the Board approved would be put on the front. Mr. Thomas said he could not disagree with that. However, now you are talking about taking down the old drive-thru sign and the additional work and expense involved in doing that. It would be cheaper for them to just put up a whole new sign (Panera Bread drive-thru) on the one side.

Chairman Sheth stated that the question really comes when people ask for the variance and it is granted by the Board. They do not have to take much, but get as much as they can. If you have only two (2) then ask what is the best way to get the sign to draw the attention. That was the whole idea of the forefathers or the City Ordinance that make it very efficient to use the Sign Ordinance. What we are using is (35-foot-tall gas station pole, etc.). There were sign issues with the Dover Mall whereas they wanted to have a running sign and the Board said no.

Mr. Keller commented he agreed with some of Mr. Hufnal's remarks as well as the Chairman's. The Board took under considerable consideration the request made a month ago. He still has his plans from that meeting and reviewed them as well for today's meeting. They clearly had two (2) separate signs Panera Bread and Drive-thru indicated on those plans. We proceeded last month with the variance approved to allow an additional sign and he recalls that some of the contention was regarding the visibility of south bound traffic approaching that building. He believes absent the meeting minutes yet in hand that he made comments regarding that visibility as you are proceeding south below Lepore Road. That building comes into view and within 1-2 tenths of a mile of that building you can see that sign that is on the westerly face (the one that laterally faces Route 13 northbound; the present day sign in place). He took some issue and still has doubts about the necessity of this sign face on the northerly side. He recalls that the votes were not unanimous in either request. The Board did in fact approve the additional sign. He recalls at the time the motion was made there was some pause and clarification made he believes by Mr. Hufnal as to the square footage involved. The same representative is here today representing that ownership and there was not an issue taken with the footage. He did not believe the matter of discussion with which the various elements of the sign or the addition or deletion or whether or not the drive -thru portion on that corner was included. He likes the mindset that the Board of Adjustment last month made a sound decision that they allowed one additional sign. The restaurant appears to be a gun-ho business. You cannot get near the lot and find a parking place so perhaps the signage even as it exists today is doing its job. He is hesitant to report a further revision to the item as passed and decided at the last meeting.

Chairman Sheth agreed with Mr. Keller. Think about the ones that are building the Longhorn Steakhouse and they will have the same issue. There will also be three (3) other restaurants coming into the area that will all have the same issue.

Mr. Keller stated that he respects and admires Mr. Diaz's resubmission of the information which was apparently inadvertently omitted. In review of the packet for this month and last month, it would not have altered his position one iota.

Chairman Sheth asked Mr. Diaz about the answering the question of Mr. Keller's about one or two signs regarding the drive-thru wording of Panera Bread. Mr. Diaz replied that this again goes back to the definition of the sign in the Sign Ordinance. Basically, if it reads as one sign then it can be considered as one sign. It does allow the applicant some flexibility. In some cases, they might be permitted more signs that are smaller and in other cases they might be permitted fewer that are larger. They can and they might state that they want it to be considered one sign or two signs to make it fit with the *Zoning Ordinance*. In this case for "Panera Bread drive-thru" we can consider it as one sign. If you were to say no, we want that to be two (2) signs, then you would have to grant a variance for an additional sign.

Colonel Ericson stated that he personally sees it as two (2) signs. If you say that the spacing between the two letterings is not part of the sign, then to him is two signs. If you wanted it to be one sign, then you should be asking for more than 47 SF so the whole thing would be covered. Mr. Diaz replied that it could be considered as one sign that is 35.67 SF and the second sign that is 6.77 SF. That would be two (2) signs that would add up to about 42 SF or you could consider them one sign that is about 47 SF based on the small amount of space between them. One sign with two lines of text. Considering them as one sign would the lesser variance.

Mr. Hufnal commented that the blank space in between is 4.83; the difference of 11.60 SF between what the Board approved and what was requested. Mr. Diaz replied that any sign is going to have some blank space on it. Any sign that has multiple lines of text is going to have blank space; it is pretty common.

Mr. Senato commented if you are dealing with so much square footage for a sign and when you are talking about two (2) and you are adding both of them together, the ordinance does not seem clear in dealing with this type of situation. He thinks that you are setting a precedent for the future.

Mr. Hufnal commented that at the last meeting the additional sign was approved. Since the Board technically overlooked the drive-thru portion, he would be in favor of just amending that you add the additional language which the Board omitted the last time.

Chairman Sheth asked Mr. Diaz what would he suggest. Mr. Diaz replied he did not want to set a precedent where any sign that has multiple lines of text would then have to consider each line of text a separate sign. This would increase by a great amount for every sign. Each time someone would apply to put up a sign we would have to consider it multiple signs if it is two or more lines of text. In cases where they are only allowed a limited number of signs (which is most cases) then that will severely limit the amount of signage they put up.

Mr. Senato questioned if the code stated the square footage of a sign or does it say lines of a sign. Mr. Diaz replied that the code limits are based on the number of signs and the square footage of signs.

Mr. Hufnal commented that he would rather see it be kept at the one sign because we are already over the limit. If we keep it at the one sign and just add the additional language it would seem to be less of an impact and also keep the Board better within the limits of what is allowed.

Mr. Keller commented that he would add an error of caution because you don't want to be flooded with having approved variances for (x) number of signs only then to have subsequent requests periodically or routinely for amendments to our final decision making. It is easy to perhaps gain that first variance, but this to him is almost like now I will get my fourth sign. I am allowed two. I got a variance for one more, so I will just go in and ask for one more. It still that troubles me a bit Mr. Chairman.

Mr. Chairman agreed and commented that is the reason he suggested that Planning Commission should ask that the applicant should submit a sign packet along with applying for a new building

so we don't come to the picture and then decide the variance. He would still like to see no more than two (2) signs and stick with it (he again referred to Grotto Pizza).

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

*Chairman Sheth opened the public hearing.*

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

Mr. Keller stated that before making his motion he would like to point out in the decision rendered on this case a month ago dated November 15, 2017 with regard to case V-17-16, page 2, paragraph number 2: "The board considered that the smaller sign where the variance was granted would be consistent in style and size of similar restaurants in the area, the design of this sign would be identical to the major part of an existing sign already installed on the walls. South bound traffic on Route 13 would not readily recognize the business. The Board felt that granting the smaller wall sign would overcome this problem and that the denial of the larger wall sign variance would not be needed to cure the visibility argument for south bound traffic on Route 13".

*Mr. Keller moved to deny the request for administrative alteration to the Board of Adjustment decision for case # V-17-16 as was stated in the statement of facts regarding that decision dated November 15, 2017. Colonel Ericson seconded the motion.*

Mr. Diaz stated that Mr. Hufnal made a suggestion that the drive-thru letters on the west face of the building be moved to the north face. Looking over the decision, it looks like it says that a 35.67 SF sign was approved for the north face of the building. He would suggest to make that strategy possible if it pleases the Board would be to revise the variance so that it says that a 35.67 SF sign is approved for the west face of the building. Then they would be able under regular code requirements to have the second sign be on the north face of the building and have the square footage needed.

Chairman Sheth stated that the Board did not have to adhere to any of the suggestions, but can if you like.

Mr. Keller commented that as a matter of discussion, the representative present today has already stated that in any event it's costly for them and probably is not something they would elect to do.

Chairman Sheth stated that we can respect Staff's suggestion, but it is up to the Board to accept it or not.

*Mr. Keller moved to deny the request for administrative alteration to the Board of Adjustment decision for case # V-17-16 as was stated in the statement of facts regarding that decision dated November 15, 2017. No further action is to be taken regarding an additional sign or drive-thru sign or nothing to exceed the one Panera Bread sign of 35.67 SF as initially proposed and approved as a variance a month ago. Colonel Ericson seconded the motion.*

Colonel Ericson commented that Mr. Diaz brought up a very good point and recommended allowing for a change of position of the signs and sizes that would take an amendment to the motion.

Mr. Rodriguez commented that it would almost need another application because you have already approved the 35.67 SF, and the only application today is to increase it to 47.27 SF. Mr. Keller's motion is to deny.

