CITY OF DOVER BOARD OF ADJUSTMENT
AGENDA
Wednesday, July 20, 2016 at 9:00 AM

City Hall Council Chambers
15 Loockerman Plaza, Dover, Delaware

ROLL CALL

APPROVAL OF AGENDA

APPROVAL OF MINUTES of June 15, 2016 Meeting

OLD BUSINESS

Applicant #V-16-06
1310-1324 Forrest Avenue. Margaret H. Johnson has requested a variance from the requirements of *Zoning Ordinance* Article 3 §27.66 pertaining to the maximum allowed height of buildings located with the COZ-1 (Corridor Overlay Zone). Subject property is zoned C-2A (Limited Central Commercial Zone) and subject to the COZ-1. Tax Parcels are ED-05-076.10-01-01.00-000, ED-05-076.10-01-02.00-000, ED-05-076.10-01-03.00-000, ED-05-076.10-01-04.00-000, ED-05-076.10-01-04.01-000. The owner of record is Margaret H. Johnson. *At its meeting of June 15, 2016 the Board of Adjustment conducted a public hearing but deferred action.*

NEW BUSINESS

Applicant #V-16-07
423 South DuPont Highway. ERG Properties LLC has requested an area variance from the requirements of Zoning Ordinance Article 4 §4.15 pertaining to the minimum required rear seatback in the C-4 (Highway Commercial Zone). Subject property is zoned C-4 (Highway Commercial Zone). Tax Parcel ED-05-077.10-01-27.00-000. The owner of record is ERG Properties LLC.

Applicant #V-16-08
82 Laurel Drive. John W. Warren has requested an area variance from the requirements of Zoning Ordinance Article 4 §4.1 pertaining to the maximum lot coverage permitted in the in the R-10 (One-Family Residence Zone). Subject property is zoned R-10 (One-Family Residence Zone). Tax Parcel ED-05-077.14-01-35.00-000. The owners of record are John W. & Donna Warren.

Applicant #V-16-09
33-35 South Bradford Street. Darlene M. Dillard has requested a variance from the requirements of Zoning Ordinance Article 3 §1.15 (e) pertaining to the minimum lot area and requirements related to keeping of chickens in One-Family and General Residence zones. Subject property is zoned RG-1 (General Residence Zone). Tax Parcels ED-05-077.05-04-08.00-000, ED-05-077.05-04-08.01-000, ED-05-077.05-04-22.01-000. The owners of record are Richard T. and Darlene M. Dillard.

Applicant #V-16-10
5780 West Denneys Road. Nikolas Dallas on behalf of ENG Properties LLC is requesting a use variance from the requirements of Zoning Ordinance Article 3 §10.1 in order to re-establish the residential use of a property as a single family home in the IO (Institutional and Office Zone). Subject property is zoned IO

(Institutional and Office Zone). Tax Parcel ED-05-057.01-01-03.00-000. The owner of record is ENG Properties LLC.

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
June 15, 2016

A Regular Meeting of the City of Dover Board of Adjustment was held on Wednesday, June 15, 2016 at 9:00 A.M. with Chairman Sheth presiding. Members present were Colonel Ericson, Mr. Senato, Chairman Sheth, Mr. Hufnal and Mr. Keller.

Staff members present were Mrs. Townshend, Mrs. Purnell, Mr. Diaz, Mr. Cook and City Solicitor Nick Rodriguez.

APPROVAL OF AGENDA

Mr. Hufnal moved to approve the agenda as submitted, seconded by Mr. Keller and unanimously carried 5-0.

APPROVAL OF THE REGULAR BOARD OF ADJUSTMENT MEETING MINUTES OF MAY 18, 2016

Mr. Keller moved to approve the meeting minutes of May 18, 2016 with the necessary corrections, seconded by Colonel Ericson and unanimously carried 5-0.

OPENING REMARKS CONCERNING DEVELOPMENT APPLICATION

Mrs. Townshend, Director of Planning and Community Development stated that the meeting today will be conducted in accordance with the agenda. There are 2 agenda items: one deferred item under Old Business, and one new item 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 adjourn 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.

OLD BUSINESS

Applicant #V-16-05

385 Saulsbury Road. Family Dental Associates c/o Christoper A. Nacrelli has requested a variance from the requirements of Article 6 §3.1 and §3.11 of the *Zoning Ordinance* for parking as related to the maximum allowed parking for the proposed use. Subject property is zoned C-PO (Commercial and Professional Office Zone) and subject to the COZ-1 (Corridor Overlay Zone). The Tax Parcel is ED-05-067.19-02-02.06-000. The owner of record is Christopher A. Nacrelli. *At its meeting of May 18, 2016 the Board of Adjustment conducted a public hearing regarding this case but deferred action because a representative was not present.*

Mr. Cook noted exhibits for the record: Staff report and plans submitted by the applicant. Legal Notice was published in the Delaware State News-on May 8, 2016. The public was notified in accordance with regulations.

Mr. Cook and Mrs. Townshend gave a brief overview of the application.

Representative: Mr. Troy L. Adams, Professional Engineer; Vice President of Mountain Consulting Inc.

Mr. Adams was sworn in by Mr. Rodriguez.

Mr. Adams apologized for not being present at last month's meeting due to a calendar issue. Mr. Adams testified that they are looking for four (4) more parking spaces. There are currently not enough spaces to allow the business to function as it should. There has consistently been four (4) vehicles parked in the established gravel area which will be removed and properly paved and striped. He stated that he came before the Board of Adjustment in October 2014 for a similar issue with parking at a dentist office on State Street. He stated that this current application needs 1 ½ spaces for each treatment room and they currently have eight (8) rooms and that would put them at 12 and there are 12 employees. This is the reason for the request of the additional four (4) spaces.

Mr. Senato questioned the water drain problem that was stated by a neighbor. Mrs. Townshend stated that information was provided and is also located in the minutes (she read the section of the minutes). Mr. Adams commented that there is currently a storm drain in the area, but he was not aware there was an issue, but will obviously be vetted more in the Planning Commission process.

Responding to Mr. Senato's question about the impact the drain would have on this request, Mrs. Townshend stated that the impact on the variance is to request additional parking spaces and that equates to additional impervious surface. If there is a drainage issue it could exacerbate it. The project does have an engineer on board and the engineer will be looking at the drainage of the site. This could be addressed through the site plan process. It could even be a matter of looking to see if the storm drain is clogged.

Responding to Mr. Senato's question if the application is approved it would be contingency that the storm drain would be a factor to eliminate any kind of flooding because of the new pavement being installed, Mrs. Townshend stated that it would be part of the site plan review to look at the property drainage. Colonel Ericson stated that it is really not an issue for the Board of Adjustment to consider. Mr. Senato stated that it was a point of information for him.

Mr. Keller raised a question about the location of the drainage within one of the proposed parking spaces and without further information on the submitted plan the Board was not aware of the type of inlet or if it is a drain that would support the weight of a vehicle or if it would require adjustment depending on the grade. He also wanted affirmation for the Board of Adjustment regarding notes on the plans that were not legible. He asked if the gravel would be removed, Mr. Adams stated yes sir. He asked Mr. Cook to confirm the number of existing parking spaces as a

result of legal nonconforming for the property, Mr. Cook stated that this is correct.

Responding to Mr. Keller's question whether the building extends into or beyond the building restrictions line and if it would be the same circumstance, Mr. Cook stated that is correct.

Responding to Mr. Hufnal's question that the applicant would make sure that his customers are parking on his property and not someone's else property which is very important since it is next to an open area owned by the City, Mr. Adams concurred.

Mr. Senato stated that he raised the issue because of a letter received from a neighbor and he wanted to make sure the concerns of the neighbor were met. If the application is approved, he wanted to make sure there was no added flooding to the area and the issue would be addressed with the engineer. Mr. Adams assured that his concerns would be fully addressed by the end of the project. He will make sure that it is adequately sized and that it is traffic baring.

Responding to Mr. Keller's question whether the engineer was aware of the current out flow, Mr. Adams stated that he was not and it was something that needed to be figured out.

Mrs. Townshend stated that the application would not go before the Planning Commission as it is an Administrative Site Plan, but the Kent Conservation District and Public Works will look at those items during the process.

Mr. Hufnal moved to approve variance application V-16-05 based upon the testimony given and the comments made in reference to the review by the Planning Office. The motion was seconded by Mr. Senato and unanimously carried 5-0. (note: The public hearing was held on May18, 2016 in the applicant's absence. There was no public testimony.)

NEW BUSINESS

Applicant #V-16-06

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

Mr. Cook gave a brief overview of the application.

Representative: Mr. Edward H. Ide III, President of I3a Consulting Engineering Firm.

Mr. Edward H. Ide was sworn in by Mr. Rodriguez.

Mr. Ide testified that he has been retained by the owner to bring the project forward. The owner of the 2.8-acre site situated on Forrest Avenue is Margaret Johnson. The property is located to the west of Betsy Ross and a small residential lot and gas station. As mentioned by Mr. Cook the base zoning is C-2A and allows for 75 feet of height, six (6) stories and the COZ-1 maximum

height is 35 feet and not to exceed two (2) stories in height. The variance request suggests that an Exceptional Practical Difficulty needed to be identified to allow for the height change. Their motive was geared towards density or maximizing the site for developing and to get as much as possible out of the property while addressing all of the requirements with the City of Dover, Department of Natural Resources, and Department of Transportation which all imposes cost implications. The previous sites were residential plots. With City approvals the corridor on Forrest Avenue has rapidly become more commercialized. There is commercial space directly to the east and west of the property. This forces the owner to move in the direction of developing it from a commercial space. While designing the site they have considered requirement of placing the building towards the front which is a COZ-1 requirement. The idea is to bring the elements of the building closer to Forrest Avenue to create a traditional look of buildings and to get people generally speaking to slow down and pay attention to the buildings as well as draw them in. The idea is not to create a tunnel effect to where you are creating a building that would be right on the street and have a massive structure that would be imposing. There are two (2) areas that address the Exceptional Practical Difficulty which are Lot Configuration and Competitive Disadvantage. With respect to the Lot Configuration it is narrow 236 feet wide and has a deep backline of 455 feet.

PRESENTATION

Mr. Ide stated that looking at the option of placing an apartment structure which is an allowable use within the zone they would be limited to the type and configuration of structure that needs to go there. Especially, when looking at the placement of some of the apartment buildings that are in proximity one would want to place the building that would run parallel to the Forrest Avenue. In this case it cannot be done due to the shape of the lot. The front of the lot has a large front back due to DelDOT right-of-way and setbacks, therefore; they are limited as to what can be done. It is generally not used for any visible storm water management system and they cannot park or build in that area. Looking at the narrow shape of the building they believe that the owner has developed a plan that addresses those concerns with placing retail at a single story structure and the apartment building towards the back. The site is not conducive for a typical storm water management system so a subsurface system will be utilized. In the past you could put a pond on the surface to allow for storm water management in order to keep the cost low, but with DNREC change in hierarchy on how they want to handle storm water they are forced to put storm water underground. They are limited to pushing storm water underground and below surface due to the layout of the site. As previously mentioned the literal intent of the COZ-1 is to pull the buildings towards the front of the site and have parking towards the rear. With the narrow site they have a limited amount of space for the entrance because the Department of Transportation dictates the size of the entrance which also reduces the amount of spaces provided for a building width. As we look at the Forrest Avenue corridor the majority of the buildings are one story with some exceptions. They feel that by placing a two (2) story apartment building that close to the road may be something that could be unappealing to the general nature of what is happening on the corridor which is retail out front and towards the back which is a different zone is the residential apartment. The owner has compromised by placing the single story retail in the front and putting the apartment building towards the back. They do maintain the building that was supposed to be placed in front of the site that is no more than two stories have been addressed with the retail space. They went with the current structure so that they could keep the overall height of the building low. When you measure the height of a gable roof or a roof that has

a bridge or peak the roof line is measured from the domain to the roof height of the structure. On a building of this size the height of this structure could ultimately be 16 to 18 feet if you use a standard 6-12 pitch. Anything lower than that would probably not look right with that type of structure. When you look at the distance between the varying height to the domain height you are probably looking at 8-9 feet which would leave an additional 8-9 feet that would sit above. They brought it down to the roof line as a low sloping pitch that cannot be seen, positive drainage, and it then brings the height of the structure down to roughly 41 feet and the top of the points are an elevation of 44-45 feet. The tallest element that sticks up is the elevation of 47-48 feet.

