CITY OF DOVER BOARD OF ADJUSTMENT
AGENDA
Wednesday, October 15, 2014 at 9:00 AM

City Hall Council Chambers
15 Loockerman Plaza, Dover, Delaware

ROLL CALL

APPROVAL OF AGENDA

APPROVAL OF MINUTES of August 20, 2014 Meeting

APPROVAL OF MINUTES OF EXECUTIVE SESSION of July 23, 2014 Meeting

NEW BUSINESS

Applicant #V-14-11
1084-1086 South State Street. Dover Family Properties, LLC 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-2A (Limited Central Commercial Zone). The Tax Parcels are ED-05-077.17-07-19.00-000 and ED-05-086.05-02-21.00-000. The owner of record is Dover Family Properties, LLC . *In its meeting of August 6, 2014 the Planning Commission approved a Site Development Plan (S-14-16) which includes a Minor Lot Line Adjustment Plan.*

Applicant #V-14-12
200 Garrison Oak Drive. (Lot 12 Garrison Oak Technical Park). Uzin Utz Manufacturing North America, Inc., has requested a variance from the requirements of Article 5 §7.5 of the *Zoning Ordinance* related to the height of fencing in the required front yard. Subject property is zoned IPM-2 (Industrial Park Manufacturing Zone – Technology Center). The Tax Parcel is LC-05-068.00-02-12.00-000. The owner of record is Uzin Utz Manufacturing North America, Inc.

Applicant #V-14-10
Lands of Mathew E. Mitten, South Side of Lafferty Lane. Mathew E. Mitten has appealed the decision of the City Planner to the Board of Adjustment regarding the interpretation of the *Zoning Ordinance* pertaining to the definitions of allowed uses in the IPM (Industrial Park Manufacturing) Zone in Article 3 §20 as related to a citation to cease operations pending the approval of a Site Development Plan pursuant to Article 3 §20.6 and Article 10 §2. Subject properties zoned IPM (Industrial Park Manufacturing Zone). The Tax Parcels are ED-05-077.00-01-26.00-000 and ED-05-077.00-01-27.00-000. The owner of record is Mathew E. Mitten.

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
August 20, 2014

A Regular Meeting of the City of Dover Board of Adjustment was held on Wednesday, August 20, 2014 at 9:00 A.M. with Chairman Sheth presiding. Members present were Mr. Hufnal, Colonel Ericson, Mr. Senato, and Mr. Keller.

Staff members present were Mrs. Townshend, Mrs. Purnell, Mr. Cook, Mrs. Harvey, and City Solicitor William Pepper.

APPROVAL OF AGENDA

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

APPROVAL OF THE REGULAR BOARD OF ADJUSTMENT MEETING MINUTES OF JULY 23, 2014

Mr. Keller moved to approve the meeting minutes of July 23, 2014 with the necessary corrections, seconded by Mr. Hufnal and unanimously carried 5-0.

OPENING REMARKS CONCERNING DEVELOPMENT APPLICATION

Mrs. Townshend, Director of Planning and Community Development stated that the meeting would be conducted in accordance with the approved agenda. There is one item on the agenda; one 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 application on this agenda was completed in accordance with code requirements. The meeting agenda was posted in accordance with Freedom of Information Act requirements.

NEW BUSINESS

Applicant #V-14-09:

10 Maggies Way. Ferguson Enterprises, Inc., has requested a variance from the requirements of Article 4 §4.15 of the *Zoning Ordinance* for parking as related to the definition of "floor area" in Article 12 of the *Zoning Ordinance*. Subject property is zoned C-3 (Service Commercial Zone). The Tax Parcel is ED-05-078.00-01-10.01-000. The owner of record is Chung Sing, LLC, to be conveyed to Ferguson Enterprises, Inc.

Mr. Bill Cook, Planner, submitted the following items for the record: staff report, application and plans submitted by the applicant.

The legal notice was published in the Delaware State News on August 10, 2014, and the public was notified in accordance with the regulations.

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

Representative: Mr. John Paradee, Attorney at Prickett Jones & Elliott PA.

Mr. Paradee apologized that his client's principal engineer was not able to be present today due to a scheduling conflict, but he is available via telephone for any questions. Mr. Paradee explained before you today is a fairly simple and straight forward application for an Area Variance as indicated by Mr. Cook. The applicant is seeking an Area Variance from the requirements of Article 4 §4.15 of the *Zoning Ordinance* for parking. In this particular instance the code creates a bit of an anomaly because of the unusual configuration of the property. Adding outdoor storage space under the code would require the addition of one parking space per 300 feet of additional outdoor storage space because the code includes the outdoor storage space in the definition of floor area. In order to use the outdoor space for outdoor storage, the business would have to compete with parking. Therefore, they are competing for storage and parking at the same time. The property is simply not large enough. The staff report indicates under the code that the parking requirement would be 90 spaces. Given the nature of this business, a wholesale plumbing supply distribution facility,the business does not have a lot of traffic or customers. There is really no need for that many parking spaces nor is there any need for the 14 parking spaces. If you review the application and the staff report it lays out why this application meets the criteria for an Area Variance very nicely. First, the requested variance is consistent with the nature of the zone in which the property lies. It is zoned C-3. Second, the requested variance does not change the character of the immediate vicinity. Third, granting the Area Variance would not seriously affect neighboring properties and uses in any manner. Fourth, if the literal parking restrictions here were enforced it would create an Exceptional Practical Difficulty for the owner in its efforts to make normal improvements in the character of that use of the property which is in fact a permitted use under the code. He would submit respectfully that this is a classic case that cries out for an Area Variance and it is an Exceptional Practical Difficulty, and would therefore be a geographical or dimensional requirement of the code that technically cannot be met.