Mr. Hufnal commented that his original idea was that the Board had already approved all the signage for the building and to make the move from the front to the north building or to the west side to the north building and to put this sign on the west side. The Board has approved the signage; it is just a matter of where the signs needs to be located.

Mr. Diaz commented that his concern is that the written decision restricts the north face specifically to 35.67 SF. If you want to remove that restriction and place it on the west side instead the motion would need to reflect that.

Mr. Keller commented that we have heard already this morning in the public hearing portion by the representative of Panera Bread that it would pull them into additional cost (expense). The individual did not air that it was necessarily something that they would like to do. With what stands now of the record and the decision rendered a month ago half of the signage that you are now perhaps talking about shifting is already in place.

*Roll Call Vote for variance request to be denied.*

*Mr. Keller – yes for denial*
*Colonel Ericson – yes for denial*
*Mr. Senato – yes for denial*
*Mr. Hufnal – no for denial*
*Chairman Sheth – yes for denial*

*Vote 4-1 in favor of the denial. Motion carries. Mr. Hufnal was not in favor of the denial.*

Mr. Senato commented that the Planning Office has to be more specific as to some of the transactions that the Board is going to have in the future and particularly with what the Board had today. Chairman Sheth agreed and Mr. Diaz was complimented. We also have new Staff in the Planning Office as well as the new Director other than Mrs. Melson-Williams who does not normally attend the Board of Adjustment meetings. The Board of Adjustment always requires past long experience and he hopes that Mr. Diaz takes the suggestions positively.

Mr. Diaz commented by saying he would do his best. They make the reports as detailed as possible, but they cannot anticipate in advance what the Board is going to ask. For example, Mr. Keller did his own research into the deed history of this project. Planning Staff does not do that for anything that comes before the Board. How are they supposed to anticipate that as their problem? We have staff come to the meeting so that they an answer the Board questions. If the Board is not satisfied with those answers, then he does not know what else they can do.

Chairman Sheth suggested to Mr. Diaz that he would just say to that you would try your best to satisfy the Board.

Meeting adjourned at 10:33 A.M.

Sincerely,

Maretta Savage-Purnell
Secretary

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

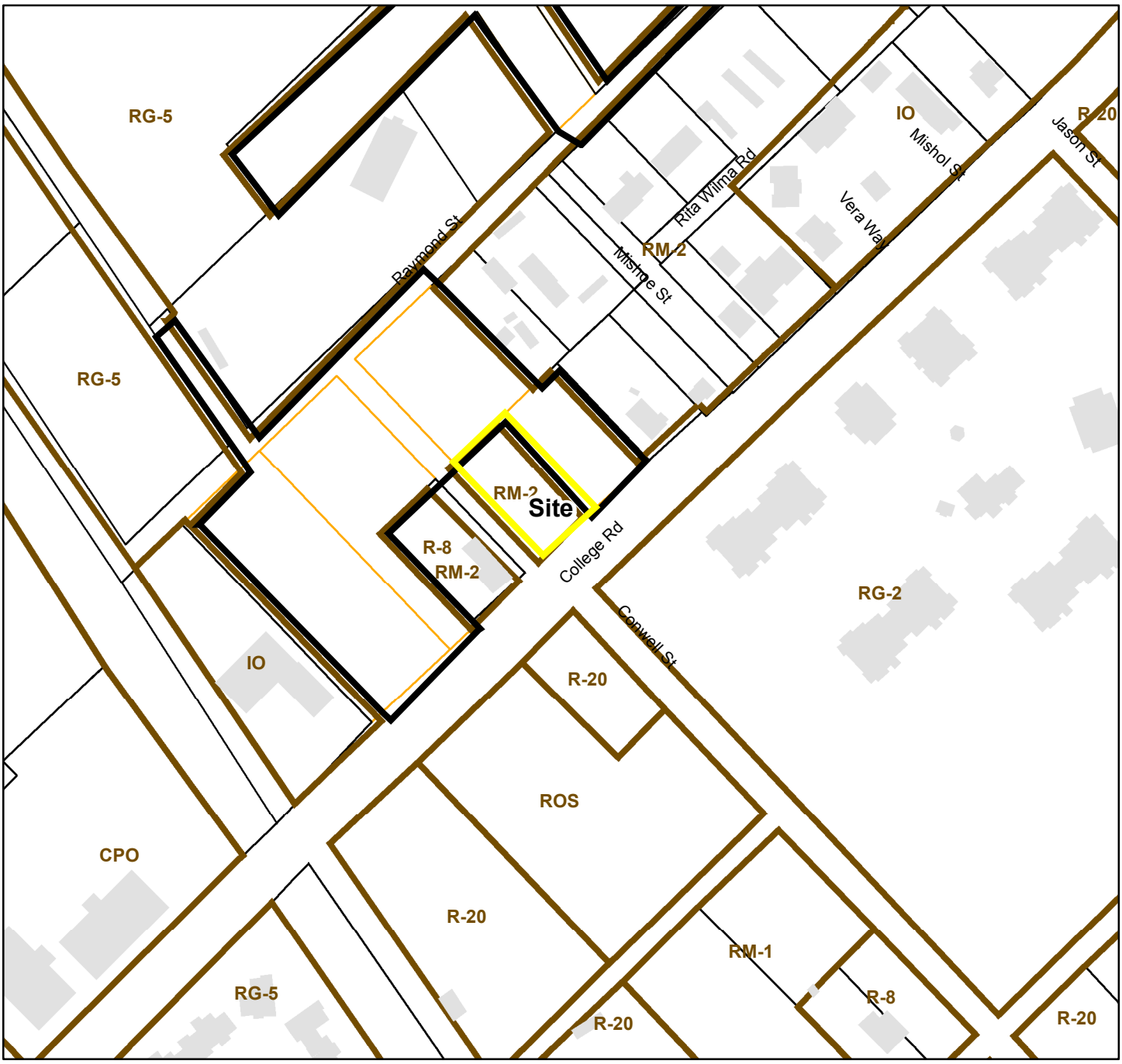
| Exhibit | Description/Author | # Pages |
|---|---|---|
| A | Zoning Map Exhibit<br>(Staff) | 1 |
| B | Current Site Plan, received 11/15/17<br>(Applicant) | 1 (24”x36”) |
| C | Original Site Plan, received 10/6/17<br>(Applicant) | 1 (11”x17”) |
| D | Applicant Statement<br>(Applicant) | 2 |