Mr. Ide stated that when the Woodmill Apartment buildings that sit directly behind this project is discussed it will show what elevations we are dealing with there. When you look at competitive disadvantage as he has gone to a lot of different municipalities and talk to a lot of different boards regarding competitive disadvantage or economic competitiveness that has kind of shied away. As an Exceptional Practical Difficulty we are going to look at this from a standpoint of the owner being at a competitive disadvantage. As pointed out by Staff there are a number of buildings within the vicinities of the site that are over two stories (The Grande Apartments located to the east side of the Modern Maturity Center and directly northeast of the proposed project). It is a four (4) story building that is within the COZ-1 zone and was approved through a PND, however; it did not come before the Board of Adjustment, but was approved by the Planning Commission. The four (4) story building has a gable roof and he assumed that the elevation of the ridge could be in the 55-60-foot range. The Woodmill Apartments that are located directly behind the proposed project site is not within the COZ-1, it is a three (3) story building with a gable roof and he assumed without measurement that it is ten (10) feet between floors, 30 feet plus the 18 feet puts it up close to 46-48 feet.

PHOTO

Photo handed out of Betsy Ross Restaurant on Forrest Avenue.

Mr. Ide stated that their site is directly to the west of the one story building (Betsy Ross). You can see the outline of the roof structure that is in the back of the Woodmill Apartments that probably measures between 45-47 foot. Other apartment buildings that were pointed out include Dover Country Club Apartments which are 3-story buildings further west of this site. It is their assumption that these apartments were constructed to maximize the site from a coverage perspective and address some storm water landscaping area open area to their advantage (meaning they developed the site to maximize the site). It ultimately comes back to some sort of competitive advantage to maximize the site to get the most return. As he researched competitive advantage and Exceptional Practical Difficulties he came across a case law that exist in Delaware between the Board of Adjustment and Quick Check Realty where they categorized variances between two (2) categories (use and area). They are asking for an Area Variance due to the height. He read a couple of quotes from the rulings of the case which basically stated that they would look at the Area Variance different than the Use Variance. He also gathered from the rulings that if the Board of Adjustment denies the variance request the harm done to the owner for wanting to be competitive would be far greater than the harm imposed to the community for allowing a 4-story building when you have a building that sits directly behind this site that could be the same height. As he read through Staff comments he also wanted to point out item 2:11 of

the report regarding the Area Variance where the Board of Adjustment is asked to evaluate the argument based on these conditions which he thought walks in line with the case study.

Mr. Ide stated that in summary they do maintain that the site is long, narrow, and difficult as is evident by the fact that it has been on the market for roughly three (3) years. Others have expressed interest in the site but generally speaking walked away because they felt it was an undevelopable site. The present design does positively address the needs of the COZ-1 by placing less than a 2-story building on the front of the parcel (retail space). The site is fully maximized and adheres to the code regulations with the exception of the height variance. There is a precedent for a 4-story building that was allowed in the COZ zone that is close proximity to this site. The owner has made an appropriate attempt to the design to bring the height down and using an attractive parapet design element in the overall height so they can keep the building in character with the surrounding areas. They have tried to keep the mass of the front building down and step the mass of the rear building up like the remainder of the buildings in the back. In looking at the case study and Nicola Pizza project in Rehoboth Beach which argued to the Board that a competitive disadvantage because they felt if they could not build a building that was over 5,000 S.F. which was a limitation, they could not stay economically competitive with Grotto Pizza. After being heard by the Board they allowed the case to be in favor of Nicola Pizza.

Mr. Ide stated that in closing they believe that the owner should have the right to not be competitively disadvantaged because of an area variance.

Responding to Chairman Sheth's question if it was 49 apartments, Mr. Ide stated that is correct.

Responding to Chairman Sheth's question of the number of bedrooms (1, 2, or 3). Mr. Ide stated that the site was designed to the parking standard of two (2) parking spaces for each room and one (1) for every four.

Responding to Chairman Sheth's question of the potential customers, Mr. Ide stated small families, early starter type families.

Mr. Chuck Spiegelman was sworn in by Mr. Rodriguez.

Mr. Spiegelman with McGinnis Real Estate Company testified that upon looking at the floor plans it does show two (2) bedrooms with a kitchen, family room, and two (2) bathrooms. It is marketed for military.

Responding to Chairman Sheth's question whether the apartments across the street was 55 plus, Mrs. Townshend stated that The Grande was 55 plus. The corridor overlay zone has a maximum building height of two-stories and 35 feet.

Mr. Ide stated that the plans show a different number of units within the space that are larger or smaller. The living room space is part of the kitchen space. There are one or two more types of units that falls between the maximum ones and the smaller ones.

Responding to Chairman Sheth's question whether this was a property condemned by the City,

Mrs. Townshend replied no, this is a different property. The property is directly across the street from Greentree Shopping center, the condemned property is further east.

Responding to Chairman Sheth's question whether there will be an office building, Mr. Ide stated that he did not think that an office element was planned for this building.

Responding to Mr. Hufnal's question whether the storm water management is going to be put underground, Mr. Ide replied yes.

Responding to Mr. Hufnal's question whether it would be placed along the east side of the grass plot, Mr. Ide replied yes and no. They will need to put subsurface exhortation underneath the parking spaces and have open landscaping space on the plot near the east side which will also have some subsurface exhortation underneath.

Responding to Mr. Hufnal's question whether the applicant adapted the roof of the building to bring it down to a maximum of 47 feet and the applicant is asking for a 12- foot variance, Mr. Ide replied yes, that is correct.

Mrs. Townshend wanted to add for the Board consideration that one of things when architectural goes to the Planning Commission the Commission has mentioned that they do not like flat roofs, but would rather see a gable roof. She questioned if this would bring it back, Mr. Rodriguez stated that it would bring it back because it is over 47 feet.

Colonel Ericson asked for clarification that if the application is approved the Planning Commission could still disapprove and keep the building at two (2) to stay within the code, Mrs. Townshend replied no. It is a permitted use so if it meets the code requirements their flexibility is more limited to the design of the project and the issue of the height is fully under the purview of the Board of Adjustment if a variance is granted. There would be some but limited flexibility on the part of the Planning Commission.

Responding to Colonel Ericson's question whether the Planning Commission determined it on The Grande apartments next to the Modern Maturity Center, Mrs. Townshend stated that it was different because it was a PND (Planned Neighborhood Design) and under the PND Ordinance the Planning Commission has the ability to set design guidelines that are separate from the normal bulk standards so they can allow for a taller building height under the provision of the PND and this site/project is not a PND.

Colonel Ericson stated that he understood the Exceptional Practical Difficulty based on economics that you want to make the maximum amount that you can on the property, he asked the applicant if he would still be making money if the building was 2-stories or 3-stories and if it would be economically feasible, Mr. Ide replied according to the owner; no. They have gone through rough estimate of 15-18 iterations of the site to make it work. This is the last effort that was made by the owner to try and get the site maximized. This is why the retail space was implemented into the project. Therefore; no the applicant could not make this economically feasible with a 2 or 3 story building.

Responding to Colonel Ericson's question of the Exceptional Practical Difficulty that it would not be economically feasible if it met the requirements of the COZ-1 zone, Mr. Ide stated that it is both the site layout and economic disadvantage. The site is long and narrow and to try to get a 2-story structure spread out just does not work. They cannot make the parking work and there is landscaping requirements between the parking stall and the face of the building that are 12 feet. This zone requires a 6-foot sidewalk and 6-feet of landscaping for safety. Again, they just could not get the layout to work.

Responding to Mr. Keller's question whether the applicant was referring to not simply eliminating 2-stories, but trying to spread it out as at 2-story structure and maintain the per code 48 units, Mr. Ide replied that is correct. Regarding the elevation, the owner has tried to bring the elevation down and introduce other elements such as a shallow peak roof. He was sure the owner would not be averse to creating some sort of mass effect much like the Eden Hill structure which is a flat roof with a gable roof. He was sure they could work some architectural element in to accommodate.

Mr. Keller mentioned in weighing the Exceptional Practical Difficulty test the difficulty must be inherent in the land and not personal to the owner. It sounds as if the argument being put forth that absent a 4-story structure this property is unusable from an economic standpoint. Absent the approval even on an Exceptional Practical Difficulty test he finds it somewhat hard to understand that the property could not be otherwise used or a developer make normal improvements to the property in character of the property as it is currently zoned.

Responding to Mr. Keller's question whether absent a 4-story structure this property is in fact unusable, Mr. Ide replied that he was not saying that at all. He was stating that you have a developer who is interested in developing this parcel the way that they need to develop it to make it work for them to go to a 4-story building with a retail space. They wanted to go with 3-story apartment buildings over the entire site corridor, but they mentioned to the owner from their perspective putting a 3-story building right on the corridor was not the right answer. So they asked how can you make this site work utilizing the apartment buildings that are already in characteristic of Forrest Avenue and directly behind it and how can you make it work with retail space and this is the way it was developed. Could someone else come in and look at the site and put in another pizza shop and maybe make it work, that is possible. Unfortunately, those people have not come up and the site has been vacant for three (3) years and there has not been a lot of interest. Now you have someone who has taken the time and spent the money to try to develop something that is realistically not out of character for that area. They have really tried to stay away from the economic competitiveness that is why in their response to Staff they looked at the density component, but unfortunately you cannot get away from it. There is a case in Delaware that states that the economic advantage or economic disadvantage is something that should be looked at. Ultimately that is the reason someone buys and develop the property for some sort economic advantage.

Responding to Chairman Sheth's question whether the 2-story could go on top of the retail shop and make it work, Mrs. Townshend stated that there is nothing in code that would prevent putting another story on top of the front building that would have residential. The code would allow that.

Mr. Ide stated that he spoke with Mr. Cook earlier regarding the intent of the COZ-1 and how it was developed to where you try to limit the height of the building. He wondered if there were any discussion about massing up towards the back of the site or it just strictly that the corridor overlay zone looks at a building being close to the corridor and they don't want to see anything larger than a 2-story structure. He asked if the issue was to not create a situation on Forrest Avenue where you have 3 or 4 story buildings to where there are no day lighting abilities or does this meet the intent of the COZ-1 by putting a low profile building and mass it towards the back. He was not sure if a secondary building could be in the COZ-1 and if there were height limitations.