Responding to Mr. Hufnal's question the total number of employees, Mr. Paradee stated that there would be 3-5 employees with a minimum of three (3) and a maximum of five (5). The business also anticipates no more than 5-6 wholesale customers at any given time. So there would be a total of 8-12 people on the property at any given time.

Responding to Mr. Hufnal's comment that the Zoning Ordinance indicates that it gives the option of one (1) parking space per 300 S.F. floor area or one (1) parking space per employee, Mrs. Townshend stated that whichever is greater.

Mr. Paradee stated that the wording is strange in the code, because if you want to use the outdoor storage space for every 300 S.F. you would need to add a parking space and in this case it does

not make any sense. He could imagine where there are instances it would make sense, but not in this case.

Mrs. Townshend stated that in the staff report it was indicated that the same use would be permitted in the IPM Zone where the parking requirement is one (1) per 800 S.F. of floor area. The issue is the parking in the zone and not the parking for the use. It would not diminish the character of the area because it could be done with less parking in another zone.

Responding to Colonel Ericson's question if the 14 spaces were exceeded where would the overflow park; Mr. Paradee stated the applicant indicated that any overflow parking could be accommodated in the outdoor storage space which would not be completely covered. The area would be fenced in and there would have to be some area to allow for inventory to be moved.

Responding to Colonel Ericson's question whether they were going to establish parking spaces in the storage area for employees which would free up more space out front and is it the intent to amend the request to make it twenty (20) parking spaces since there will be designated storage area for employees, Mr. Paradee stated that he did not know the answer to that question because he was not sure that they were able to calculate exactly how many spaces there would be in the overflow area. They would need to get into a fairly specific site plan.

Colonel Ericson commented as he referred to the staff response that states "the applicant has indicated that the enclosed outdoor sales and storage area will continue to be used for employee parking, thus further reducing demand on the fourteen (14) spaces that they propose providing on the site" therefore; this would indicate if you take the five (5) employees it would then be nineteen (19) spaces. If there are going to be nineteen (19) spaces then it should be designated. Responding to Colonel Ericson, Mr. Paradee stated that he did not think it would be a huge problem if what is being suggested that there would need to be a minimum of five (5) spaces available for employees in the overflow area. He thought that would be fine.

Responding to Colonel Ericson's question of how they came up with customers due to the wholesale business though he was not very familiar with the wholesale business process, but from the few visits with wholesale that he had majority of the time wholesale business has a maximum of six (6) customers at any given time, Mr. Paradee stated that he could do a conference call to the applicant.

Conference Call

Andrae Vian was sworn in by Mr. Pepper.

Mr. Paradee reiterated the questions by the Board of Adjustment

Question: How many parking spaces will be designated for employees parking in the overflow in the outdoor storage area and can you accommodate five (5) overflow parking spaces for employees only; Mr. Vian stated yes, the outdoor storage space is reserved by parking space, it will be a revolving area.

Mr. Paradee stated that Colonel Ericson suggested that a minimum of five (5) parking spaces be designated to be available at all times for employees.
Responding to Mr. Paradee if the above statement was a fair characterization, Colonel Ericson concurred.

Mr. Paradee stated that the question below was critical to the application because there is not going to be a huge demand for parking because you have a low number of employees and a low number of customers.

Question: How can you determine and commit to a number of 5-6 wholesale customers on site at any given time that would be the maximum; Mr. Vain stated that it is based on the character of their plumbing wholesale business as well as other similar properties they have around the nation. Generally, on average they only have 5-6 customers at any given time. They are not a Home Depot or Lowes type of retailer. They do not have homeowners coming in to buy plumbing products. It is contractors and others who are engaged in very large projects.

Question: the way the parking spaces would play out is that there would be fourteen (14) spaces dedicated for customers and five (5) spaces for employees and if that would be more than sufficient, Mr. Vain concurred.

Responding to Colonel Ericson's question whether the number exceeded to twenty (20) where would the other five (5) vehicles park; Mr. Vain stated that normally an outdoor storage yard is created and if that was the case this would be opened for the additional parking.

Responding to Mr. Paradee's question if this would be foreseen as a likely prospect, Mr. Vian stated absolutely not.

Responding to Mr. Paradee's question that it was comforting for the Board of Adjustment to understand that there will be sufficient space within the outdoor storage area to accommodate any overflow parking that you would foreseeably experience, Mr. Vian concurred.

Responding to Colonel Ericson's question whether there was a copy (drawing) of the site, Mrs. Townshend stated that it was included in the packet.

Responding to Mr. Keller's question whether the operation is intended to be clearly a wholesale operation with no retail customers coming to the site, Mr. Paradee and Mr. Vian concurred.