# City of Dover

## Department of Planning & Inspections

Exhibit A

Application No.: V-17-17



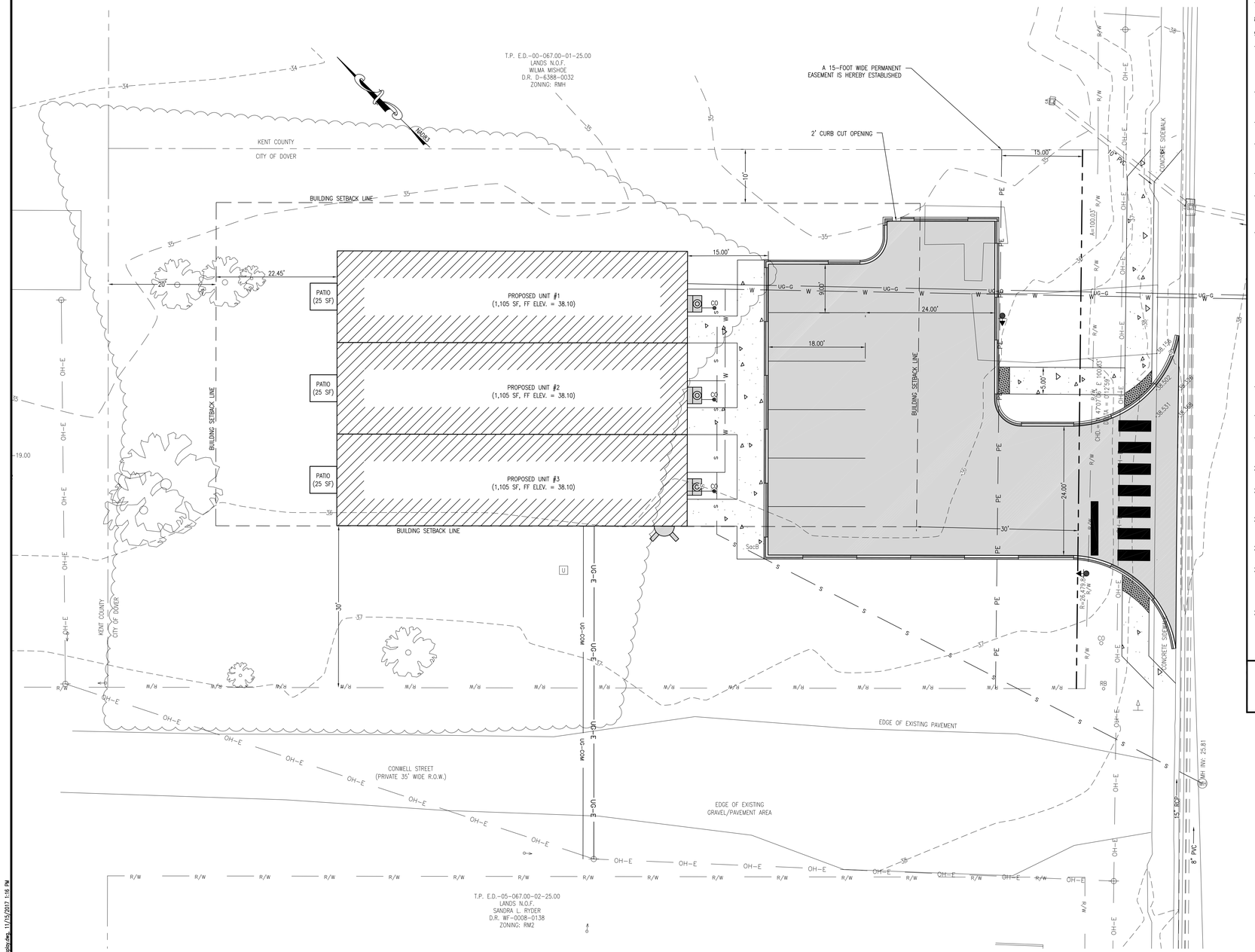

Title: College Road Multiplex
Address: 299 College Road
Parcel IDs: ED-05-067.00-02-26.00-000
Zoning: RM-2
Owner: Stephen E. Lumor
Date: 12/14/2017

**Legend**

- Subject Property
- Dover Parcels
- Zoning
- 2012 Buildings
- Kent County Parcels
- Dover Boundary

N
W
E
S

0 125 250 500 Feet




## DATA COLUMN

1. COUNTY TAX MAP: ED-05-067.00-02-26.00
2. APPLICATION NUMBER: **********
3. BUSINESS NAME: ENYAM, LLC
4. ADDRESS OF SITE: 299 COLLEGE ROAD
   DOVER, DE 19901
5. ZONING: EXISTING: RM-2
   PROPOSED: N/A
6. LOT AREA: 0.42± ACRES (PER MOUNTAIN CONSULTING BOUNDARY SURVEY)
7. SOURCE OF TITLE: DEED BOOK D, VOL. 7445, PAGE 0084
8. EXISTING USE: VACANT
9. PROPOSED USE: MULTIPLE DWELLINGS
10. DATUM: EXISTING MANHOLE
    ELEV. 38.33 (VERTICAL – NAVD88)
    N: 429784.9627
    E: 618700.9626
    (HORIZONTAL – NAD83)
11. SETBACKS: FRONT: 30'
    SIDE: 10'
    REAR: 20'
12. MONUMENTS: EXISTING: 1
    PROPOSED: 0
13. FLOOD PLAIN MAP:
    PER FIRM MAP NUMBER 10001C0166H, DATED MAY 5, 2003, THIS SITE LIES WITHIN ZONE X (500 YEAR FLOODPLAIN). NO PORTION OF THE SITE IS WITHIN THE 100 YEAR FLOOD PLAIN.
14. PURPOSE OF PLAN:
    THE PURPOSE OF THIS PLAN IS TO SHOW A PROPOSED 51' X 65' MULTI-FAMILY DWELLING AND ASSOCIATED IMPROVEMENTS.
15. PARKING RATIONALE:
    REQUIRED: 2 SPACES/PER DWELLING * 3 DWELLINGS = 6 SPACES
    PROVIDED: 6 SPACES
16. SITE BREAKDOWN:

| EXISTING | ACRES | SQUARE FOOTAGE |
|---|---|---|
| EXISTING BUILDING: | 0.00 | 0± |
| EXISTING IMPERVIOUS: | 0.01± | 409± |
| EXISTING OPEN AREA: | 0.41± | 17,835± |
| TOTAL | 0.42± | 18,244± |

| PROPOSED | | | |
|---|---|---|---|
| PROPOSED BUILDING: | 0.08± | 3,315± | |
| PROPOSED IMPERVIOUS: | 0.09± | 3,899± | (558 SF LOCATED WITHIN PROPOSED PE) |
| PROPOSED PERMANENT EASEMENT: | 0.03± | 1,500± | |
| PROPOSED OPEN AREA: | 0.25± | 9,530± | |
| TOTAL | 0.42± | 18,244± | |

IMPERVIOUS COVERAGE:

IMPERVIOUS COVERAGE ALLOWED ON PARCEL = 35% OF LOT TOTAL (6,385± S.F.)*
*VARIANCE REQUESTED FOR 40% OF LOT TOTAL = (7,298± S.F.)
IMPERVIOUS COVERAGE PROPOSED ON PARCEL = 39.54% (7,214± S.F.)

17. DEBRIS DISPOSAL:
    NO DEBRIS SHALL BE BURIED ON THE SITE. ANY BURIED DEBRIS ENCOUNTERED SHALL BE REMOVED AND DISPOSED OF AT AN APPROVED FACILITY.
18. LIMITS OF CONSTRUCTION:
    THE TOTAL LIMITS OF CONSTRUCTION FOR THE SITE IS 0.46± ACRES (INCLUDING ENTRANCE WORK IN RIGHT OF WAY AREAS).
19. WETLANDS:
    A PRELIMINARY SITE INVESTIGATION WAS PERFORMED BY CENTURY ENGINEERING AND NO WETLAND AREAS WERE OBSERVED ON THE SITE. THE PARCEL DOES NOT LIE WITHIN A WETLAND DELINEATED AREA AS PER THE NATIONAL WETLAND INVENTORY.
20. WOODLANDS:
    NO EXISTING AREAS MEETING THE CITY OF DOVER CODE DEFINITION OF "WOODLANDS" ARE PRESENT ON THE SITE.
21. STORMWATER MANAGEMENT:
    THE SITE IS EXPECTED TO MEET STANDARD PLAN CRITERIA FOR RESIDENTIAL DEVELOPMENT WITH LESS THAN 1.0 ACRE OF DISTURBANCE, THUS NO STORMWATER MANAGEMENT FACILITIES ARE INDICATED ON THE PLANS.
22. PROPERTY BOUNDARY:
    BOUNDARY PLAN SHOWN TAKEN FROM BOUNDARY SURVEY PLAN PREPARED BY MOUNTAIN CONSULTING DATED NOVEMBER 14, 2016, COMM. NO. 2016-064. CENTURY ENGINEERING, INC. IS NOT RESPONSIBLE FOR THE ACCURACY OF BOUNDARY LOCATION.
23. TOPOGRAPHY:
    TOPOGRAPHIC SURVEY DATA HEREON WAS PROVIDED BY CENTURY ENGINEERING, INC.
24. OWNER:
    ENYAM, LLC
    STEPHEN E. LUMOR
    314 TOPAZ CIRCLE
    DOVER, DE 19904
25. ENGINEER:
    CENTURY ENGINEERING, INC.
    4134 N. DUPONT HIGHWAY
    DOVER, DE 19901
    (302) 734-9188

## VARIANCE REQUEST:

1. THE APPLICANT SEEKS A VARIANCE FROM THE CITY OF DOVER CODE, ZONING ORDINANCE, ARTICLE 4 § 4.8 TO INCREASE THE ALLOWABLE IMPERVIOUS COVERAGE ON THE PROPERTY FROM 35% TO 40%.