Responding to Colonel Ericson's question of the approximate distance between the two (2) buildings, Mr. Ide replied the approximate distance between the two (2) buildings is 80-90 feet.

Responding to Mr. Hufnal's question of the distance between the Route 8 and the apartment building off the road, Mr. Ide replied the distance would be 235 feet. Directly behind this building is the Woodmill Apartments building that is 45 plus feet tall.

Responding to Mr. Senato's question of the distance from the road back to the street, Mr. Ide replied 75 feet. He stated that it was 75 feet from the start of the deceleration lane back to the face of the building, and 85-90 feet from the Public of Transportation right-of-way.

Mrs. Townshend stated that there was a corridor study of Route 8 that was done in the early 90's that made a series of recommendations that resulted in the development of the corridor overlay zone. The timing of this was that it was not a whole lot of development yet on Route 8 and there was a conscious effort to make sure that they did not end up with two (2) Route 13. That is kind of the reason for the corridor overlay zone.

Responding to Mr. Keller's question within the Staff Report the references to Dover Country Club Apartments, Woodmill Apartments, and The Grande Apartments were they not all either legal nonconforming or cases where they were perfectly in conformance with the zoning code, Mrs. Townshend replied that is correct. As the applicant mentioned Woodmill Apartments is outside of the COZ-1 (Corridor Overlay Zone) so they are subject to the height requirements of the zone that they are in. Dover Country Club predates the implementation of the Corridor Overlay Zone and The Grande went through the Senior Citizen housing PND process and had their bulk standards adjusted by the Planning Commission.

Responding to Mr. Hufnal's question whether the COZ-1 runs to Dover Kenton Road, Mrs. Townshend replied that it goes from the railroad track to Artis Drive and the City limits. If you recall the Board of Adjustment did grant a variance to the Dover High School.

Mrs. Townshend stated that the COZ-1 (Corridor Overlay Zone) especially as it relates to Route 8 was very much envisioned as a commercial corridor and you can see how it has grown. Some of the success stories of the Corridor Overlay Zone are the Blood Bank and the Cardiology Office projects were built with the requirements of the Corridor Overlay Zone. One of the things that has changed is our zones used to be more segmented, so there was less of mixing residential

uses in the commercial zone. That is something that has changed over time. The C2-A is a commercial zone and a number of commercial zones in the past did not permit apartments and that was in addition more recently. There has been some change to the base zones over time that the Corridor Overlay Zone has not been looked at in that context. The Corridor Overlay Zone was amended in 2006 or 2007 to get the elements of superior urban design to the Planning Commission a little bit of flexibility on things like parking and those issues, but it was not amended as it relates to building height.

Mr. Hufnal commented that he could see in the Corridor Overlay Zone not wanting to build 4-stories buildings right on the highway itself. However, they have lessened the impact of this by putting a single story in the front and 235 feet back is the 4-story building.

Mr. Senato asked for clarification that it is 75-80 feet to the retail section and from the street back to side part of the apartment buildings it is roughly 235 feet, and the height of the apartment building is 4-stories and the height of the retail space is 20-25 feet and the apartment buildings is 47 feet. Mr. Ide replied yes, when you look at the parapet height and the top you are close to 45-47 feet. Responding to Mr. Senato's question whether he was talking roughly 20 feet higher than the retail shopping center, Mr. Ide replied yes. As he referred to the photo he stated that this is an elevation is a perspective of someone on Forrest Avenue looking. Therefore, you can see what happens to the massing as someone is looking at it. Responding to Mr. Senato that the illusion would not hit you as a 4-story. Mr. Ide concurred.

Mr. Ide stated that the owner has looked to place the lower story to the front. As he referred to another photo view (A303) that shows another perspective of the lower story and how the 4-story sits behind. The corridor overlay zones allow for a maximum height of 35 feet and 2-story and the height of this building is less than that.

Responding to Mr. Senato's question whether it would be economically viable if the applicant went to a 2-story apartment building, Mr. Ide replied no.

Responding to Chairman Sheth's question the cost of the square footage for the retail space and expected rent the 1-2 bedroom apartments, Mr. Spiegelman replied anywhere from $14-$16 a square foot for the retail space and the rent for the smaller apartment unit he would estimate around $800-$900.

Mr. Keller stated that he still had difficulty with accepting the argument of Exceptional Practical Difficulty and it was mentioned that the property has gone unsold for three (3) years, Mr. Ide replied that Mr. Spiegelman office started listing the property in May 2013 and he was not sure how long it was on the market prior to that time.

Mr. Keller stated that it is difficult to state the rationale for a lack of a sale. Certainly the current economy not the most beneficial.

Mr. Spiegelman stated that there seems to be very little new development of raw land and they felt that they had an opportunity with a developer to get something going that was conforming to the neighborhood.

Mr. Ide stated that as mentioned earlier the Exceptional Practical Difficulty does not weigh solely on the economics of this project. The owner wants to develop the parcel and the parcel is a difficult site to develop because of the length and whether or not someone can stay competitive to build a small retail center to the back whether that it is economically viable for what is required by the Department of Transportation. Over the past 1 ½ years DNREC has changed their hierarchy regulations for storm water management that you simply cannot place an open storm water in an area because that is the economical way to do it. They want you to put everything underground now. The storm tech and rain tree systems for a 2-acre site is an easily $200,000 to install. Whereas digging a pond on this site would be in the $25,000-$30,000 range. Being an Engineer and developing these plans over the year and the way he sees the regulations changing it makes it more difficult for folks to economically develop a site. He is sure the owner is not saying he wants a competitive advantage over Woodmill Apartments and he is going to take those folks, but the owner is looking at the economics of developing this difficult site and what it is going to cost and what he needs to do to recover the cost.

Chairman Sheth opened the public hearing.

Mr. William Garfinkel who lives at 9 Freedom Drive in Bicentennial was sworn in by Mr. Rodriguez.

Mr. Garfinkel testified that he totally supports Staff recommendations to deny this request. He has lived in the area for 32 years and the overlay zone works. If you look at the area there is business, commerce, and a lot of people in the residential area. We do not need this encroachment closer to Forrest, because it just does not fit. It is a reason that the City of Dover put the overlay zone code in effect. There is a problem with people who think they cannot make enough money. Is that a compelling state interest to the people to destroy an area where the overlay zone has worked, no. The compelling state interest is to enforce the overlay zone. They have a business model problem because there is nothing wrong with the land, we just need someone to come up with a business model that works. There are thousands of people who live in the area. The area between is beautiful and works. Please do not violate the overlay zone.

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

Mrs. Townshend stated that the Planning Office received a letter from June Schamp of 1326 Forrest Avenue. Ms. Schamp is an adjacent property owner. The letter has been distributed to all Board members and will be entered into the record. The letter is in support of the project with a conditional preference stated. "I prefer 2 or 3 story building, however, if for financial reasons only a 4-story building would work for him, then I offer my support."

Mr. Keller stated that he was still concerned with the basis for the Exceptional Practical Difficulty considerations. He reiterated that the Exceptional Practical Difficulty must be inherent in the property and not personal to the owner. The property is vacant and per Mr. Ide the long narrow layout would be very difficult to develop, but yet there is a proposal in front of the Board for a commercial building and apartment complex. Apparently it is not too difficult. Can the property be reasonably used without the variance? He has heard nothing today to lead him to believe that it cannot be. Does the property have some unique shape? Again, the test is inherent

in the land is basically a rectangular lot. Is the variance request the least modification to the COZ-1 considerations? He thinks not. The request is for a 4-story and he asked if there was any consideration for a 3-story or an outgrowth for some issue raised for allowable commercial uses. It seems that there is a greater interest in maximizing the Development as well as the profits there from; as opposed to some distinct condition that would lend greater support to the Exceptional Practical Difficulty test.

Responding to Chairman Sheth's question if there were any other alternate plans, Mr. Ide stated that they have generated a number of plans. The owner who is interested in this parcel wants to build an apartment complex. The owner feels it is the best use for the property. They worked on a number of configurations of putting 2-story buildings apartment complexes in the front elevating the roof-line of the 35 feet plus 5 feet so you are up to 40 feet maximum height on the front which would go against what Mr. Keller mentioned regarding something being opposing to someone. There have been 15-18 different iterations of this such as combinations of different apartment buildings. Does it come back to economics, certainly? Is it the sole reason, absolutely not? As he pointed out the site has unique characteristics with respect of the way the drain stores the rear of the site so they have limitations with the storm water management. DelDOT requires a certain size entrance which has to be taken out for a 236-foot-wide parcel; therefore, limiting the amount of the area. When you look at the other apartment buildings in the general vicinity of Woodmill the plots are larger than the rectangular space. It is not a site that would work well for a typical apartment building layout that you would see. The owner's compromise is to go to a lower profile retail space to help make it economical viable for him to do this, otherwise he does not feel that he is able to do this. They are here today to address the Exceptional Practical Difficulty they have to use all of the tools that they can possibly use. Again, there is a case law that discusses the difference between Use and Area Variances and they evaluate each one of them differently. This also happened in Rehoboth. While economics are not the sole reason and if this site was more square where he could place the apartment buildings in a general configuration then they might not be before the Board today, but that is not the case because we are dealing with a site that has been vacant over 3 years with no interest. Now you have someone who is interested in the site and is doing the right thing by developing something that is generally in character with the rest of the area (as he referred to exhibit 2.11) where they are massing low and going higher. There are no daylight issues and we are not in Dewey or Bethany Beach where we are arguing a 10-story building where someone does not have benefits to the sunset. That is where height issues really are issues and we just do not see that. The Woodmill Apartments can be seen from Forrest Avenue.

Chairman Sheth stated that he understood, but we are dealing with the ordinance. The Board has always tried to help applicants, but not at the cost of something the Board does not feel comfortable with. Chairman Sheth suggested whether there could be an alternative, Mr. Ide stated that he did not have the authority to say that, they have been through a number of iterations to try to compromise to something less. The owner has looked at the idea of going to a 2-story and placing the apartment buildings over the retail space. Quite frankly the owner did not like the height and lowering it down to a 3-story building as a compromise he could not make it work. The owner did not like the fact if you go to a 2-story building with a gable roof it would be an overwhelming building right on the corridor. They looked at placing the 2-story facility for an apartment building and it is not an attractive look.

Mr. Hufnal commented that the COZ-1 was established to keep you from putting a great height of a building up to 35 feet right on Route 8. With the increase in size of the building being 235 feet back it has lessened the impact of the building being right on Route 8 by having a 1-story in the front. It is a shame that the building could not have been a 3-story because you would almost be down to the maximum height limit.

Chairman Sheth's questioned if the applicant would like to consult with the owner and come back before the Board?

Mr. Senato stated that his colleague had a point because he is not seeing a hardship or difficulty other than on the finance end of it and the owner not liking or disliking certain things. He questioned is there any way to compromise and consider the 3-story building behind the retail because you are only talking 20 feet and the building height would drop down almost level to the retail area. Mr. Ide replied that it is certainly a layout that has been provided to the owner previously and the owner stated no; he could not make that work. It does not mean that he cannot not go back more strongly and the owner again. They take the COZ-1 requirement to heart and when the plans were being laid out the owner was informed at the beginning. They have been designing these plans for the better of eight (8) months trying to come up with different configurations to make this work. It has been a puzzle and a balancing act to get the impervious area requirement, parking, storm water management, landscaping and height to work within the site which is not uncommon. It has just been a little more difficult with this site.