Responding to Mr. Keller's question whether in the event of a year-end sale public parking is permitted on Maggies Way, Mrs. Townshend stated that Maggies Way is not a city street, but it is the Bryan Business Park and there are other tenant spaces in the area that would have parking if there was some type of mass rush on plumbing wholesale.

Responding to Mr. Keller's question whether they were aware of any condition that would prohibit someone stopping and walking into the wholesale business for questions, etc. to prohibit parking on Maggies Way, Mrs. Townshend stated that she has seen parking throughout the

business park for events that happened at Fordham Brewery Company. There seems to be some precedent that people park wherever parking is available if the businesses are not open.

Responding to Mr. Keller's question in response to the question regarding any serious affect to neighboring properties and the statement made by staff if "the majority of properties on Maggies Way have less parking provided than the one (1) space per 300 S.F. of floor area required in the C-3 zone" how did this come about and is it legal non-conforming, in violation of zoning or have they otherwise been permitted, Mrs. Townshend stated that the assumption would be that perhaps that overtime the zoning changed, either the requirements within the *Zoning Ordinance* or the zoning of the property could have changed. It could predate the current requirements and in that case it would be legal non-conforming. It was all constructed within the site plan, but the site plan probably goes back twenty (20) or more years.

Responding to Mr. Keller's question that you don't necessarily know for a fact that "the parking provided at surrounding properties appears more than adequate for their uses" gleaming from comments and testimonies this property would have without a doubt more than adequate for their intended use and as well would be fair to say, Mrs. Townshend concurred.

Responding to Mr. Senato's question that the business would be strictly plumbing wholesale with no retail, but there are other wholesale plumbing businesses within the City of Dover and occasionally the general public (retail traffic) will walk in knowing that the business is there. It was mentioned by Mr. Vian that this would not happen, but if it does happen there would be a parking issue, he could not understand or believe that there would not be any general public buying an item on a retail basis, what assurances can be offered to the Board of Adjustment that it will not become a significant problem, Mr. Vian stated the nature of the products sold are wholesale and not the type of products that you would fine at Lowes or Home Depot. While there may be retail customers who wander in from time to time it is not the type of products that retail customers would be looking for.

Chairman Sheth stated that normally average business would require parking that is needed. If there was a big sale on plumbing it would only happen one or two days in a year. It does not happen every day as he compared it to other big events that only happen once or twice a year.

Mr. Paradee stated that if you appreciate the type of customers that this business would appeal too it would take quite a mad rush indeed for all of the contractors in Kent County to show up at this business at the same and this is just not going to happen. The audience for this particular business is very limited.

Chairman Sheth stated that even if it did happen it would be a good sign for the business. Generally, most of the contractors come before regular hours.

Responding to Mr. Keller's question that the applicant and owner are listed as Chung Sing LLC to be conveyed to Ferguson Enterprises Inc., and the application was signed by a Mr. Kirk D. Wall, Senior Director of Facilities; is this for Chung Sing LLC or is he the Senior Director of Facilities for Ferguson Enterprises Inc., Mr. Paradee stated that the applicant is Ferguson Enterprises Inc., Equitable Owner and they are purchasing the property, the current title owners

are Chung Sing LLC who is present today. They can be asked if consent is given for this application.

Ms. Kam –Yin Yeung was sworn in by Mr. Pepper.

Ms. Kam –Yin Yeung principal of the LLC, owner of the property, gave consent to the application.

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

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

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

Mr. Keller moved that Application V-14-09 be approved as submitted based on the testimony heard today and staff recommendations for approval with regards to all of the expectable responses with regard to the character of the zone and the surrounding areas, the similar types and uses in the business park noted, acceptable response to questions regarding parking and comments made regarding very similar circumstances within IPM (Industrial Park Manufacturing) zone uses. The motion was seconded by Mr. Hufnal and unanimously carried 5-0.

Colonel Ericson moved to amend the current motion to include the additional five (5) spaces will be reserved within the outdoor storage area for employee parking. The motion was seconded as amended by Mr. Senato and unanimously carried 5-0.

Responding to Mr. Senato's question whether the discussion that happened over a year ago regarding applicants coming before the Board of Adjustment with mistakes or oversight on plan review, engineering, or site plans, for example the library, that was occurring rather frequently that some form of an additional fee would be added and he wanted to know the status, Mrs. Townshend stated that she have been working on a fee review and at one point it was taken to Council Committee and it was sent back to staff. She cannot levy any fees administratively. Part of the fee proposal that she put together was deferrals or reoccurrence. At this point it is in a proposal that is in limbo. The Legislative, Finance, and Administration Committee sent it back to staff to work with the business community. She has been in discussions with the Chamber since it has been in limbo.

Mr. Keller stated that he wanted to raise a question with regard to the reasoning for his questioning of the fee holder today and the applicant making the application, etc. He thought that one (1) to two (2) years ago there was an incident or two (2) where the applicant was not the fee owner, Responding, Mrs. Townshend stated that the application specifically states that "I (name) do affirm that I am the property owner on which the variance is sought and that the information provided in this application is accurate to the best of my knowledge and belief." So,

with an LLC the office does not know who the principals are who are permitted to sign, so they have to accept it. The owner should be signing and not the equity owner. She stated that she would speak with Mr. Paradee in regards to that because she wants the owner signature on the application.