Exhibit B

SCALE: 1" = 10'

CITY OF DOVER SUBMISSION

This drawing is the property of Century Engineering and is prepared for the exclusive use of its clients at the location indicated. No other use is authorized or intended.

CENTURY ENGINEERING
CONSULTING ENGINEERS ■ SURVEYORS
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WEBSITE: www.centuryeng.com
EMAIL: cel@centuryeng.com

REVISIONS

ADDENDUM

| DESCRIPTION | DATE |
|---|---|

PROJECT

T.P. ED-05-067.00-02-26.00
299 COLLEGE ROAD MULTIPLEX
FOR
ENYAM, LLC
CITY OF DOVER, KENT COUNTY, DELAWARE 19901
EAST DOVER HUNDRED, KENT COUNTY, DELAWARE

SHEET TITLE

VARIANCE REQUEST DISPLAY

CITY OF DOVER
BOARD OF ADJUSTMENT
NOVEMBER 17, 2017

| DRAWN | CHK'D/DESIGNER |
|---|---|
| MDS | AES |

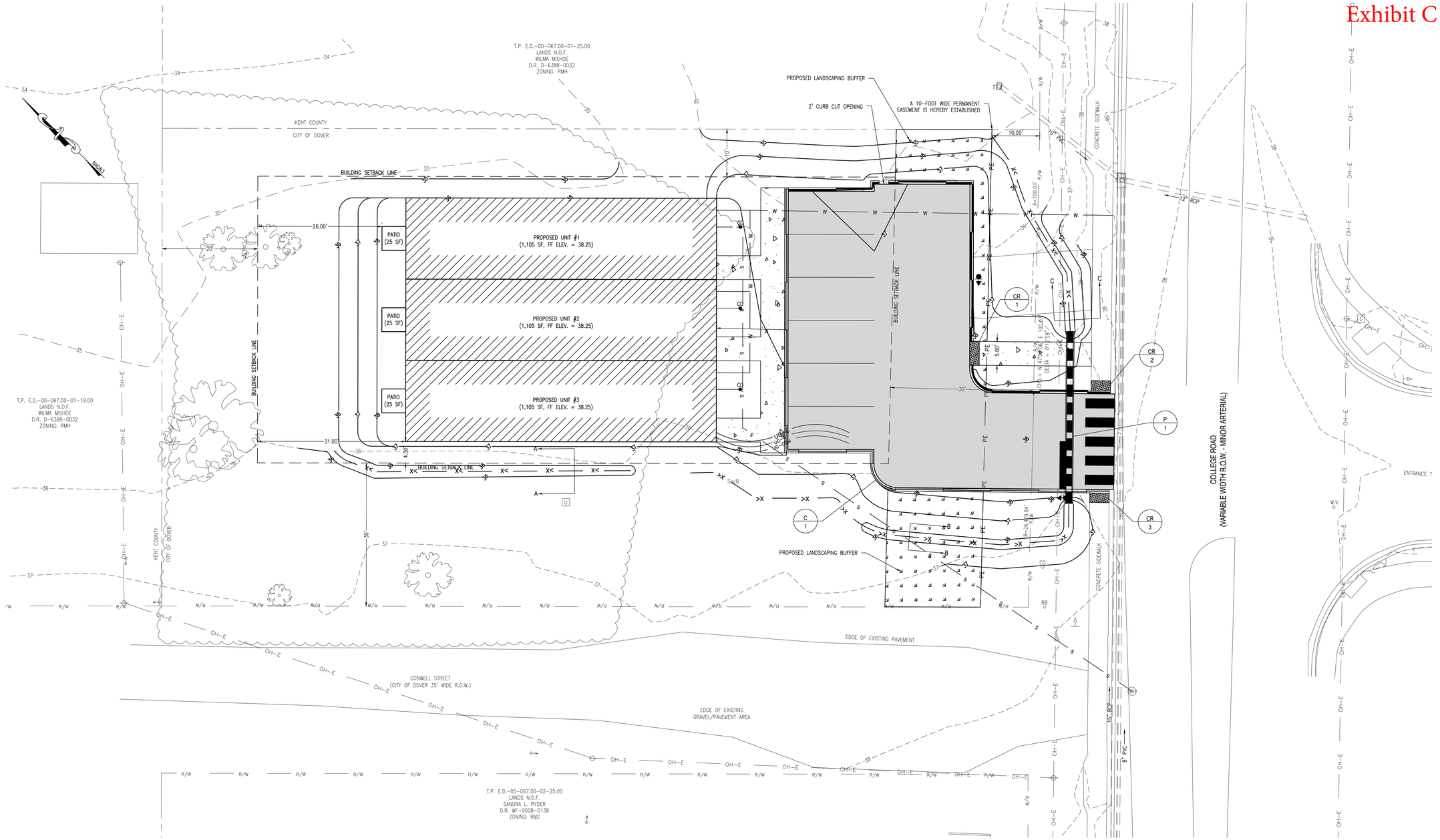
SCALE: 1" = 10'

SHEET NO.: V100

PROJECT NO.: 175022.00

G:\PROJECTS\175022.00 Lumor Property\CADD FILES\Sheet\V100_VarianceRequestDisplay.dgn, 11/15/2017 1:16 PM

Exhibit C




| CURB RAMP SCHEDULE | |
|---|---|
| RAMP NO. | TYPE |
| 1 | 2 |
| 2 | 1 |
| 3 | 1 |

| CURB SCHEDULE | | |
|---|---|---|
| CURB NO. | LENGTH | TYPE |
| 1 | xxx L.F. | P.C.C. TYPE 1-8 |

| STORM SEWER PIPE SCHEDULE | | | | | | | |
|---|---|---|---|---|---|---|---|
| PIPE ID | SIZE | MATERIAL | CLASS | LENGTH | SLOPE | INVERT IN | INVERT OUT |
| 1 | 15" | RCP | V | 36' | 0.005 | 35.75 | 35.57 |

GENERAL NOTES:

1. CURB CUTS SHALL BE TAPERED DOWN AT 2:1 ON EACH END WITH A 2 FOOT FULLY DEPRESSED SECTION.
2. STATION GIVEN FOR CURB CUT CORRESPONDS TO THE CENTER OF THE CURB CUT.
3. ENDS OF ALL CURBS SHALL BE TRANSITIONED TO BE FLUSH WITH THE PAVEMENT AT A RATIO OF 2:1.

CITY OF DOVER SUBMISSION

This drawing is the property of Century Engineering and is prepared for the exclusive use of its clients at the location indicated. No other use is authorized or intended.

CENTURY ENGINEERING
CONSULTING ENGINEERS ■ SURVEYORS
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REVISIONS

ADDENDUM

| DESCRIPTION | DATE |
|---|---|

PROJECT

T.P. ED-05-067.00-02-26.00
299 COLLEGE ROAD MULTIPLEX
FOR
ENYAM, LLC
CITY OF DOVER, KENT COUNTY, DELAWARE 19901
EAST DOVER HUNDRED, KENT COUNTY, DELAWARE

SHEET TITLE

CONSTRUCTION SITE PLAN

CITY OF DOVER SUBMISSION
OCTOBER 6, 2017

| DRAWN | CHK'D/DESIGNER |
|---|---|
| JSW | AES |

| SCALE | SHEET NO. |
|---|---|
| 1" = 10' | C103 |

PROJECT NO. 175022.00

C:\PROJECTS\175022.00 Lumor Property\LAND FILES\Sheets\Construction Site Plans\C103_ConstructionSitePlan.dwg, 10/10/2017 2:51 PM

299 College Road Property
City of Dover - Board of Adjustment
Area Variance Request – Response to Evaluation Criteria

**Applicant:** Enyam, LLC (Owner)

**Project Background:** The proposed project is located on College Road in Kent County, Delaware, within the limits of the City of Dover. The existing site is currently vacant ground and bordered by Conwell Street on the west, College Road on the south, and residential properties on the north and east. The surrounding properties include predominately residential dwellings with apartments to the north, in addition to the Delaware State University's Courtyard Apartments to the east, across College Road.