Mr. Senato commented that he was very familiar with the area since the 60's when it was two 2 lanes. Looking at the area as a whole the high percentage is residential. He had the same question as mentioned earlier regarding whether the owner would be willing to compromise. Mr. Spiegelman replied again that he did not know whether the owner would not compromise, but they have tried many different layouts that so far have not worked. He clarified that the property has been marketed by their company since 2013, but it has actually been on the market/vacant since 2009.

Mr. Keller stated that the strip of the corner has been populated by a number of single family dwellings for years with some devoted to business use, but looking at the appearance as you drive down Forrest Avenue it looks like mom and pop housing. Occasionally now properties have become vacant or posted for sale and perhaps did not represent itself to be the most attractive commercial development or use as a single unit. Now, some of the properties have become vacant and some contiguous properties have been joined and propose a greater potential as well. Since 2009 to present date he thinks a lot of the property has become more attractive for development.

Colonel Ericson and Chairman Sheth commented that it would be a year before the applicant could come before the Board again if the application was disapproved. He asked if the applicant would prefer the application be tabled and delayed until the next meeting so that he could get more information and discuss with the owner to see if it could be compromised. Mr. Ide replied that he would also need to contact the developer. Mr. Spiegelman stated that it was probably the best way to go.

Mr. Keller stated that it still haunts him to come before the Board of Adjustment with what represents itself as the least modification that is sought to overcome the shortcoming in your mind at least over the zoning code and the COZ-1 as opposed to kind of displaying a maximum modification if you will by the presentation made. He agreed with Colonel Ericson's suggestion.

Mr. Ide stated that the 4-story was not the maximum consideration. The owner looked at the 6-story building because it is allowed by the C-2A zone. They could not make a 5-story or 6-story building work from a parking rationale stand point. So, the compromise was to go to the 4-story.

Colonel Ericson commented that the Board of Adjustment looks at setting precedent. He thinks that what has been designed is attractive. He thinks that 200 feet back offsets the bulk in the building and it would not be that bad. He would hate to see that up and down the corridor because it would be defeating the purpose of the corridor.

Mr. Ide agreed with Colonel Ericson and so does the owner, that is why they did not want to go any larger than a single story on the front as this was their compromise.

Colonel Ericson stated that he would not like to see a 2-story on the front to make it economically feasible because it would not be attractive.

Mr. Ide they wanted to utilize the retail space to generate enough money to make the site work for him especially with everything he has going against him. As we look at this and the way the Board is technically is supposed to look at this they feel that it is not uncharacteristic with the rest of the site. The low retail space is in line with the COZ-1 request and the 4-story even though it is not within the COZ-1 you have buildings 50-60 feet behind it that are just as tall.

Chairman Sheth stated that he experienced the same questions and issues with regards to previous projects such as the Residence Inn and the Fairfield Inn, and Planning Commission's preference against flat roofs when it was built. He complimented Mr. Ide on a great job and the Board of Adjustment is there to help.

Mr. Ide stated that their dilemma with this is they will go back and talk with owner, but they know that they have tried a 2-story and a 3-story configuration and the footprint to get more apartments is not as great as the 4-story on that footprint. We know that combination does not work, but we believe that you will find it unappealing if they went to the 2-stories with the gable roof because it would be large and tall due to the main roof height that the gable roof is measured. As suggested we will go back and talk to the owner, but he knows the outcome because the owner does not want to go 2-stories on the front because of what he feels it is going to look like on the corridor and the 3-stories from an economic standpoint will not work for this site.

Mr. Senato commented that he received the impression that the owner is not going to compromise and it was mentioned many times through the entire presentation that the owner did not agree to any of the suggestions presented to him.

Colonel Ericson commented that as a Board member he would like the applicant and owner to

think about it because it is a significant departure from the corridor.

Mr. Spiegelman assured the Board that they would go to the developer and explain the options in detail.

Responding to Colonel Ericson's question whether there was a drawing of the 2-story building, Mr. Ide replied that he did not do a pretty drawing, but had sketches.

Mr. Spiegelman stated that he liked Colonel Ericson's idea to consult with the owner to make the decision and come back before the Board within a month.

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

Chairman questioned if there was any additional correspondence or phone calls for the record.

Mr. Cook stated that Mr. Garfinkel who is present called last week and expressed his concerns about the case which were conveyed at this meeting. He also met with Ms. Schamp yesterday and she also submitted a letter this morning that each Board member received.

Colonel Ericson moved to table variance application V-16-06. The motion was seconded by Mr. Senato and unanimously carried 5-0.

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

Meeting adjourned at 10:47 A.M.

Sincerely,

Maretta Savage-Purnell
Secretary

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

Meeting adjourned at 10:47 A.M.

Sincerely,

Maretta Savage-Purnell
Secretary

City of Dover

Board of Adjustment

July 20, 2016

V-16-07

Address:	423 South DuPont Highway
Location:	East side of South DuPont Highway south of Martin Luther King Boulevard.
Tax Parcel:	ED-05-077.10-01-27.00-000
Applicant/Owner:	ERG Properties LLC
Application Date:	June 17, 2016
Present Zoning:	C-4 (Highway Commercial Zone)
Present Use:	Vacant. One building. Former gas station.
Proposed Use:	Construct a two-story structure. Establish automobile sales.
Reviewed By:	Bill Cook, Planner I
Variance Type:	Area Variance
Variance Requested:	Variance from the requirements of Zoning Ordinance Article 4 §4.15 pertaining to the minimum required rear seatback in the C-4 (Highway Commercial Zone) in order to allow construction of a 27-foot tall structure 11 feet from the rear property line.

Project Description
The applicant is proposing construction of a two (2) story 2,166 SF structure at the northern corner of the property on the approximate .45 acre site. The business plan is believed to be an automobile sales oriented business.

The applicant is requesting an Area Variance from the requirements of *Zoning Ordinance* Article 4 §4.15 pertaining to the minimum required rear seatback in the C-4 (Highway Commercial Zone) in order to allow construction of a 27-foot tall structure 11 feet from the rear property line.

Zoning and Adjacent Land Uses
A Zoning Map exhibit (Exhibit A) prepared by staff is attached to this report showing the zoning and parcel locations. Surrounding properties on both sides of South DuPont Highway (Route 13) are all zoned C-4 (Highway Commercial Zone). The plans submitted by the applicant (Exhibit B) show a site plan as well as an aerial photo for additional orientation.

Adjacent properties include a pawn shop to the east located on the same parcel as an igloo-shaped structure near the corner of Route 13 and Martin Luther King Boulevard that has had a variety of uses over the years. Adjacent properties to the south are an auto service business and a travel agent. Nearby properties across Martin Street include a hotel (zoned C-4) and a residential alcohol recovery facility for men zoned IO (Institutional and Office Zone).

Code References
The proposed automobile sales use is a permitted use in the C-4 zone. The unusually shaped six-sided lot appears to meet certain bulk standards referenced in *Zoning Ordinance* Article 3 §16.1(m) applying specifically to motor vehicle sales, such as minimum street frontage and minimum lot area.

Zoning Ordinance Article 4 §4.15 lists the bulk and area standards for lots in the C-4 zone. Table 1 summarizes the requirements for the C-4 zone. In the same table, the proposed lot dimensions and criteria are shown for the subject lot at 423 South DuPont Highway. Refer also to the Site Plan exhibit provided by the applicant. (Exhibit B).

As shown on the Site Plan, the applicant is proposing construction of the building at the north end of the property abutting the rear property line and two angled side property line segments. The labeled “Existing Building” is proposed to be demolished, but is shown on the plan to demonstrate that the proposed two-story building would be built no closer to the rear property line than the existing one-story building.

As shown in Table 1, the minimum rear setback is 10 feet or equal to building height. The existing building is 11 feet in height. The proposed building is 27 feet tall. Thus, to construct a 27 foot tall building with an 11 foot setback requires a variance of 16 feet.

Table 1: Zoning Requirements and Requested Bulk Standards
V-16-07 Lands of ERG Properties LLC, 423 South DuPont Highway

For All Permitted Uses:	**C-4 (Highway Commercial Zone)**	
Minimum Required:	**REQUIRED**	**REQUESTED [1]**
Lot area (sq. ft.)	--	--
Lot width (ft.)	150	[2]
Lot depth (ft.)	150	[2]
Front yard (ft.)	20	20
Side yard (ft.)	15	15
Rear yard (ft.)	10 or equal to bldg. height (27 req'd as proposed)	***11***
Side or rear yeards which adjoin a residence zone	30	N/A
Off-street parking spaces:		
Per 300 SF floor area or	1	TBD
Per employee	1	
Maximum Permitted:		
Building height		
Stories	6	2
Feet	75	--
Floor area ratio	4.0	[2]

Notes:

[1] Criteria requiring variance are *in* ***bold italics*****.**

[2] Not specified, and/or legal non-conforming

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 part of the application, the applicant was asked to summarize how the requested variance relates to the criteria. The applicant's response is provided below along with a staff assessment of the application in accordance with the required criteria.

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

   Applicant Responses:
   "Section 16. – Highway Commercial Zone (C-4) Commercial Property, Retail Store"

   Staff Response:
   The C-4 (Highway Commercial Zone) allows a wide variety of commercial uses including restaurants, retail stores, offices, hotels, service establishments, and motor vehicle sales and service. Most C-4 zoning in the City is found on DuPont Highway and Bay Road, busy commercial corridors where most businesses are oriented with generous parking in front and laid out for easy and convenient access by car from the highway.

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

   Applicant Responses:
   "Two-story / Single-story commercial buildings. Heavily commercialized area."

   Staff Response:
   Surrounding buildings are one or two stories. The property is located just south of the South DuPont Highway and Bay Road split. Many nearby properties are older and have seen marginal development or vacancy in recent years, although there has been some recent development activity which includes Serenity Place and a nearby property fronting South Bay Road which is under renovation to become a funeral home.

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

   Applicant Responses:
   "It would not impact neighboring properties. Only one property exists to the east. The new (proposed) building would not sit any closer to the existing building."

Staff Response:

Staff notes that the adjacent property to the east referenced by the applicant is one structure addressed to Martin Street, but the property also extends north of the subject property and also contains the domed building.

The proposed two-story structure could have some impact to visibility of the Martin Street business from South DuPont Highway, however that business is not oriented to South DuPont Highway. The adjacent business can be accessed from either the highway or Martin Street.

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:
"Yes. The property has an extensive R.O.W dedicated to DelDOT. Numerous property lines to the north & south that are on angles, thus reducing the build line. The rear property line has a 10' setback or setback equal to height of the building. The proposed building height is 27ft thus pushing the building to the center of property leaving no outside sales area."

Staff Response:
Staff concurs that the shape of the property and significant right of way dedication do pose challenges to siting a building and operating a business such as the proposed use. The angled side yards constrict the ability to locate the structure at the north and south ends of the property, and enforcing the 27-foot rear setback requirement would force the building to the center of the property, limiting the ability to use the square footage of the lot for purposes other than siting the building.