Mr. Keller stated that from a staff perspective to keep this in mind because once a variance is approved it attaches to the property and not an individual and sometimes sale agreements fall apart. Mrs. Townshend concurred and stated that she had the same observation as it was being discussed.

Mrs. Townshed stated that there have been times where items were being held up because they were waiting on the owner signature.

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

Meeting adjourned at 9:42 A.M.

Sincerely,

Maretta Savage-Purnell
Secretary

City of Dover

Board of Adjustment

October 15, 2014

V-14-11

Location:	1084-1086 South State Street
Applicant/Owner:	Dover Family Properties, LLC c/o Venetia N. Dover
Tax Parcels:	ED-05-077.17-07-19.00-000 ED-05-086.05-02-21.00-000
Application Date:	August 15, 2014
Present Zoning:	C-2A (Limited Central Commercial Zone)
Present Use:	Vacant lots
Proposed Use:	Office Building (Medical Office – Dentist)
Reviewed By:	Bill Cook, Planner I
Variance Type:	Area Variance
Variance Requested:	To increase the parking on site above the maximum number of spaces permitted by *Zoning Ordinance*.

Project Description

At its meeting of August 18, 2014, The Planning Commission approved application S-14-16 to permit construction of a new 2,730 S.F. medical office and associated site improvements for Dover Family Cosmetic Dental. The plan includes a Minor Lot Line Adjustment Plan to consolidate two parcels to form a single 23,214 S.F. parcel.

This project will construct a one story building for the proposed use as a dental office. The plan proposes a site entrance/exit onto South State Street. The parking lot is shown on the east and south sides of the proposed building.

The applicant is requesting an area variance from the requirements of *Zoning Ordinance,* Article 6 §3.11 for parking.

Adjacent Land Uses

The subject property is zoned C-2A (Limited Central Commercial Zone), located on the west side of South State Street between Wyoming Avenue and South DuPont Highway.

Surrounding properties to the north and fronting South State Street are also zoned C-2A. Properties across South State Street to the north and south are zoned C-4 (Highway Commercial Zone) and SC-2 (Shopping Center Development). The properties bordering the west (rear) and south (left) property lines of the final assembled subject parcel are outside City limits.

Code Citations

The proposed use as a dental office would be classified as a type of business/professional office and is permitted in the C-2A (Limited Central Commercial Zone) as outlined in *Zoning Ordinance* Article 3 §14.1(b).

The Zoning Bulk and Parking Regulations found in *Zoning Ordinance* Article 4 §4.14 for parking in the C-2A zoning district requires the greater of one (1) off-street parking space per 300 S.F. of floor area or one (1) parking space per employee. Calculations under the provisions of Article 6 §3.1 for "Medical Offices-All types" are the same as the zoning district regulations for parking.

Zoning Ordinance Article 6 §3.11 states that "the maximum number of parking spaces shall not exceed 25 percent over the number of parking spaces required by the code."

Table 1 shows a summary of the required, maximum, and requested parking provisions for the site under the proposed development scenario for the site.

Table 1
Off-Street Parking Calculations
1084-1086 South State Street (V-14-11)

Proposed Condition		**Parking Spaces**
Required By Floor Area		
Proposed Structure (S.F.)	2,730	
Required Parking*		10
Maximum Parking Permitted		13
Requested Parking		23
Required by Employee Count		
Number of Employees	12	
Required Parking*		12
Maximum Parking Permitted		15
Requested Parking		23

* Code requires the greater of either calculation method

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:
   "The property is in a C-2A zone. The proposed use as a dental office is permitted and is classified as a business/professional office."

   Staff Response:
   The requested variance is consistent with the nature of the zone in which the property lies. The property is zoned C-2A (Limited Central Commercial Zone) which is a mixed-use zone characterized by a wide variety of retail, office, and service uses for the general public. Residential uses, including single-family and multi-family dwellings are also permitted and found in C-2A zones. All such uses are found within a short radius of the subject property, including residential uses, as well as business and professional uses located in converted single-family structures.

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

   Applicant Responses:
   "The property is located on the west side of S. State Street between Wyoming Avenue and US. 13. The property is bounded by CNMRI on the north; S. State Street on the east; a tattoo parlor on the south; and a woodland on the west."

Staff Response:
The requested variance does not change the character of the immediate vicinity at the present time. Other medical offices (CNMRI) are located on the adjacent property to the north and rear of the subject property. Surrounding properties are typically one or two-story structures. A shopping center is across South State Street housing several retail businesses. Paved surface parking lots are typical of most commercial properties.

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

Applicant Responses:
"The proposed project will have a dedicated entrance on S. State Street with no interconnection to any adjacent properties. The additional 8 spaces requested will not have an effect on neighboring properties and uses."

Staff Response:
The subject property has sufficient space to allow for additional parking on site. The provision of additional parking would not impact adjacent properties, and would reduce the likelihood of visitors of the subject property seeking parking on adjacent properties.

The landscape plan approved as part of the approved Site Plan shows plantings of evergreen and deciduous trees, shrubs, other plants and grass along the South State Street frontage. This approximately 20 foot deep landscaping strip between the right-of-way and the edge of the parking lot will likely enhance the corridor and reduces the visual impact of any parking lot development.