The project proposes construction of a two (2) story, three (3) unit residential dwelling with six (6) parking spaces and a relocated entrance along College Road. The building will be classified as a "Multiplex" by the City of Dover Planning & Zoning Department. The Delaware State Fire Code and City of Dover Building Code will consider the structure an "Apartment" building as no "Multiplex" occupancy classification is included in their Codes. The dwelling will resemble a townhouse in appearance from the curb and is intended to be rented out, not subdivided and sold to multiple owners as is typical with townhouses.

**Code Reference:** City of Dover Code, Zoning Ordinance, Article 4 § 4.8

**Nature of Request:** An area variance is requested from the specified maximum lot coverage for the "Multiple Dwellings" occupancy classification in the table specified in the Code for RM-2 zoning.

**Explanation of Exceptional Practical Difficulty:**

The Code requires a site to contain less than 35% lot coverage as a "Multiple Dwelling" occupancy classification in the RM-2 zoning. No "Multiplex" occupancy classification is listed in the table provided in Section 4.8. Comparatively, the maximum allowable lot coverage under the RM-2 zoning is sufficiently higher for similar occupancy classifications such as "Townhouses" (50% lot coverage allowable) or "Garden Apartments" (60% lot coverage allowable). To accommodate the building and provide the required site improvements, the applicant is requesting to increase the 35% coverage limit to 40%. The proposed 40% coverage remains significantly lower than the allowable coverage for dwellings similar in appearance and use to the proposed building. Due to the small size of the parcel (±0.42 Ac) and the requirement to adhere to all relevant DelDOT, City of Dover, and State Fire Marshall requirements, there are no economically viable options to reduce lot coverage to below 35%. The area variance request meets each of the four (4) criteria considered by the Board of Adjustment as explained in the bullets below:

- 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.

- 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.

- 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.

- 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).

For the reasons above, we respectfully request that a variance from City of Dover Code, Zoning Ordinance, Article 4 § 4.8 be granted, allowing for the increase in allowable lot coverage from 35% to 40%.

# MEMORANDUM

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

DATE: January 9, 2018
TO: Board of Adjustment Members
FROM: Eddie Diaz, Planner I
SUBJECT: Background for Variance Application V-17-17: Code Requirements for Multiplexes

---

On December 20, 2017, the Board of Adjustment heard application V-17-17 requesting an area variance from *Zoning Ordinance*, Article 4 §4.8, for 299 College Road. Specifically, the applicant requested that the maximum impervious coverage on the site (zoned RM-2, Medium Density Residence Zone) be increased from 35% to 40%, in order to permit construction of a 3-unit residential Multiplex. Citing uncertainty about the nature of Multiplexes, and asking whether it would be possible to avoid the need for a variance if the applicant's project was classified as a different kind of residential use, the Board members asked for additional background on Multiplexes from Planning Staff. The Board elected to defer decision on the application until this information was provided.

**Multiplexes vs. Other Residence Types as Defined by the Dover *Zoning Ordinance***
While the difference between a Multiplex and an apartment building or group of townhouses may be fluid in an architectural sense, for the purposes of zoning regulations these different dwelling types have precise definitions in order to distinguish them from each other. In Article 12, the Dover *Zoning Ordinance* gives the following definition for Multiplex:

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

A Multiplex is a type of multi-family dwelling. Multi-family dwellings come in a wide variety of building types, and the definitions given in the *Zoning Ordinance* are broad enough to cover these different types:

> Dwelling, multi-family: (See "dwelling, multiple"- a building, or portion thereof, containing more than two dwelling units).
>
> Dwelling, multiple: A building, or portion thereof, containing more than two dwelling units.

Several other kinds of multi-family dwellings are given more specific definitions in the *Zoning Ordinance*, particularly more traditional apartment buildings:

> Garden apartments: Multiple dwellings designed to provide maximum accessibility of the dwelling units to the private open space. The dwelling units share a common lot area which is the sum of the required lot areas of all dwelling units within the building.

> Mid-rise apartment: Multiple dwellings where individual dwelling units share common outside access, and elevators serve each floor. The dwelling units share a common lot area, which is the sum of the required lot areas of all dwelling units within the building.

Contrast these definitions with the definition for townhouses:

> Townhouse: A one-family, attached dwelling unit, with one dwelling unit from [the] ground to roof, having individual outside access.

The applicant has stated that the building will resemble townhouses architecturally. However, so long as the three units share a lot, they cannot be considered one-family units, the most crucial part of the townhouse definition. The three-unit structure would instead meet the definition of a multi-family dwelling. Each unit will have individual outside access (their own door to the outside, as opposed to a door to a hallway), and each of the end units will have three exposures (exterior walls), with the middle unit having two. The building therefore also meets the definition of a Multiplex. The building lacks the common lot area needed for a garden or mid-rise apartment. Comparing the characteristics of the building to the definitions in the *Zoning Ordinance,* "Multiplex" is the best definition for the building under the ordinance.

**Bulk Standards for Multiplexes and Other Unit Types in the RM-2 Zone**
Different types of residential units have different bulk standards within the RM-2 Zone. The categories given in *Zoning Ordinance,* Article 4 §4.8 for the RM-2 Zone are as follows:

- One-Family Detached Dwellings and Roominghouses
- One-Family Lot Line Dwellings
- Duplex Dwellings
- Multiplex Dwellings
- Townhouse Dwellings
- Garden Apartment Dwellings

The bulk standards have requirements per dwelling unit as well as requirements per building. For instance, all of the above categories establish a minimum lot area per unit. Garden apartments additionally establish a minimum lot area per building. Most of the categories establish minimum lot width and lot depth per unit. However, Multiplexes (and garden apartments) establish minimum lot width and depth per building instead. The applicant's proposed building meets all the applicable bulk standards of a Multiplex the RM-2 Zone, save lot coverage. Because of the differing standards, it is not certain this would be the case if the project was classified differently.

With regard to lot coverage specifically, all of the categories set this maximum on a per-parcel basis. Most of the categories set a maximum of 35%, including the Multiplex category. Townhouses have a maximum coverage of 50%, while Garden Apartments have a maximum of 60%. However, as established above, the proposed building would not fall into either of those two categories.

The full table of bulk standards for the RM-2 Zone is attached to this Memo.

Section 4.8. - [RM-2 zone.]

Bulk and parking regulations for the RM-2 zone [are as follows] (see also article 12, definitions; article 5, supplementary regulations; and article 6, off-street parking, driveways and loading facilities):

| | One-Family Det. Dwelg. and Rooming Houses | One-Family Lot Line Dwelgs. | Duplex Dwellings | Multiplex Dwelgs. | Townhouse Dwelgs. | Gdn. Apt. Dwellings |
|---|---|---|---|---|---|---|
| Minimum requirements per dwelling unit: | | | | | | |
| Lot area (sq. ft.) | 8,000 | 7,000 | 5,000 | 3,000 | 3,000 | 3,000 |
| Lot width (ft.) | 70 | 65 | 40 | | 22 | |
| Lot depth (ft.) | 100 | 90 | 100 | | 110 | |
| Off-street parking spaces | 2 | 2 | 2 | 2 | 2 | 2 |
| Minimum requirements per building: | | | | | | |
| Lot area | | | | | | 1 acre |
| Lot width (ft. | | | | 100 | | 100 |
| Lot depth (ft.) | | | | 120 | | 125 |
| Front yard (ft.) | 25 | 20 | 25 | 30 | 30 | 30 |
| Minimum side yard (ft.) | 10 | — | 15 | 10 | 10 | 20 |
| Total side yards (ft.) | 20 | 30 | 30 | 30 | 30 | 40 |
| Rear yard (ft.) | 30 | 30 | 30 | 20 | 30 | 30 |
| Maximum permitted: | | | | | | |
| Building height | | | | | | |
| Stories | 2½ | 2 | 2½ | 3 | 3 | 3 |
| Feet | 35 | 24 | 35 | 35 | 35 | 35 |
| Lot coverage | 35% | 35% | 35% | 35% | 50% | 60% |
| Number of dwelling units per building | 1 | 1 | 2 | 5 | 8 | 24 |

(Ord. of 1-8-1979, § 2; Ord. of 5-14-1990; Ord. of 12-14-1992)

**Multiplexes under the Dover Building Code and Fire Code**
The City's Building Code and Fire Code have fewer categories for types of residences than the City's *Zoning Ordinance.* Inspections Staff found during Site Development Plan review for the project that there was not a specific category under these two codes for Multiplexes. Therefore, *for the purposes of the Building Code and Fire Code only*, the Planning & Inspections Department allowed the applicant to choose to define the building as either three townhouses or one apartment building with three units, and to follow the attendant code requirements following that choice. The applicant chose to define the building as an apartment building, even though they have at other times described it being architecturally similar to townhouses, because this choice allowed them to have one sprinkler system for the whole building, rather than one for each unit. They also did not have to have an NFPA-approved fire barrier separating each unit.