Variance Recommendations:
Staff recommends approval of the variance:

- The proposed variance and planned use would not be out of character for the zone and the surrounding uses.
- Staff believes that the reduced setback is not inappropriate when abutting other commercial properties in this case and would have minimal negative impact to surrounding businesses.
- The improvement to the property is in the interest of the surrounding area.
- The unique physical characteristics of the property impose exceptional practical difficulty with regard to making improvements to the property, thus Staff believes the case for granting of the variance is met.

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 is subject to Site Development Plan, Conditional Use, and Minor Subdivision approval processes and appropriate permits from the City of Dover Department of Planning & Inspections and other agencies.

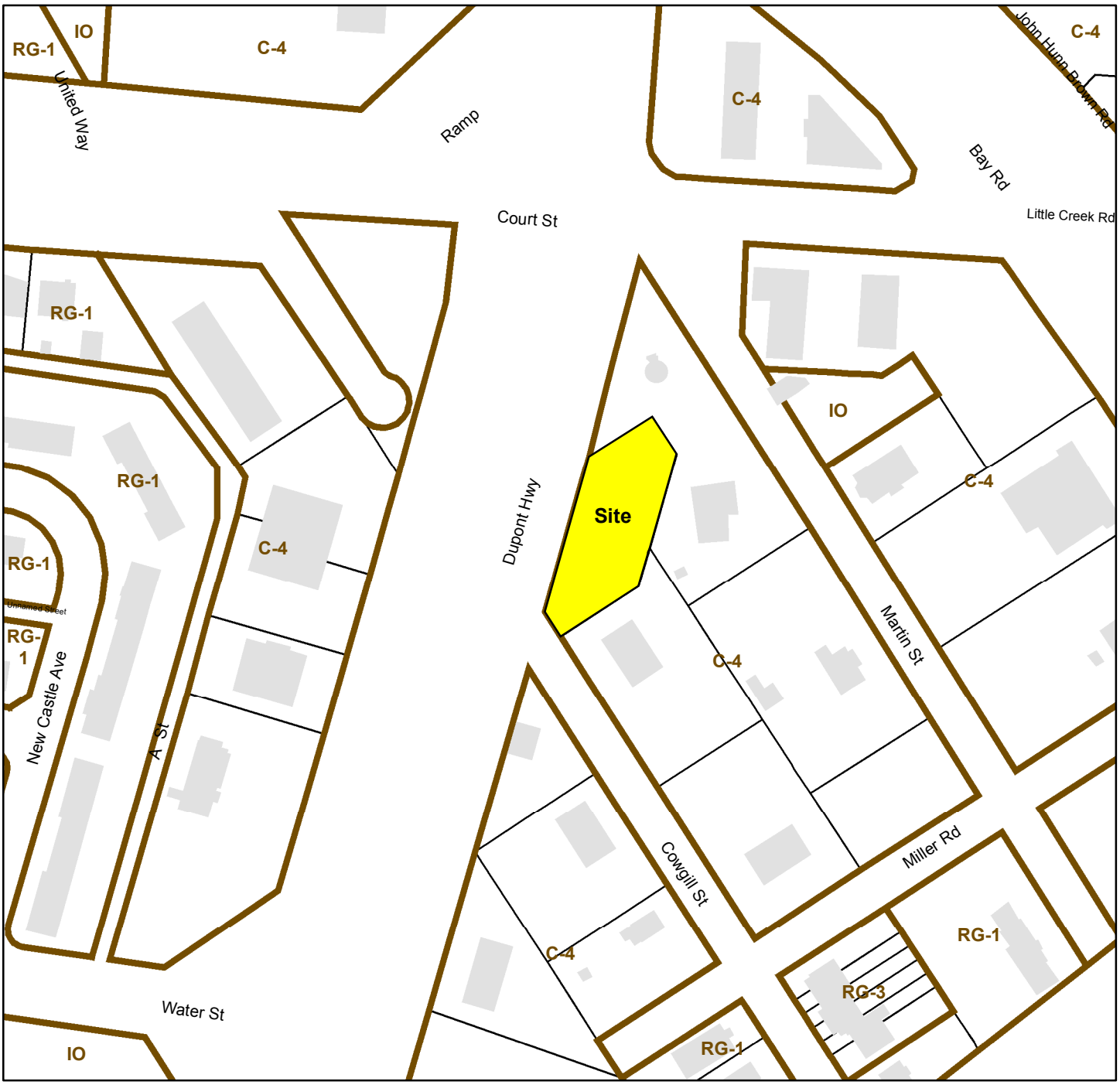
GUIDE TO ATTACHMENTS

Exhibit	Description/Author	# Pages
A	Zoning Map Exhibit (Staff)	1
B	Site Survey, Aerial Photo showing existing and proposed condition, 11” x 17” (Applicant)	2

City of Dover

Department of Planning & Inspections

Application No.: V-16-07



Title: Lands of ERG Properties LLC
Address: 423 South DuPont Highway
Parcel ID: ED-05-077.10-01-27.00-000
Zoning: C-4 (Highway Commercial Zone)
Owner: ERG Properties LLC
Date: 7/12/2016

Legend

- 2012 Buildings
- Zoning
- Dover Parcels

N
W
E
S

0 100 200 400 Feet



SITE AERIAL W/ PROPOSED BLDG. LOCATION

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

TAX PARCEL #
2-05-07710-01-2700-00001

PROJECT:
423 S DUPONT HWY
DOVER, DE

SITE AERIAL W/ PROPOSED BLDG. LOCATION

06/16/16
DATE

NONE
SCALE

C1
SHEET#

US ROUTE 13

COWGILL STREET
(50' UNIMPROVED STREET)

EXISTING PAVEMENT

TO BE RETROFIT
WITH NEW FACE

EX.SS

EX.15"SD

EXISTING GRAVEL

15' BSL PER ZONING CODE

EXISTING PAVEMENT

15' BSL PER ZONING CODE

20' BSL PER ZONING CODE

CONCRETE PAD

27' BSL PER ZONING CODE

PROPOSED BSL PER VARIANCE

27' SETBACK
PER ZONING CODE
TO BE DELETED

S&L ENTERPRISES, INC.
2-05-07710-01-3800-00001

EXISTING PAVEMENT

S&L ENTERPRISES, INC.
2-05-07710-01-3800-00001

15' BSL
PER ZONING

15' BSL PER ZONING CODE

PROPOSED BUILDING
2,166 SF.

DENOTES
BOUNDARY

EXISTING BUILDING
391 SF

15' BSL PER
ZONING CODE

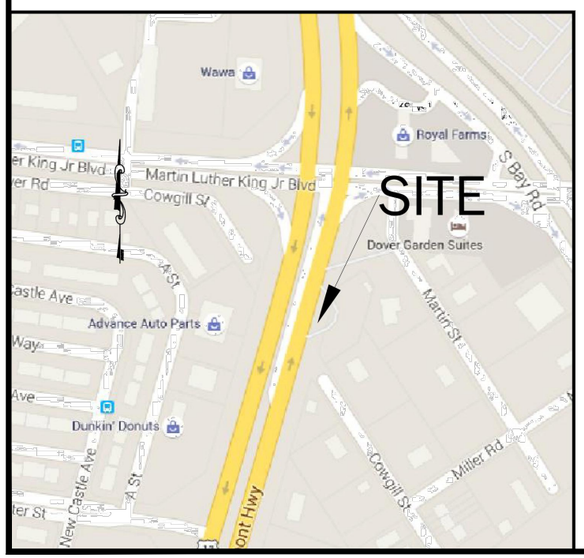
PROPOSED BSL PER VARIANCE

2YRD

2YRD

PROPOSED 11'
BSL PER VARIANCE

PROPOSED
DUMPSTER PAD
SCREENED FROM
REAR ON ALL SIDES



SITE SURVEY W/ PROPOSED BLDG. LOCATION

IDE³ ASSOCIATES

CONSULTING ENGINEERS

CONSTRUCTION MANAGERS

106 W. COMMERCE ST
SMYRNA, DE 19977
Tel: 302 659-9090
Fax: 302 659-0909
Email: ed@i3allc.com

TAX PARCEL # 2-05-07710-01-2700-00001

SURVEY INFO:
BY: PARKER & ASSOCIATES INC.
DATE: 04-22-16

PROJECT:
423 S DUPONT HWY
DOVER, DE

SITE SURVEY W/ PROPOSED BLDG. LOCATION

06/16/16
DATE

NONE
SCALE

C2
SHEET#

City of Dover

Board of Adjustment

July 20, 2016

V-16-08

Location:	82 Laurel Drive
Applicant/Owner:	John W. Warren
Application Date:	June 15, 2016
Tax Parcel:	ED-05-077.14-01-35.00-000
Present Zoning:	R-10 (One Family Residence Zone)
Present Use:	Residence
Reviewed By:	Eddie Diaz
Variance Type:	Area Variance
Variance Requested:	Variance from the impervious coverage limit of 30% to install a 15'x12' (180 S.F.) addition to an existing shed.

Project Description:

The applicant is seeking a variance from Article 4, Section 4.1 of the *Zoning Ordinance*, the bulk standard requirements of the R-10 zoning, specifically as those requirements relate to impervious coverage. The applicant is also seeking a variance from Article 7, Section 1.3 of the *Zoning Ordinance,* as that section relates to enlargement of nonconforming buildings that do not hold nonconforming uses. The applicant seeks to install a 15ft x12ft (180 S.F.) addition to an existing shed at the rear of the property. The requested variances would allow for the total lot coverage (house, garage, driveway, enclosed porch, covered deck, pool patio, concrete and brick sidewalks, existing shed, and shed addition) on the property to exceed the 30% lot coverage regulation by 4.1%, for a total of 34.1% lot coverage. The property has an existing legal nonconforming lot coverage of 33%. The property is located at 82 Laurel Drive.

Adjacent Land Uses

The lands to the north, east, and west are all similarly zoned R-10 properties. The properties across the street and further to the east and west hold residential land uses; the properties immediately to the east and west are vacant parcels owned by the applicant and his family. To the south is land owned by the State of Delaware, zoned IO (Institutional and Office Zone), containing offices of the Delaware Department of Transportation. The office buildings are well removed from the applicant's property; the nearest active land use is a bike trail about 350 ft. from the applicant's house. The land in between is all forested.

Code Citations

Article 4, Section 4.1. [One-family residence zones.]

Bulk and parking regulations for one-family residence, R-20, R-15, R-10, R-8 and R-7 zones [are as follows] (see also article 12, definitions; article 5, supplementary regulations; and article 6, off-street parking, driveways and loading facilities):

TABLE INSET:

			For Dwellings In:				
			R-20	R-15	R-10	R-8	R-7
Minimum required:							
	Lot area (sq. ft.)		20,000	15,000	10,000	8,000	7,000
	Lot width (ft.)		120	100	80	70	50
	Lot depth (ft.)		150	125	110	100	100
	Front yard (ft.)		30	30	25	25	20
	Minimum side yard (ft.)		25	20	15	10	5
	Total both side yards (ft.)		50	40	30	20	10
	Rear yard (ft.)		40	40	30	30	30
	Livable floor area/DU (sq. ft.) 1,200		1,200				
	Off-street parking spaces/dwelling units		3	3	2	2	2
Maximum permitted:							
	Building height						
		Stories	2 1/2	2 1/2	2 1/2	2 1/2	2 1/2
		Feet	35	35	35	35	35
	Lot coverage		20%	25%	30%	35%	40%

Article 7, Section 1.3. [Nonconforming buildings and uses.]