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:
"Parking facilities are very important for both staff and patients. Convenient parking can have a favorable influence on patients' perceptions of a dental office. Dental offices typically require more parking spaces due to the frequency of appointments throughout the day. A rule of thumb for determining the number of parking spaces needed for a dental office is to multiply the number of treatment rooms by 1.5 and add in the number of staff parking spaces. There are seven (7) treatment rooms and 12 staff members for a total requirement of 23 parking spaces. A parking count less than 23 spaces will not allow the business to operate efficiently nor meet the demand of patient traffic. This would negatively impact the long term sustainability of the practice."

Staff Response:
Staff concurs with the applicant's argument regarding the need for parking due to the volume of patients and relatively fast "turnover" of patients in a dental office compared

to other types of medical offices and general types of offices. The space demands of a dental office may be different than other medical offices, meaning that staff may be able to serve many more patients in a smaller space than would be required by other types of medical specialties, thus creating a more intensive but efficient utilization of the facility. The *Zoning Ordinance* parking calculations make no distinction regarding medical specialties or operational differences, thus the conventional calculation method based on building square footage may be insufficient compared to actual parking demand.

Variance Recommendations:

Staff recommends approval of the variance for the increase in parking to a total of 23 spaces for reasons as follows:

- The proposed variance would not be out of character for the zone and the surrounding uses.
- The parking proposed by the applicant is reasonable considering the demands of the business. The *Zoning Ordinance* does not differentiate between dental offices and other types of medical or professional offices.
- Parking can be accommodated on the property without impacting the ability of the property to comply with lot coverage and bulk standards of the *Zoning Ordinance.*

Office Location
SunRay Professional Center
155 S. Bradford Street
Suite 200
Dover, DE 19904

Mailing Address
P.O. Box 558
Dover, DE 19903

Phone: 302-672-0610
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www.mountainconsultinginc.net

mountain consulting
CIVIL ENGINEERS

Kim I. Adams
President

Troy L. Adams, P.E.
Vice President

VARIANCE REQUESTED

Dover Family Properties, LLC is a seeking an area variance to increase the number of parking spaces from the maximum allowable fifteen (15) parking spaces to a total of 23 spaces. The parking requirement in the C-2A zoning district is one (1) parking space per 300 SF of floor area or one space per employee, whichever is greater. Based on twelve (12) employees, the minimum number of spaces required is twelve (12) and the maximum is fifteen (15).

RESPONSE TO CRITERIA

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

   The property is in a C-2A zone. The proposed use as a dental office is permitted and is classified as a business/professional office.

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

   The property is located on the west side of S. State Street between Wyoming Avenue and US. 13. The property is bounded by CNMRI on the north; S. State Street on the east; a tattoo parlor on the south; and a woodland on the west.

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

   The proposed project will have a dedicated entrance on S. State Street with no interconnection to any adjacent properties. The additional 8 spaces requested will not have an effect on neighboring properties and uses.

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 permitted uses under the provisions of the zoning ordinance.

Parking facilities are very important for both staff and patients. Convenient parking can have a favorable influence on patients' perceptions of a dental office. Dental offices typically require more parking spaces due to the frequency of appointments throughout the day. A rule of thumb for determining the number of parking spaces needed for a dental office is to multiply the number of treatment rooms by 1.5 and add in the number of staff parking spaces. There are seven (7) treatment rooms and 12 staff members for a total requirement of 23 parking spaces. A parking count less than 23 spaces will not allow the business to operate efficiently nor meet the demand of patient traffic. This would negatively impact the long term sustainability of the practice.

City of Dover

Board of Adjustment

October 15, 2014

V-14-12

Location:	200 Garrison Oak Drive Garrison Oak Technical Park
Applicant/Owner:	Uzin Utz MFG North America, Inc.
Tax Parcel:	LC-05-068.00-02-12.00-000
Application Date:	September 12, 2014
Present Zoning:	IPM-2 (Industrial Park Manufacturing – Technology Park)
Present Use:	Manufacturing Facility – under development
Proposed Use:	Manufacturing Facility
Reviewed By:	Ann Marie Townshend, AICP
Variance Type:	Area Variance
Variance Requested:	Elimination of the 4-foot restriction of a fence in the front yard

Project Description

The applicant is requesting to erect a 6-foot-tall fence within the front yard of the property. The required front yard is 60 feet. The applicant requests a variance to located the fence 15 feet into the setback, or 45 feet from the property line.

Adjacent Land Uses

The subject property is located within the Garrison Oak Technology Park, which is zoned IPM-2. The adjacent lots are undeveloped.

Code Citations

Zoning Ordinance, Article 5 – Supplemental Regulations, Section 7.5:

> 7.5 *Fences.* Fences or walls shall be limited to a maximum height of four feet above the ground when situated within front yard areas, and shall be limited to a maximum height of eight feet above the ground when situated within side and rear yard areas. Fences situated on corner lots shall be subject to the provisions of article 5, section 1.3. For the purposes of this provision, on lots with dual street frontage that are not corner lots, a fence situated to the rear of the principal structure shall be limited to a maximum height of eight feet above ground. Fences or walls with a height in excess of eight feet above the ground shall conform to the setback requirements for dwelling buildings as set forth in article 4 of this Appendix. Fence material commonly referred to as "barbed wire" and/or "razor wire," or any similar material shall be prohibited along property lines which adjoin residential zones.