While the choice to classify the building as an apartment building under the Building Code does have implications for the design of the site- for instance, one of the parking spaces will need to be made ADA-accessible- it does not change the building's classification as a Multiplex under the *Zoning Ordinance.* The proposed building must meet zoning requirements for Multiplexes and Building and Fire Code requirements for apartments.

**Conclusion**
The confusion about how to classify the applicant's proposed project should not be overstated. While this confusion did exist at the start of the Site Development Plan process, Planning & Inspections Staff had by the time this project appeared before the Planning Commission on November 22, 2017 determined all of the zoning, building, and fire codes applicable to the project. If the classification were changed, the project would have to be redesigned from the ground up to meet the standards of the new classification. Because of this, Staff supports the continued classification of the project as a Multiplex, and recommends the Board of Adjustment make a decision on the variance based on this classification.

**Attachments (provided by Staff):**
1. Table of Bulk Standards Requirements in the RM-2 Zone (From *Zoning Ordinance* Article 4, §4.8)

# MEMORANDUM

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

DATE: January 8, 2018
TO: Board of Adjustment Members
FROM: Eddie Diaz, Planner I
SUBJECT: Background for Variance Application V-17-17: History of 299 College Road, Dover, DE

---

On December 20, 2017, the Board of Adjustment heard application V-17-17 requesting an area variance from *Zoning Ordinance*, Article 4 §4.8, for 299 College Road. Specifically, the applicant requested that the maximum impervious coverage on the site (zoned RM-2, Medium Density Residence Zone) be increased from 35% to 40%, in order to permit construction of a 3-unit residential Multiplex. Citing uncertainty about the nature of the property and whether the Board would potentially be authorizing an adjustment to more than one parcel, the Board members asked for additional background on the property from the applicant. The Board elected to defer a decision on the application until this information was provided.

On December 21, 2017, the applicant's representative (Mark Strickland of Century Engineering) emailed the requested information to Planning Staff. This information has been provided below.

**History of the Property**

"Based on our research two lots, #145 and #146, were originally created as part of the College Settlement subdivision. We believe that both lots were purchased sometime around 1961 and a house constructed across both parcels, as historic aerial imagery from 1961 shows a single house centered on the parcel. The structure in the historic aerials covers what would be portions of both lots 145 & 146 if they were recognized as individual lots by the City or the County. We believe at some point the lots were consolidated, whether by record plan or administrative lot line adjustment. Currently Kent County and the City of Dover both currently recognize the parcel as a single lot, whose dimensions are based on the two lots referenced in Deed. The County records simply use the combination of lots 145 & 146 in the College Settlement Subdivision to describe the boundary of the parcel at 299 College Road because the parcels were originally created as two lots."

"A brief history of the parcel is described below:

1899 – Plot plan for 'The College Settlement Company' completed showing lots 145 & 146 individually (Attached as 1899 Plot Plan)

May 28th, 1986 – 0.0403 acres conveyed to State of Delaware (DelDOT R/W) (Attached as DR C_42_295)

July 25th, 1988 – 299 College Road conveyed to Lillian Smith (Attached as DR I 45 22) as 'being lots #145 and #146 as laid out on a plot of lands of record in the Office of the Recorder of Deeds at Dover, in and for Kent County, In Deed Record Book E, Volume 8, Page 75'

Nov 21st, 2014 - 299 College Road conveyed to Stephen E Lumor (Attached as DR 7445-84) as 'being lots #145 and #146 as laid out on a plot of lands of record in the Office of the Recorder of Deeds at Dover, in and for Kent County, In Deed Record Book e, volume 8, Page 75'"[1]

**Deed Restrictions on the Property that would Affect Construction**

"There are no deed restrictions other than the DelDOT easement along College Road that would impact construction."

**Owner of the Property**

"Stephen E. Lumor is the Owner of the property. We will update our plans accordingly to reflect this. Stephen Lumor is also the sole owner of Enyam, LLC."

Based on the information submitted by the applicant, Planning Staff stands by their original assertion that 299 College Road is a single 0.42-acre tract of land, known as Tax Parcel #ED-05-067.00-02-26.00-000, currently held in fee simple by the applicant. From the information provided, it appears that there are no restrictions to building a residential Multiplex on the property other than code requirements already being checked through the Site Development Plan process and the lot coverage limitation that is the subject of the present variance request.

The applicant has stated they do not intend to change the ownership of the property in the foreseeable future, but future changes to the ownership are possible. Such changes might include selling the property to a new owner, making the units into condominiums (a form of ownership where apartment-style units are owned by their residents instead of rented to them), or subdividing the property. Subdivision of the property would require review by the Planning Commission, and the resulting lots and structures on them would have to follow the applicable bulk standards of the *Zoning Ordinance* and the *Land Subdivision Regulations*. This requested variance from the lot coverage requirements would only apply to the successor lots if the buildings on them were still multiplexes.

Attachments (provided by applicant):

1. 1899 Plot Plan
2. DR C_42_295 (Deed conveying 0.0403 acres to DelDOT)
3. DR I 45 22 (Deed conveying the property to Lillian Smith)
4. DR 7445-84 (Deed conveying the property to Stephen E. Lumor)

[1] Not included in the applicant's history summary, but visible in Attachment #4, is that the property was at one point sold at Sherriff's Sale by Sherriff Norman Wood of Kent County and conveyed to the City of Dover on September 5, 2012. It appears that the City sold the property to Stephen Lumor.

70 2014 00266480

**Kent County**
**Betty Lou McKenna**
**Recorder of Deeds**
**Dover, DE 19901**

**Instrument Number 2014-266480**

**Recorded On** December 05, 2014 **As-Deed**

**Parties** DOVER CITY OF

**To** LUMOR STEPHEN E **# of Pages 3**

**Comment**

# **DO NOT REMOVE-THIS PAGE IS PART OF THE RECORDED DOCUMENT**

Deed 56 00

# of Pages 2

# of Parcel IDs 1

**Total 56 00**

## Realty Tax Information

Affidavit Attached No

**DOVER** **EXEMPT**

Value

State of Delaware

**0 00**

*I hereby certify that the within and foregoing was recorded in the Recorder's Office in Kent County*

**DO NOT REMOVE-THIS PAGE IS PART OF THE RECORDED DOCUMENT**

**File Information**

Document Number 2014-266480
Receipt Number 338640
Recorded Date/Time December 05, 2014 01 23 47P
Book-Vol/Pg BK-RE VL-7445 PG-84
User / Station C Yerkes - Cashier 4

**Record and Return To**

SCHMITTINGER AND RODRIGUEZ
414 SOUTH STATE STREET
DOVER DE 19903

Betty Lou McKenna

Tax Parcel # ED-05-067 00-02-26 00-000

Accepted for Filing in
Kent County
Doc# 266480
On Dec 05,2014 at 11:23P

Prepared by and Return To
Schmittinger & Rodriguez
414 S State Street
Dover, Delaware 19901
14-291WP