> Normal maintenance and repair, structural alteration in, and moving, reconstruction, or enlargement of a building which does not house a nonconforming use, but is nonconforming as to the district regulations for lot area, lot width, front yard, side yard, rear yard, maximum height, maximum lot coverage, or minimum livable floor area per dwelling is permitted if the same does not increase the degree of, or create any new nonconformity with such regulations in such building.

Exceptional Practical Difficulties Tests

Article 9, Section 2 of the *Zoning Ordinance* dictates the specific powers and duties of the Board of Adjustment with regard to granting variances. In order to grant a variance, the Board must determine that an exceptional practical difficulty exists.

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 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.

An area variance shall be evaluated on the following criteria;

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

   Applicant Response[1]:
   I am requesting an area variance change of 180 sq. ft. over the existing 30% limit of hard surface to allow for 12'x15' addition to an existing 16'x16' shed. The addition would be used for storage of patio furniture, pool furniture, and a garden tractor. The neighborhood is a residential area of single family homes.

   Staff Response:

[1] The applicant did not provide separate responses to the four criteria. The applicant responses provided in this report are drawn from the applicant's full response (Appendix B), which is contained in the application packet.

The Laurel Drive area is zoned R-10 (One Family Residence Zone) and consists of single family homes and vacant lots. The residential lots vary greatly in size; the property upon which the applicant's house is built is one of the smaller ones at 0.43 acres, while the largest one (89 Laurel Drive) reaches a size of 2.21 acres. As such the bulk standards of the *Zoning Ordinance* affect the properties on the street unequally, with larger properties having larger buildable area. The R-10 Zone requires a maximum lot coverage of 30%.

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

   Applicant Response:
   In my proposal I am enclosing pictures of my home and the existing shed to show the board that I take a lot of pride in the appearance of my property. I am also showing a picture of my back yard to point out an open area consisting of a 50'x120' space along a drainage ditch that belongs to the state of Delaware. The states property line starts at the bird bath shown in the picture over to the edge of the ditch. Even though I do not own the property I have maintained it for twenty eight years. I also own the vacant lot to the right of my house. The vacant lot to the left of my house is owned by my mother-in law Doris B. Cole who has no objections to my shed addition. The only neighbor with in 200ft. of my shed is Perry and Karla Boulter.

   Staff Response:
   As the applicant describes, the character of much of the property's immediate vicinity is effectively under the applicant's control. Without regard to property lines, a very large amount of open space surrounds the applicant's house. The house is of similar size to other houses in the neighborhood, many of which are more closely clustered together than the applicant's house is to its neighbors. Sheds do not appear to be a common type of structure in the neighborhood.

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

   Applicant Response:
   The Boulters have given me a signed statement showing no objections to the shed addition.

   Staff Response:
   The removal of the restriction upon the applicant's property would not seriously affect neighboring properties and uses. The existing shed is located at the rear of the property and there are no buildings belonging to neighbors within about 175 feet of it, though the grounds of three neighboring residential properties are within this distance. The shed is also adjacent to the tree line; it is expected that the tree line would largely hide the shed addition from view.

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 Response:
If the board would please take note of the shed picture you can see that it is not just a painted plywood shed. I went through the added expense to make sure that the shed blended in with my existing home as I will do with the addition if approved. I would like to point out that I am a carpenter who retired after thirty three years of service with the state of Delaware and if given approval I will be constructing the shed addition myself. Thank you for your consideration of this proposal.

Staff Response:
The shed addition as the applicant describes it would be a normal improvement in the character of the use of the property. The applicant has a case for allowing the shed addition based on his ownership of the adjacent parcel to the west. If the parcel on which the shed addition is proposed and the adjacent parcel were joined into one parcel, or if a strip of land were transferred from the adjacent parcel to the first one, the lot coverage on the first parcel would be greatly reduced. However, to take either action, the applicant would have to hire a registered land surveyor to create a Record Plan, and submit it to the City as a Minor Lot Line Adjustment Plan. The time and expense involved in this process are out of scale to the site improvements desired (a 1.4% increase in lot coverage), and therefore constitute a hardship and practical difficulty.

However, the practical difficulty is not an exceptional one. This is because the City normally has an interest in ensuring adjacent parcels are not regulated as one parcel, and normally requires parcels be joined when there is owner interest in using them as one parcel. In the present case, the City has an interest in making sure a minimum amount of open space is maintained between the two lots. The current owner or a future owner could erect a house with maximal lot coverage on the adjacent lot; this would nullify the lots' present low lot coverage, and the intent of the *Zoning Ordinance* would not be preserved. Joining the lots would prevent a second house from being erected and ensure long-term protection of the minimum desired amount of open space.

Variance Recommendations:
Staff recommends denial of the variance to exceed the 30% impervious coverage limit for the property, and recommends denial of the variance to exceed the 33% existing legal nonconforming impervious coverage, for the following reasons:

- Although the property currently has enough open space adjacent to it, should the addition be built, to meet the intent of the *Zoning Ordinance* with regard to maximum lot coverage, without recordation of a deed joining the property to one or more adjacent parcels, there is no way to ensure the overall maximum coverage desired will be respected by future construction on those adjacent parcels.
- Granting the variances would increase the nonconformity of the lot with regard to the bulk standards of the *Zoning Ordinance.*

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.
- Approval of a variance does not constitute a Building Permit. A Building Permit must be received from the City of Dover prior to the start of any construction work.

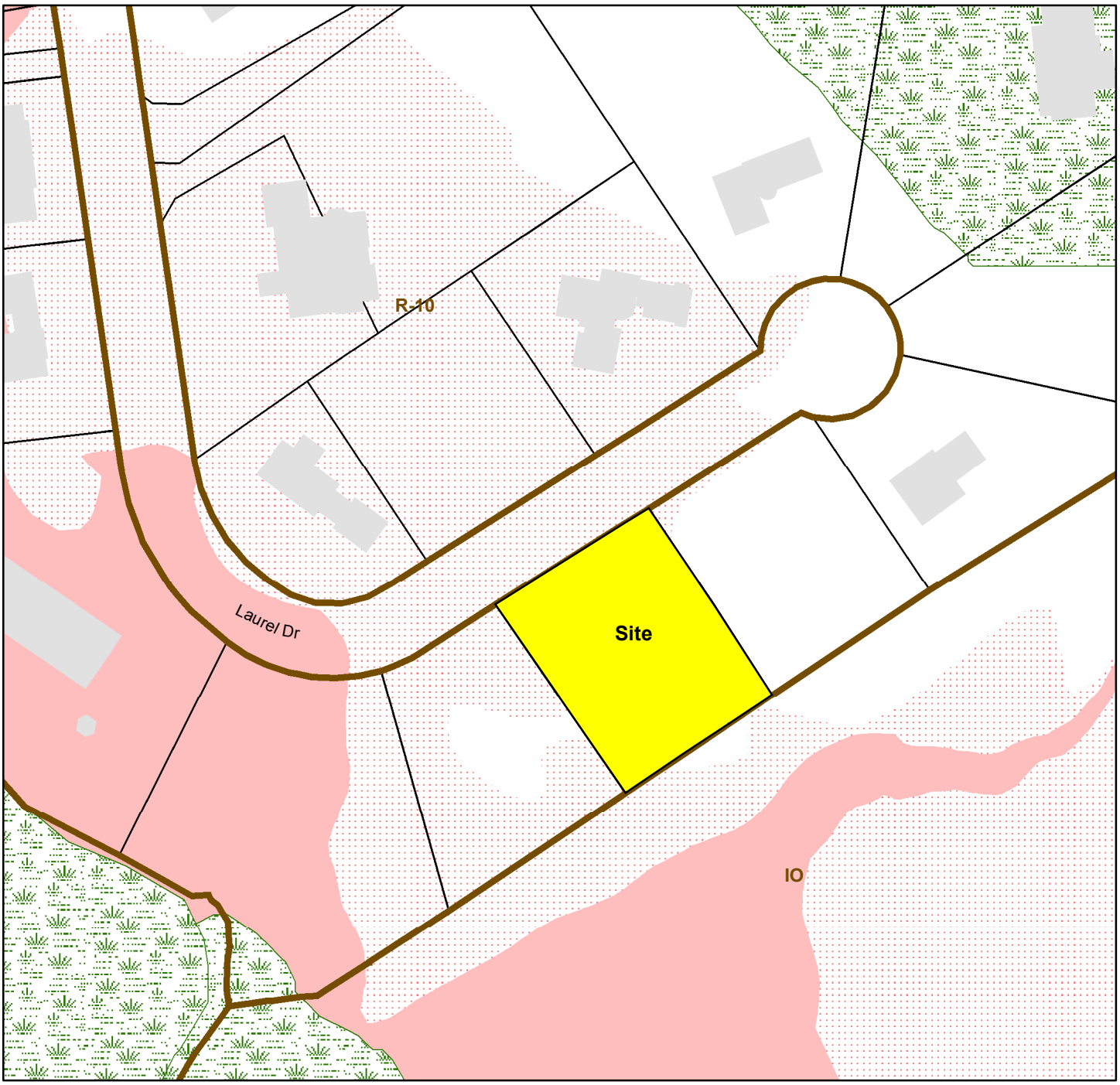
GUIDE TO ATTACHMENTS

Exhibit	Description/Author	# Pages
A	Zoning Exhibit Map (Staff)	1
B	Applicant Statement (Applicant)	1
C	Letter of No Objection from Perry and Karla Boulter (Applicant)	1
D	Site Plan showing Shed Addition (Applicant)	1 (8.5”x11”, landscape)
E	Site Plan showing Existing Conditions (Staff/Applicant)	1 (8.5”x11”, portrait)
F	Construction plans (Applicant)	1 (8.5”x11”, landscape)
G	Site Context (Applicant)	1 (8.5”x11”, landscape)
H	Site Photographs (Applicant)	3 (8.5”x11”, portrait)

City of Dover

Department of Planning & Inspections

Application No.: V-16-08



Title: Lands of John W. & Donna Warren
Address: 82 Laurel Dr
Parcel ID: ED-05-077.14-01-35.00-000
Zoning: R-10 (One-Family Residence Zone)
Owner: John W. & Donna Warren
Date: 7/12/2016

Legend

- Zoning
- Dover Parcels

Flood Hazard Zones

Annual Risk/Elevation

- 1% Base Elevation
- 1% No Base Elevation
- 0.2%

N W E S

0 60 120 240 Feet

City of Dover

Board of Adjustment

July 20, 2016

V-16-09

Address:	33-35 South Bradford Street
Location:	On the east side of South Bradford Street between Division Street and Reed Street
Tax Parcels:	ED-05-077.05-04-08.00-000 ED-05-077.05-04-08.01-000 ED-05-077.05-04-22.01-000
Applicant/Owner:	Richard T. and Darlene M. Dillard
Application Date:	June 14, 2016
Present Zoning:	RG-1 (General Residence Zone)
Present Use:	Residential
Reviewed By:	Bill Cook, Planner I
Variance Type:	Area Variance
Variance Requested:	Variance from the requirements of Zoning Ordinance Article 3 §1.15 (e) pertaining to the minimum lot area and requirements related to keeping of chickens in One-Family and General Residence zones.

Description
The applicant is seeking a variance to continue keeping small chickens that the owner has maintained prior to recent *Zoning Ordinance* changes relating to the keeping of chickens in residence zones.