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:
   "Industrial Park Manufacturing 2 (IPM 2)"

   Staff Response:

The property is located within the Garrison Oak Technology Park, which is zone IPM-2 (Industrial Park Manufacturing – Technology Center).

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

   Applicant Responses:
   "The property, for which this variance is applied for, is located on Lot #12 on Garrison Oak Technical Park. Lot #12 is going to have the future street address 200 Garrison Oak Drive. Lot #12 is surrounded by Lot #11 to the north, which is a parcel on Garrison Oak Technical Park and currently not occupied, but a future lot for industrial use. To the south, Lot #12 is surrounded by a stormwater management pond and to the west by a swale and Route 1 in extension of the property. To the east, Lot #12 is connecting to Garrison Oak Drive, which is a loop road into and out of the Industrial Park."

   Staff Response:
   The Garrison Oak Technology Park is largely undeveloped, with only the Dover Sun Park, the active construction on the Garrison Energy Center, and the subject site. Delaware Route 1 is located immediately west of the subject property. Garrison Oak Drive is the internal street serving all lots within the Garrison Oak Technology Park.

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

   Applicant Responses:
   "The applicant plans to move the fence inside the front yard (60' B.R.L.), which reduces the maximum height of fence to four (4) feet above ground according to the CoD Zoning Ordinance Article 5, Section 7.5. With the variance been granted, the applicant plans to build a six (6) foot fence above ground inside front yard in order to be consistent with the fence height to the north, west and south of the property, which is uniformly a 6 ft fence. To the front of Lot #12 there is no direct neighbor, only a man made ditch. Therefore the applicant does not see any negative effect on the property of neighbors and their uses

   The applicant has already contacted Public Works, as the front yard is designated being a 60' wide utility and drainage easement area. An application for a variance to build a structure inside a utility easement has been filed with Public Works already."

   Staff Response:
   The removal of the restriction and the allowance of a 6-foot-tall fence within the 60-foot front yard would not seriously affect neighboring properties and uses. The fence would still be located at least 40 feet inside the property line. This fence is located along the Garrison Oak Drive frontage of the property.

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:
"In order to allow incoming and outgoing truck traffic sufficient space to maneuver vehicles up to a length of 73' to the loading docks and production tower for unloading raw materials and loading finished product, the applicant identified by simulating truck paths and turning radii, that the fence has to be moved at least 15 feet inside the front yard (to the East) in order to provide additional space for the trucks to turn and revers to the loading docks and production tower (see attachments 1 and 2).

The need for additional maneuvering space was caused by moving the entrance 12 ft south due to a potential collision of the trucks with an electricity pole located north of the entrance (see attachment 3).

Also, the trucks do only have approximately 12 ft distance from the trucks sitting in the loading dock area, when leaving the loading dock area straight towards the edge of the paving/current fence line, which is not enough space for a 73' tractor trailer to maneuver (see attachment 4).

If the restriction would not be removed the applicant would not have sufficient protection of property stored on site and outside of the build, as a four food high fence is easy to climb over. Since Garrison Oak Technical Park is located in a remote location in Dover and currently not fully developed, the applicant would strongly prefer to have a fully fenced property which also represents a certain level of security by the height of the fencing."

Staff Response:
The site is an industrial site. A four-foot fence would not provide adequate security, and locating the fence at or beyond the 60-foot setback would provide inadequate space for trucks to turn around. This was determined after the building was under construction and could not be moved. This situation presents and exceptional practical difficulty for the applicant make planned improvements and operate the manufacturing facility.

Refer to A

Variance Recommendations:
Staff recommends approval of the variance for to allow a 6-foot-tall fence in the front yard (refer to Attachment 2 for proposed location) based on the following comments:

- The variance would be in keeping with the character of the zone and the surrounding area, and it would not seriously affect neighboring properties.
- The applicant has demonstrated exceptional practical difficulty in that placing the fence at or beyond the setback line would interfere with the need for trucks to turn around.
- The applicant has indicated the need for a variance of "at least" 15 feet. The applicant shall determine the actual dimension of the variance request, as the Board will need to specify the required setback for the fence under the variance, if the variance is approved.

City of Dover, DE
Department of Planning and Inspections
P.O. Box 475, Dover, DE 19903

September 11, 2014

Board of Adjustment Application

Variance to Zoning Ordinance Article 5, Section 7.5 - fence height restriction in front yard

Responses to criteria required in order to evaluate the variance request:

1. *The nature of the zone in which the property lies:*
Industrial Park Manufacturing 2 (IPM 2)

2. *The character of immediate vicinity and the contained uses therein:*
The property, for which this variance is applied for, is located on Lot #12 on Garrison Oak Technical Park. Lot #12 is going to have the future street address 200 Garrison Oak Drive.
Lot#12 is surrounded by Lot#11 to the north, which is a parcel on Garrison Oak Technical park and currently not occupied, but a future lot for industrial use.
To the south, Lot#12 is surrounded by a stormwater management pond and to the west by a swale and Route 1 in extension of the property.
To the east, Lot#12 is connecting to Garrison Oak Drive, which is a loop road into and out of the Industrial Park.