THIS DEED, made this 21st day of November, 2014

BETWEEN The City of Dover, a municipal organization of the State of Delaware, party of the first part

And

Stephen E Lumor, party of the second part

Grantee Address 314 Topaz Circle, Dover, DE 19904

WITNESSETH, that the said party of the first part in and for the consideration of the sum of One Dollar ($1 00) lawful money of the United States of America, the receipt whereof is hereby acknowledged, hereby grants and conveys unto the party of the second part, his heirs and assigns,

ALL those two certain lots, and parcels of land and premises situated in East Dover Hundred, Kent County and State of Delaware, and lying on the northerly side of the public road known as College Road leading from the duPont Boulevard to Chestnut Grove School House by way of "the State College for colored students" adjoining lands now or formerly of Olin Curry, each of said lots having a front on said public road of fifty (50) feet and extending back therefrom between parallel lines a distance of two hundred (200) feet, the two lots containing twenty thousand (20,000) square feet of land, be the same more or less And being lots #145 and #146 as laid out on a plot of lands of record in the Office of the Recorder of Deeds at Dover, in and for Kent County, in Deed Record Book E, Volume 8, Page 75

EXCEPTING, HOWEVER, THEREFROM, a parcel containing 0 0403 acre conveyed unto the State of Delaware by Thomas H Mosley by deed dated May 28, 1986 and of record in the office of the Recorder of Deeds, in and for Kent County, at Dover, Delaware, in Deed Record Book C, Volume 42, Page 295

BEING the same lands and premises which were conveyed unto The City of Dover by deed of Norman Wood, Sheriff of Kent County in the State of Delaware, dated September 5, 2012, and of record in the Office of the Recorder of Deeds in and for Kent County, Delaware in Deed Record 6411, Page 177

The above lands and premises are conveyed subject to covenants, conditions and restrictions of record, if any, such state of facts as an accurate survey and/or inspection of the lands and premises will disclose, the operation and effect of any zoning laws, and building restrictions imposed by public authority, and easements and public utility grants of record

IN WITNESS WHEREOF, the said party of the first part has hereunto caused its name to be hereunto set and the corporate seal of the City of Dover to be hereunto affixed, duly attested, the day and year aforesaid

Sealed and delivered
in the presence of

The City of Dover

By Scott D Koenig (SEAL)

Attest Yvonne Martine

STATE OF DELAWARE, County of Kent

BE IT REMEMBERED, that on this 21st day of November, 2014, personally came before me, the subscriber, a Notary Public in and for the State and County aforesaid, Scott D Koenig, of The City of Dover, a municipal organization of the State of Delaware, party to this Indenture, known to me personally to be such and acknowledged this Indenture to be the act and deed of said City of Dover

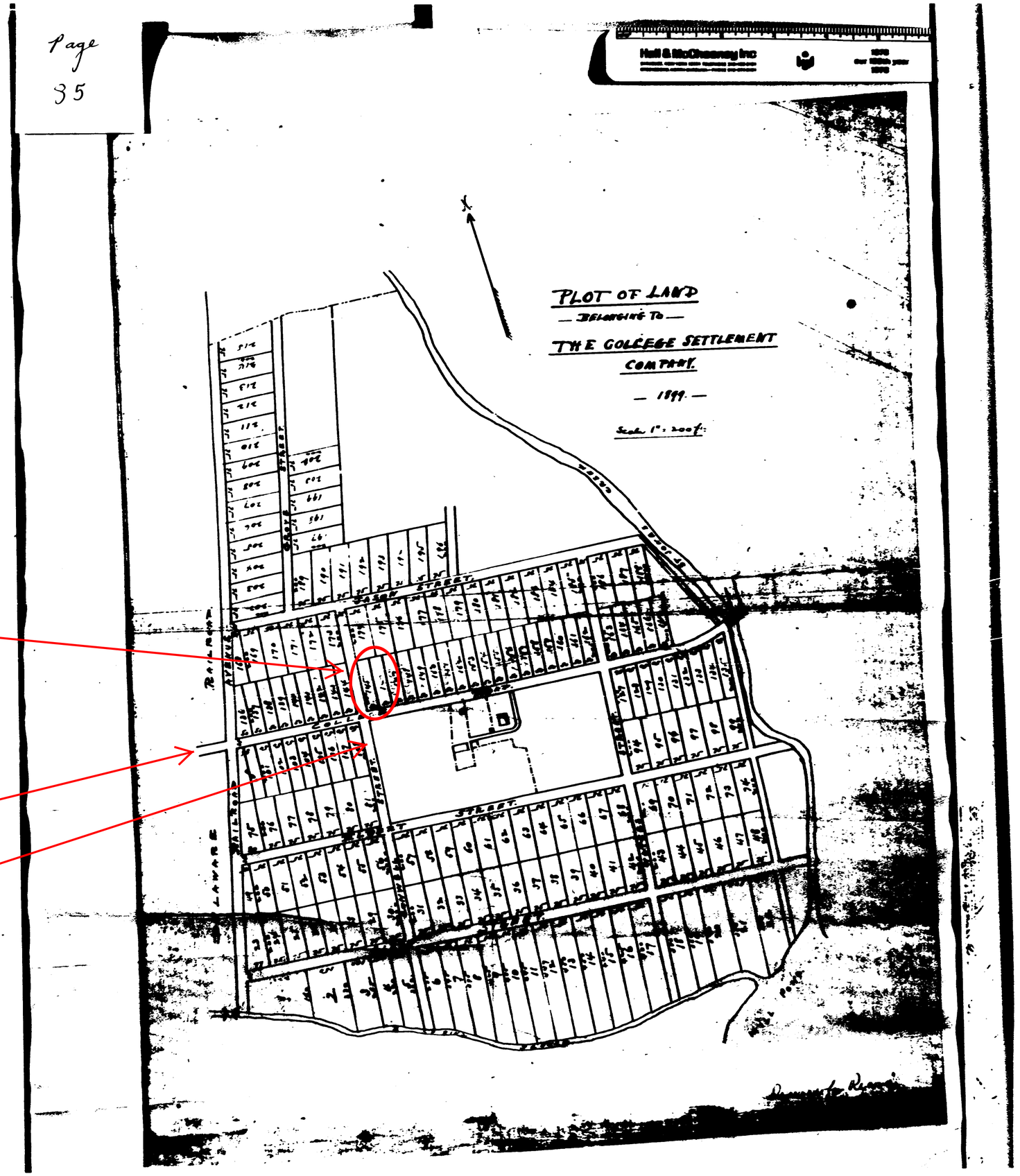
GIVEN under my hand and seal the day and year aforesaid

CITY OF DOVER
REALTY TRANSFER TAX
PAID NOV 24 2014 PAID
$ Exempt

Traci A. McDowell
Notary Public
Commission Expiration 6/1/16
Printed Name Traci A McDowell

TRACI A. McDOWELL NOTARY PUBLIC MY COMMISSION EXPIRES ON 06-01-16 STATE OF DELAWARE

Page
35




Lots 145 &146

College Road

Conwell Street

Book R
Page 85

BOOK C 42 PAGE 295

(No. 44-B) DEED-TYPEWRITER 09458

Printed and Sold by Hugh George Co., Stationers

# This Deed, Made this

28TH day of MAY in the year of

our LORD one thousand nine hundred and eighty-six (1986)

BETWEEN, THOMAS H. MOSLEY of East Dover Hundred, Kent County and State of Delaware, party of the First Part,

AND

THE STATE OF DELAWARE, party of the Second Part.