The applicant is requesting an Area Variance from the requirements of *Zoning Ordinance* Article 3 §1.15 (e) pertaining to the minimum lot size required (10,890 SF or ¼ acre) for keeping chickens in One-Family Residence zones, and the keeping of roosters.

Zoning and Adjacent Land Uses
A Zoning Map exhibit (Exhibit A) prepared by staff is attached to this report showing the zoning and parcel locations. The property is unique in that it is actually composed of three (3) lots owned and used by the Dillards. The residence was originally designed as a duplex structure on two (2) lots with a party wall, but the structure is now used as a one-family residence.

The subject property is RG-1 (General Residence Zone). The code pertaining to "uses permitted" in RG zones refers to all permitted uses in "R" One-Family Residence zones.

Surrounding properties on both sides of South Bradford Street are all zoned RG-1. Adjacent properties across the alley to the east which front on South State Street are zoned RG-O (General Residence and Office Zone).

Exhibit B provided by Staff is a photo aerial showing the property's back yard, vegetation, structures, and approximate location of the coop. Exhibit C consists of photos of the coop and birds.

Code References
Ordinance #2016-01 was adopted by City Council at its meeting of April 11, 2016. The ordinance modified *Zoning Ordinance* Article 3 §1.15 (District Regulations: One-Family Residence Zones, Accessory Uses) subsection (d) related to keeping domestic animals, and added subsection (e) related to keeping of chickens. The adopted code related to keeping chickens is as follows:

1.15 Accessory uses, limited to the following:

(e) Keeping of chickens for individual domestic purposes subject to the following restrictions:

i. Keeping of chickens shall not be permitted on lots smaller than 10,890 square feet in lot area.

ii. No more than five (5) chickens shall be permitted on a residential lot.

iii. Chickens shall be registered with the Delaware Department of Agriculture.

iv. Chickens shall be penned in a coop that shall be at least four (4) square feet per chicken.

v. All chicken coops shall be located in a rear yard and shall be a minimum of 20 feet from side and rear property lines.

vi. Any odor associated with the chickens shall not be discernable from property lines.

vii. Keeping of roosters shall be prohibited.

viii. Any lot with chickens shall either comply with these requirements by June 1, 2016 or remove the chickens.

The applicant requests a variance in order to keep chickens that were present prior to the passage of the recent ordinance. A comparison of the requirements of *Zoning Ordinance* Article 3 §1.15 and the facts regarding the applicant's property is found in Table 1.

Table 1: Zoning Requirements; keeping of chickens
V-16-09 Lands of Dillard, 33-35 South Bradford Street

	REQUIREMENT		APPLICANT'S PROPERTY	
i.	Minimum lot size:	10,980 SF	Parcel:	Area (SF)
			ED-05-077.05-04-08.00-000	3,671
			ED-05-077.05-04-08.01-000	3,483
			ED-05-077.05-04-22.01-000	607
			Total:	7,761
ii.	Maximum # chickens:	5	2	
iii.	Registration with Del. Dept. Agriculture		--	
iv.	Minimum coop size per chicken:	4 SF	Approx. 16 SF total (8 SF ea.)	
v.	Required location:	Rear Yard Min. 20 feet from side & rear lot lines	Complies	
vi.	Odor must not be discernable from property lines		Applicant claims to comply	
vii.	Roosters prohibited		Applicant has one (1) bantam rooster	
viii.	Compliance required by 6/1/16 or removal		Applicant requests variances to permit keeping existing chickens	

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 part of the application, the applicant was asked to summarize how the requested variance relates to the criteria. The applicant's response is provided below along with a staff assessment of the application in accordance with the required criteria.

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

   Applicant Responses:
   "this property is zoned RG-1, General residential zone."

   Staff Response:
   The RG-1 zoning district is found in older parts of central Dover and often encompasses properties that existed before zoning was enacted. Housing types found in RG-1 may include single-family detached dwellings, duplexes, and legal non-conforming apartment conversions of former one-family dwellings and other apartment buildings. It is common within RG-1 for a variety of legal non-conforming conditions to be present related to lot area, setbacks, lot coverage, and other issues.

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

   Applicant Responses:
   "the immediate neighbors to our left are an abandoned property, and next to that is a property that is for sale and vacant. Our neighbors to our right is a duplex - one side an apartment building and the other side a single family home, next to them another property for sale. Behind us, after our yard and garage, there is an alley and then a single family home."

   Staff Response:

Staff concurs with the general description of the area and further notes that the garage at the rear of the property and landscaping and fencing on the sides enclose the back yard.

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

   Applicant Responses:
   "Section 1.15 e subsection i: the removal of the restrictions on my property will not affect the neighboring properties or their uses. The neighboring properties did not even know I had bantams, and except for this new ordinance, and this request for a variance probably never would have. They cannot see, smell, or hear my pet bantams. Our backyard has a privacy fence and my coop is cleaned daily, the waste and bedding is thrown away, (I would compost but thought that might get smelly.) Section 1.15 e subsection iv: Same answer, Bantam chickens being 1/3 the size of regular chickens do not require as much space in the coop. Section 1.15 e subsection vii: Same answer, my rooster is not a disturbance in the neighborhood at all."

   Staff Response:
   Code Enforcement staff has not received any complaints or concerns in regards to this property. Staff cannot comment on the characteristics of the breed, but it is reasonable to assume that a "miniature" of chicken would have less nuisance impacts, such as noise or waste, than their full-sized relatives. Other permitted and customary animals could be much larger and capable of greater disturbance (i.e. barking dogs) than the bantam chickens as described.

   As described by the applicant, the siting of the coop for the chickens is compliant with the setback requirements from the rear and side property lines. The approximate combined width of the two principal lots is 52 feet.

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:
   "If the restriction is not removed I would have to do without the company and companionship of my pets. I would have to find others to take in my pets, and as they are small it may be difficult for them to assimilate into a new flock. I would also lose the joy and comfort I find in caring for them and watching them daily. I also found the June 1 deadline to be a hardship as I did not find out about the ordinance until the middle of May. I had previously checked and was assured that there was no difficulty in my keeping my pet bantams as the previous ordinance did not have property size limits, or coop requirements. Upon finding the new ordinance I called and found out what to do to apply for this variance. I also have a monetary commitment of approximately $1000.00 tied up in their home, well-being and care and application for this variance."

Staff Response:
Staff notes that subsection "viii" of the ordinance provision required removal by June 1, 2016. There was no provision for continuance of a non-conforming use. In the case of live animals kept as pets or hobbies, the requirement for their removal would likely be considered a hardship by the owner. Staff believes that when the ordinance was proposed the City did not take into account the investment that owners may have made in their animals and habitat. Staff also notes the costs and time associated with the requirement for a variance.

Variance Recommendations:
Staff recommends approval of the variance:

- The proposed variance and planned use would not be out of character for the zone and the surrounding uses.
- Staff believes that the existing setback from the property lines, and the existing vegetation and buildings provide what appears to be effective screening from neighboring properties.
- Staff supports a variance to allow the keeping of the existing bantam rooster, citing applicants' response to Criteria 3.
- The case is not typical, but staff notes a reasonable proportionality to the variance request. While the total lot area is less than that required by the ordinance, the number of animals being kept is fewer than the maximum permitted, and the applicant also states that this particular smaller breed of chicken presents minimal nuisance characteristics compared to larger birds.
- This is a new ordinance and Staff is monitoring implementation in order to understand potential issues as they relate to code enforcement or future recommendations for amending the ordinance.

Advisory Comments to the Applicant:
- None

GUIDE TO ATTACHMENTS

Exhibit	Description/Author	# Pages
A	Zoning Map Exhibit (Staff)	1
B	Aerial Photo Exhibit (Staff)	1
C	Photos of coop and birds (Applicant)	2

City of Dover

Department of Planning & Inspections

Exhibit A

Application No.: V-16-09



Title: Lands of Richard T. and Darlene M. Dillard
Address: 33-35 South Bradford Street
Parcel ID: ED-05-077.05-04-08.00-000
ED-05-077.05-04-08.01-000
ED-05-077.05-04-22.01-000
Zoning: RG-1 (General Residence Zone)
Owner: Lands of Richard T. and Darlene M. Dillard
Date: 7/12/2016

N
W E
S

0 60 120 240 Feet

Legend

- Dover Parcels
- Zoning
- Historic District


Exhibit B
RGO
Alley
ED05-077.05-04-22.01
ED05-077.05-04-08.00
ED05-077.05-04-08.01
RG-1
Bradford St
RG-1
Aerial Photo Exhibit
V-16-09
33-35 South Bradford St
Date Prepared: 07-13-16
N
0 5 10 20 30 40
Feet
Source: Esri, Digita
USDA, USGS, AEX
User Community


Exhibit C



City of Dover

Board of Adjustment

July 20, 2016

V-16-10

Location:	5780 West Denneys Road
Applicant:	Nikolas Dallas
Owner:	ENG Properties LLC
Tax Parcel:	ED-05-057.01-01-03.00-000
Application Date:	June 16, 2016
Present Zoning:	IO (Institutional and Office Zone)
Present Use:	Vacant Residential Structure
Reviewed By:	Ann Marie Townshend, AICP
Variance Type:	Use Variance
Variance Requested:	Allow for the reestablishment of a nonconforming use (a one-family dwelling) after more than one year.

Project Description:
The applicant is requesting a variance from the *Zoning Ordinance* of Article 7, Section 1.13 - Nonconforming Buildings and Uses, and of Article 3, Section 10 - Institutional and Office Zone (IO), to allow the reestablishment of a nonconforming use after the one-year time frame has elapsed, that use being a one-family dwelling.

Adjacent Land Uses
The properties to the east, south, and west are zoned IO (Institutional and Office Zone). The properties to the north are zoned IL (Limited Industrial), RMH (Residential Manufactured Home) and BG (General Business) in Kent County. The property is in a row of five houses along West Denneys Road; all the land around and behind these houses on the City side of the road is owned by the State of Delaware, and used as the grounds of the Delaware

Technical and Community College. Land uses on the other side of the road in the County include private utility offices, two additional residences, and an automobile service station.

General Information

According to the applicant, the property was actively used as a one-family residence until June 27, 2013, when the property was foreclosed upon. Artisans Bank received the property, and later sold it to ENG Properties, LLC on November 17, 2015. The building has been vacant since the foreclosure. Therefore, the legal nonconforming use as a one-family residence has lapsed under the provisions of Article 7, Section 1.13 of the *Zoning Ordinance,* as the vacancy period has exceeded one year and one-family residences are not a permitted use in the IO Zone.

Code Citations

Article 7 Section 1 - Nonconforming buildings and uses
1.1 Any nonconforming use, except those nonconforming uses specified in [sub]section 1.5, may be continued indefinitely, but:

1.11 Shall not be enlarged, extended, reconstructed or placed on a different portion of the lot or parcel of land occupied by such uses on the effective date of this ordinance, nor shall any external evidence of such use such as traffic, noise, vibration, smoke, dust, odor, heat or glare be increased by any means whatsoever; or

1.12 Shall not be changed to another nonconforming use without a special permit from the board of adjustment, and then only to a use which, in the opinion of said board, is of the same or a more restricted nature; or

1.13 Shall not be reestablished if such use has been discontinued for any reason for a period of one year or more, or has been changed to, or replaced by, a conforming use. Intent to resume a nonconforming use shall not confer the right to do so.