3. *Whether, if the restriction upon the applicant's property would be removed, such removal would seriously affect neighboring properties and uses*
The applicant plans to move the fence inside the front yard (60' B.R.L.), which reduces the maximum height of fence to four (4) feet above ground according to CoD Zoning Ordinance Article 5, Section 7.5. With the variance been granted, the applicant plans to build a six (6) foot fence above ground inside front yard in order to be consistent with the fence height to the north, west and south of the property, which is uniformly a 6 ft fence. To the front of Lot#12 there is no direct neighbor, only a man made ditch. Therefore the applicant does not see any negative effect on the property of neighbors and their uses.
The applicant has already contacted Public Works, as the front yard is designated being a 60' wide utility and drainage easement area. An application for a variance to build a structure inside a utility easement has been filed with Public Works already.

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 permitted uses under the provisions of the zoning ordinance.*

In order to allow incoming and outgoing truck traffic sufficient space to maneuver vehicles up to a length of 73' to the loading docks and production tower for unloading raw materials and loading finished product, the applicant identified by simulating truck paths and turning radii, that the fence line has to be moved at least 15 ft inside the front yard (to the East) in order to provide additional space for the trucks to turn and reverse to the loading docks and production tower (see attachments 1 and 2).

The need for additional maneuvering space was caused by moving the entrance 12ft south due to a potential collision of the trucks with an electricity pole located north of the entrance (see attachment 3).

Also, the trucks do only have approximately 12 ft distance from the trucks sitting in the loading dock area, when leaving the loading dock area straight towards the edge of paving / current fence line, which is not enough space for a 73' tractor trailer to maneuver (see attachment 4).

If the restriction would not be removed, the applicant would not have sufficient protection of property stored on site and outside the building, as a four foot high fence is easy to climb over. Since Garrison Oak Technical Park is located in a remote location in Dover and currently not fully developed, the applicant would strongly prefer to have a fully fenced property which also represents a certain level of security by the height of the fencing.

With kind regards,

Philipp Utz

City of Dover
Board of Adjustment

October 16, 2014

V-14-10

Location:	South side of Lafferty Lane, Dover, Delaware ED-05-077.00-01-26.00-000 ED-05-077.00-01-27.00-000
Applicant/ Property Owner:	Mathew E. Mitten
Application Date:	Appeal Received August 15, 2014 Request for September 17, 2014 Meeting. Meeting was rescheduled for October 15, 2014.
Present Zoning:	IPM (Industrial Park Manufacturing Zone)
Appeal Requested:	Regarding the interpretation of the *Zoning Ordinance* pertaining to the definitions of allowed uses in the IPM (Industrial Park Manufacturing) Zone in Article 3 §20. Appeal of the determination of the City Planner to cease operations at the site pending approval of a Site Development Plan.

Request for Appeal

The applicant has filed an Appeal of a determination by the City Planner regarding the use of Lands of Mitten properties on the south side of Lafferty Lane and the interpretation of *Zoning Ordinance,* Article 3 Section 20 regarding the definitions of allowed uses in the IPM zone and *Zoning Ordinance,* Article 10 Section 2 regarding the requirement for a Site Development Plan.

Property Description

The property located on the south side of Lafferty Lane consists of two parcels of land.[1] There are activities in cleared areas on the site near the access drive from Lafferty Lane and also large areas of existing woodland. There are no buildings located on the properties. From aerial photographs (dating 2006-2012) there are a number of storage trailers and other materials on the properties.

[1] The Appeal application lists one parcel of 4.9 acres on the south side of Lafferty Lane identified as ED-05-077.00-01-26.00-000. Staff has also included the adjacent property also held in the same ownership and identified as ED-05-077.00-01-27.00. This second property is also involved in the City Planner's determination.

The adjacent properties to the south are zoned MHP (Manufactured Home Park) for the Kings Cliffe Mobile Home Park; and R-20 (One Family Residence Zone) and IPM (Industrial Park Manufacturing Zone) for properties related to the Dover Air Force Base. The adjacent properties to the north and east are vacant lands zoned IPM (Industrial Park Manufacturing Zone) and M (Manufacturing Zone). A portion of the subject site and adjacent properties are subject to the AEOZ (Airport Environs Overlay Zone) and are located within Noise Zone A and the APZ-1 Accident Potential Zone.

Code Citations

Procedures

The Board of Adjustment procedures for Appeals are outlined in the *Zoning Ordinance* and within *Delaware Code.* See the following code citations.

Dover Code of Ordinances, Appendix B: Zoning, Article 9. Board of Adjustment:
Section 2. Powers and duties:

> The board of adjustment shall have the powers and duties as specified in Delaware Code Annotated (22 Del. C. § 301 et seq.) and as articulated below:
>
> 2.2 *Appeal of administrative order, requirement, decision, or determination*. The board shall have the authority to hear and decide appeals where it is alleged there is any order, requirement, decision or determination made by an administrative official in the enforcement of the zoning ordinance. Appeals to the board may be made by any person aggrieved or by any officer, department, board or bureau of the municipality affected by any decision of an administrative officer.