Witnesseth, That the said party of the first part, for and in consideration of the sum of One Thousand Three Hundred Dollars ($1,300.00) lawful money of the United States of America, the receipt whereof is hereby acknowledged, hereby grants and conveys unto the said party of the second part,

ALL that certain tract, piece, or parcel of land situated in East Dover Hundred, Kent County and State of Delaware, said tract being a portion of the right-of-way required for the reconstruction of State College Road, the road leading from Saulsbury Road towards U. S. Route 13, said tract being more particularly bounded and described as follows, to-wit:

BEGINNING at a point formed by the intersection of a division line between these lands of Thomas H. Mosley (hereafter known as the grantor) and lands now or formerly of William T. Wilson and his wife, with the existing northerly right-of-way line of State College Road (at 50.00 feet wide), said point being located north of and opposite of Division of Highways construction centerline survey station 63+46.75 and 18.60 feet distant measured radially thereto, as shown and noted on sheet number 6 of the Right-of-Way plans for the Department of Transportation, Division of Highways Contact Number 84-062-07;

THENCE from said point of beginning along the said existing right-of-way line South 56 degrees 51 minutes 39 seconds West, 100.00 feet to a point along the easterly line of Conwell Street (at 35.00 feet wide), said point being located north of and opposite of Division of Highways construction centerline survey station 62+46.84 and 16.35 feet distant measured radially therefrom;

THENCE thereby along the said easterly line of Conwell Street, North 33 degrees 08 minutes 21.0 seconds West, 18.66 feet to a point along the proposed northerly right-of-way line of State College Road said point being located north of and opposite of Division of Highways construction centerline survey station 62+46.46 and 35.00 feet distant measured radially therefrom;

THENCE thereby along the said proposed right-of-way line in a northeasterly direction, concentric with the construction centerline and 35.00 feet distant measured radially thereto, curving to the right on an arc of a circle of a 26,479.84 feet radius, an arc distance of 100.03 feet to a point on the aforesaid division line for lands now or formerly of William T. Wilson and his wife, said point being by a chord North 58 degrees 09 minutes 16.7 seconds East, 100.03 feet from the origin of this course; said point being located north of and opposite of Division of Highways construction centerline survey station 63+46.35 and 35.00 feet distant measured radially therefrom; and

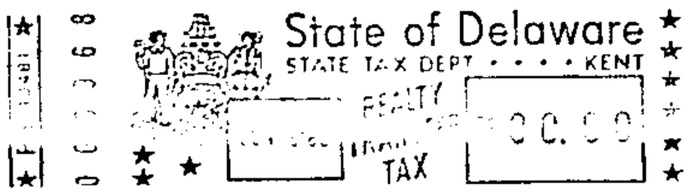
THENCE along the aforesaid division line South 33 degrees 08

minutes 21.0 seconds East, 16.40 feet to the first described point and place of BEGINNING.

CONTAINING within said metes and bounds 1756.27 square feet (0.0403 acre) of land, be the same more or less.

BEING a portion of the lands which where conveyed unto Frazier Mosley by Indenture of Joshua M. Twilley and Rebecca B. Twilley, his wife, dated the 11th day of September, A. D. 1957 and of record in the office for the Recorder of Deeds in and for Kent County, in Deed Record Q, Volume 21, page 183.

Frazier Mosley subsequently died the 31st day of December, A.D., 1983 and devised in fee unto his brother, Thomas H. Mosley under the terms of his last will and testament and now of record in the office of the Register of Wills in and for Kent County at Dover in Will Book 5, Volume 5, page 301.




RECEIVED FOR RECORD
JUN 6 9 50 AM '86
ROBERT J. DONAWAY
RECORDER OF DEEDS
KENT COUNTY, DELAWARE

In Witness Whereof, the said party of the first part has hereunto set his hand and seal, the day and year aforesaid.

Sealed and Delivered in the Presence of

Jeffrey A. Marsco
Jeffrey A. Marsco

Thomas H. Mosley M.L.M. SEAL
THOMAS H. MOSLEY
Thomas H. Mosley SEAL

State of Delaware,
KENT County, } ss.

Be It Remembered, That on this 28th day of May in the year of our LORD, one thousand nine hundred and eighty-six (1986) personally came before me the Subscriber, a Notary Public in and for the County and State aforesaid, THOMAS H. MOSLEY

party to this Indenture, known to me personally to be such, and acknowledged this Indenture to be his Deed.

GIVEN under my Hand and Seal of office, the day and year aforesaid.

Melanie W. Weber
Notary Public

My Commission expires December 5, 1988.

(No. 44-B) BOOK 1 45 PAGE 22

DEED-TYPEWRITER

Printed and Sold by Hugh George Co., Stationers

15169

# This Deed, Made this

25th *day of* July *in the year of*

*our LORD one thousand nine hundred and* eighty-eight (1988)

*BETWEEN,* MARJORIE L. MOSLEY, VICTORIA ANN PRITCHETT and LISA YVETTE MILLIGAN, parties of the first part,

and

LILLIAN MORGAN SMITH, of 299 State College Road, Dover, Kent County, Delaware, party of the second part,

**Witnesseth,** *That the said part* ies *of the first part, for and in consideration of the sum of*

ONE DOLLAR ($1.00)----------*lawful money of the United States of America,*

*the receipt whereof is hereby acknowledged, hereby grant and convey unto the said*

*part* yes *of the second part,* her heirs and assigns,

ALL those two certain lots, and parcels of land and premises situated in East Dover Hundred, Kent County and State of Delaware; and lying on the northerly side of the public road known as College Road leading from the duPont Boulevard to Chestnut Grove School House by way of the State College for colored students adjoining lands now or formerly of Olin Curry, each of said lots having a front on said public road of fifty (50) feet and extending back therefrom between parallel lines a distance of two hundred (200) feet, the two lots containing twenty thousand (20,000) square feet of land, be the same more or less. And being lots #145 and #146 as laid out on a plot of lands of record in the Office of the Recorder of Deeds at Dover, in and for Kent County, in Deed Record Book E, Volume 8, Page 75.

EXCEPTING, HOWEVER, THEREFROM, a parcel containing 0.0403 acre conveyed unto the State of Delaware by Thomas H. Mosley by deed dated May 28, 1986 and of record in the Office of the Recorder of Deeds, in and for Kent County, at Dover, Delaware, in Deed Record Book C, Volume 42, Page 295.

AND BEING the same lands and premises which were conveyed unto Frazier Mosley by deed of Joshua M. Twilley and Rebecca B. Twilley, his wife, dated September 11, 1957, and of record in the Office of the Recorder of Deeds in and for Kent County, at Dover, Delaware, in Deed Record Book Q, Volume 21, Page 183. The said Frazier Mosley died on December 31, 1983 and by Article II of his Last Will and Testament which is of record in the Office of the Register of Wills, in and for Kent County, at Dover, Delaware in Will Record Book S, Volume 5, Page 301, devised the said premises unto Thomas H. Mosley. The said Thomas H. Mosley died on June 29, 1986, intestate, leaving to survive him as his heirs-at-law, his widow, Marjorie L. Mosley, and children, Victoria Ann Pritchett and Lisa Yvette Milligan, grantees herein.

*640.00 26JL88 02 4

BOOK I 45 PAGE 23

**In Witness Whereof,** *the said parties of the first part have hereunto set their hands and seals, the day and year aforesaid.*

Sealed and Delivered in the Presence of

Jan T. Allen
(AS TO ALL)

Marjorie L. Mosley (SEAL)
MARJORIE L. MOSLEY

Victoria A. Pritchett (SEAL)
VICTORIA ANN PRITCHETT

Lisa Yvette Milligan (SEAL)
LISA YVETTE MILLIGAN

**State of Delaware,**

KENT **County,** } ss.

**Be It Remembered,** *That on this* 25th *day of* July *in the year of our LORD, one thousand nine hundred and* eighty-eight (1988) *personally came before me*, the Subscriber, a Notary Public for the State and County aforesaid, MARJORIE L. MOSLEY, VICTORIA ANN PRITCHETT, and LISA YVETTE MILLIGAN,

*parties to this Indenture, known to me personally to be such, and* they *acknowledged this Indenture to be* their Act and Deed.

*GIVEN under my Hand and Seal of office, the day and year aforesaid.*

Jan T. Allen
*Notary*

RECEIVED FOR RECORD
JUL 26 2 02 PM '88
MICHAEL T. SCUSE
RECORDER OF DEEDS
KENT COUNTY, DELAWARE

$3.00 STATE DOCUMENT FEE PAID