Article 3 Section 10 - Institutional and office zone (IO)
10.1 *Uses permitted.* In an institutional and office zone (IO), no building or premises shall be used, and no building or part of a building shall be erected, which is arranged, intended, or designed to be used, in whole or in part, for any purpose, except the following:

(a) Business, professional, or governmental offices.

(b) Banks.

(c) Research, design, and development laboratories.

(d) Public and institutional uses including hospitals, medical clinics, libraries, police stations, courthouses, transit centers, schools, colleges, universities, places of public assembly, philanthropic and charitable institutions, parks, playgrounds, public indoor recreation centers, athletic fields.

(e) Public utility rights-of-way and structures necessary to serve areas within the city.

(f) Day care centers, provided they are established in accordance with all applicable state regulations pertaining to child care and provided that they are established and maintained in accordance with article 5, section 14 of this ordinance.

(g) Emergency shelters and transitional housing.

Review Standard for a Use Variance
The *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 done.

2.12 Use Variance. A variance shall be considered a use variance if it would permit a use of the subject property that would otherwise not be permitted on the subject property. In considering a request for a use variance, the board shall determine that the following criteria exist and document them in their findings of fact:

> (a) That there are physical conditions applying to the land or building for which the variance is sought, which conditions are peculiar to such land or building, and have not resulted from any act of the applicant or any predecessor in title; and
>
> (b) That the aforesaid circumstances or conditions are such that the strict application of the provisions of this ordinance would deprive the applicant of all reasonable use of such land or building and the granting of the variance is necessary for the reasonable use of the land or building, and that the variance as granted by the board is the minimum variance that will accomplish this purpose; and
>
> (c) That the granting of the variance under such conditions as the board may deem necessary or desirable to apply thereto will be in harmony with the general purpose and intent of this ordinance, will not represent a radical departure therefrom, will not be injurious to the neighborhood, will not change the character thereof and will not be otherwise detrimental to the public welfare.

Review of Application
As a part of the application, the applicant was asked to state how the requested variance relates to the above three criteria. The applicant's responses are provided below, along with a staff assessment of the application in accordance with the required criteria.

1. That there are physical conditions applying to the land or building for which the variance is sought, which conditions are peculiar to such land or building, and have not resulted from any act of the applicant or any predecessor in title.

   Applicant Response:
   The Property, zoned IO, sits on 0.18 +- acres. It contains a single family, 832 square foot, two-bedroom, one-bath home, built in 1952. This property has been in continuous residential use until it was lost in foreclosure to Artisans Bank on June 27, 2013, and then sold via auction to ENG Properties, LLC on November 17, 2015. As such, the non-conforming use cannot be re-established automatically since it had

not been used for more than one year prior to the current owner acquiring the property, as per the City of Dover's Municipal Code, Article 7, Section 1.13.

The property is the middle of five lots, all currently being used for residential purposes as single family homes. Directly across the street from the property are two additional lots, also being used for residential purposes. The rear of the property adjoins the lands occupied by Delaware Technical and Community College.

The property, as currently improved, cannot accommodate any of the uses permitted under the City of Dover's Municipal Code, Article 4, Section 10 (attached hereto as Exhibit A).

The City of Dover's Municipal Code, Article 4, Section 4.15 (attached hereto as Exhibit B) requires a minimum 10,000 square feet of lot area to develop an IO zoned property. The property at issue is 8,110 square feet, and cannot be re-developed, and even if an area variance is requested and approved, it would be too small for any of the permitted uses.

Staff Response:
Staff concurs with the applicant's response that the property (at 8,100 square feet) is less than the required 10,000-square-foot minimum lot size of the IO district, and too small for new development of any of the uses permitted by the district. Additionally, it is surrounded on either side by other similarly zoned properties that are also nonconforming residential uses.

2. That the aforesaid circumstances or conditions are such that the strict application of the provisions of this ordinance would deprive the applicant of all reasonable use of such land or building and the granting of the variance is necessary for the reasonable use of the land or building, and that the variance as granted by the board is the minimum variance that will accomplish this purpose.

Applicant Response:
As stated previously, the property cannot be redeveloped alone, as it does not meet the minimum lot requirements for an IO zoned property, nor can it be re-purposed in its as-is condition for a permitted use. Upon information and belief, the property was re-zoned to IO in either 2003 or 2008 (we could not verify when the rezoning occurred). The only potential user of the property would be Delaware Technical and Community College, whose campus is located at the rear of the property, and who has expressed no interest in acquiring the property (there were no other bidders at the auction), and does not appear to have any interest in the foreseeable future. The variance as requested is the minimum variance that will allow reasonable use of the property as a residential home, and not granting it would deprive the applicant of all reasonable use.

Staff Response:

Staff concurs with the applicant's assessment that there are very few viable uses of the property that would be consistent with the IO zone given the physical characteristics of the property in its size and location among other residential uses.

3. That the granting of the variance under such conditions as the board may deem necessary or desirable to apply thereto will be in harmony with the general purpose and intent of this ordinance, will not represent a radical departure therefrom, will not be injurious to the neighborhood, will not change the character thereof and will not be otherwise detrimental to the public welfare.

   Applicant Response:
   Granting of the variance will be in harmony with the general purpose and intent of the City of Dover Municipal Code, Article 1, Section 2.

   Residential use of the property is in character with the neighborhood, as the house is bounded on both sides by residential homes (two on each side), as well as two residential homes located directly across the street. As previously stated, the house had been in continuous residential use from 1952 to 2013. If the use variance is not granted, the current owner would be unable to use or sell the property, and would have to walk away from it, allowing it to become a detriment and blight to the neighborhood as an empty, boarded up house.

   Staff Response:
   Staff concurs that granting a variance that would allow the property to be used as a one-family residence would be the minimum variance necessary and that it would be in keeping with the harmony and intent of the *Zoning Ordinance*, and that it would not be injurious to the public welfare.

Variance Recommendation:
Staff notes that the standard for a use variance is different and more stringent than the standard for an area variance, as the applicant must demonstrate that the provisions of the ordinance would deprive the applicant of all reasonable use of the land. Additionally, the variance granted must be the minimum variance that would accomplish this purpose. In this case, staff believes that the applicant has demonstrated that these criteria are met and recommends that the Board of Adjustment approve the variance as submitted.

- The applicant has demonstrated that adherence to the requirements of the ordinance would leave him with no real viable use of the land, given the lot size is too small for any of the permitted uses of the zone and the location in the middle of other residential uses.

- The variance requested is the minimum variance necessary to provide for reasonable use of the land.

Advisory Comments to the Applicant

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

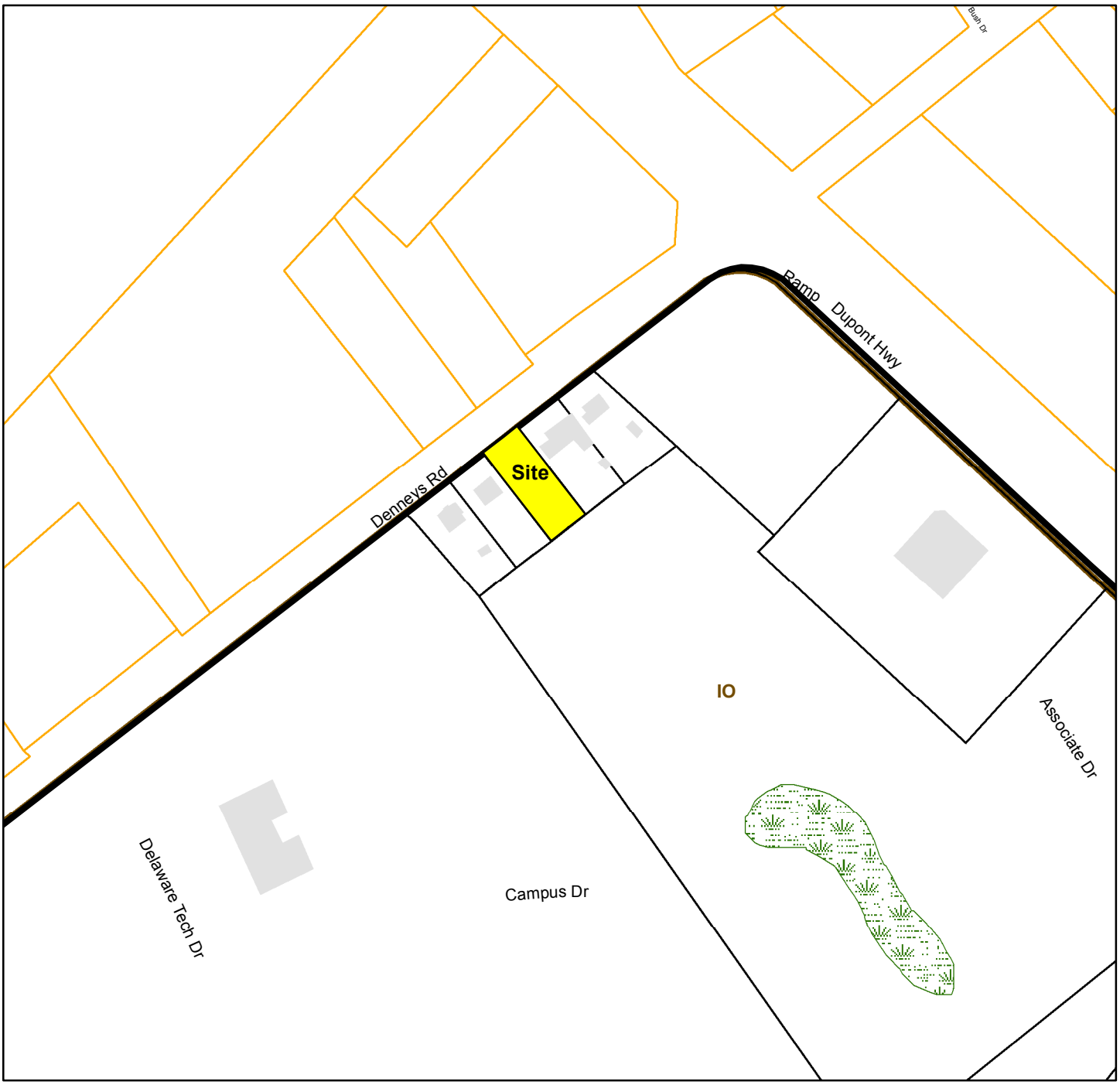
GUIDE TO ATTACHMENTS

Exhibit	Description/Author	# Pages
A	*Zoning Ordinance*, Article 3 §10 (excerpt)	2
B	*Zoning Ordinance,* Article 4 §4.15	2
C	Zoning Exhibit Map (Staff)	1
D	Photo Binder (Applicant)	5 (8.5”x11”, landscape)
E	Context Maps (Applicant)	2 (8.5”x11”, portrait)
F	Site Plan (Applicant)	1 (8.5”x14”, landscape)

City of Dover

Department of Planning & Inspections

Application No.: V-16-10



Title: Lands of ENG Properties LLC
Address: 5780 West Denneys Road
Parcel ID: ED-05-057.01-01-03.00-000
Zoning: IO (Institutional and Office Zone)
Owner: ENG Properties LLC
Date: 7/12/2016

Legend

- Dover Parcels
- Zoning
- Kent County Parcels

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