Zoning Ordinance, Article 9 §3 outlines the procedures for both variances and appeals. Appeals are subject to a Public Hearing which must noticed by publication in the newspaper and by mailed notice to property owners within 200 feet of the subject property.

The Appeal must be filed in writing on prescribed forms and is subject to a filing fee. It is noted that this fee may be returned to the applicant (*Zoning Ordinance*, Article 9 §3.4) under certain provisions:

> Article 9 §3.4 The board of adjustment may, in its discretion, return to the applicant part or all of the fee paid by him in the event that his appeal under section 2.2 Appeal of administrative order, requirement, decision, or determination hereof is partially or wholly successful.

The Appeal (written application and submission items) as filed shall consist of the following per the *Zoning Ordinance*, Article 9 §3.5:

> Article 9 §3.5 Each variance application or appeal shall fully set forth the circumstances of the case. Every variance application or appeal shall refer to the specific provision of the ordinance involved, and shall exactly set forth, as the case may be, the interpretation that is claimed, the details of the variance that is applied for and the grounds on which it is claimed that the same should be granted.

- **A copy of the Appeal as filed by the Applicant is attached as Exhibit 1A and Exhibit 1B.**
    - **Exhibit 1A – Application to Board of Adjustment for Appeal**

- **Exhibit 1B – Letter from the applicant dated August 18, 2014 with Attachment (Appeal Statement)**

The provisions of *Delaware Code* (22 Del. C. § 301) also note a procedure for Appeals:
22 Del. C. §324 Appeals to board.

Appeals to the board of adjustment may be taken by any person aggrieved or by any officer, department, board or bureau of the municipality affected by any decision of the administrative officer. Such appeal shall be taken within a reasonable time as provided by the rules of the board by filing with the officer from whom the appeal is taken and with the board a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.

- **Copies of materials from the Determination by the City Planner and associated Code Enforcement Case File are attached as Exhibits 2A through 2S.**
  - **Exhibit 2A – Email of 6/2/2014 RE: BOA Appeal process**
  - **Exhibit 2B – Letter of 6/2/2014 Appeal of Code Enforcement Citation, Case #06-00002574**
  - **Exhibit 2C – Official Citation #06-00002574 of 5/22/2014 with Fourth Notice, and Violation Detail**
  - **Exhibit 2D - Letter of 6/5/2013 RE: Expiration of Site Development Master Plan Application: Mitten Industrial Park at Lafferty Lane, Dover Delaware S-10-10 and S-13-14**
  - **Exhibit 2E – Email of 6/25/2012 RE; Mitten Industrial Park**
  - **Exhibit 2F – Letter of 6/13/2012 RE: Property Located on the South Side of Lafferty Lane (S-08-06 and S-10-10)**
  - **Exhibit 2G – Email of 6/7/2012 RE: Property on Lafferty Lane Owned by Matt Mitten**
  - **Exhibit 2H – Letter of 10/3/2007 from Braun Engineering & Surveying, RE; Site Plan Proposal – Mitten Industrial Park**
  - **Exhibit 2I – Letter of 9/14/2007 RE: Property Owned by Matthew E. Mitten, Case No. 06-00002574**
  - **Exhibit 2J – Letter of 8/30/2007 RE: Property Owned by Matthew E. Mitten, Case No. 06-00002574**
  - **Exhibit 2K – Letter of 6/3/2007 RE: Site Plan Application for Properties Owned by Matthew E. Mitten**
  - **Exhibit 2L – Notes and Sketch Plan from 12/19/2006 Pre-Application Meeting**
  - **Exhibit 2M - Letter of 12/4/2006 RE: Property Owned by Matthew E. Mitten, Case No. 06-00002574**

- **Exhibit 2N – Letter of 11/15/2006 RE: Case Number 06-00002574**
- **Exhibit 2O – Letter of 11/15/2006 RE: Property Owned by Matthew E. Mitten, Case No. 06-00002574**
- **Exhibit 2P – Notes and Sketch Plan from 7/5/2006 Pre-Application Meeting**
- **Exhibit 2Q – Letter of 5/16/2006 RE: Use of Property, 4.9 Acres on the South side of Lafferty Lane**
- **Exhibit 2R – Letter of 3/9/2006 RE; Use of Property, 4.9 Acres on the South side of Lafferty Lane, Site Plan Approval Required with Attachments of Code Reference and 3 Photographs**
- **Exhibit 2S – Letter of 8/23/2005 RE: Parcel B4.2466 Acres, Lands of Mathew E. Mitten with Attachment of Sketch Plan**

Action by the Board of Adjustment

It is the responsibility of the Board of Adjustment to hear and decide the Appeal where it has been alleged that the determination of the administrative official was in error. This Appeal is regarding the interpretation of the *Zoning Ordinance* pertaining to the definitions of allowed uses in the IPM (Industrial Park Manufacturing) Zone as outlined in Article 3 §20 and Appeal of the determination of the City Planner to cease operations at the site pending approval of a Site Development Plan as required in *Zoning Ordinance,* Article 3 Section 20.6 and Article 10 Section 2.

Background Information

Code Citations:

IPM (Industrial Park Manufacturing Zone) Zoning District

The description of the IPM (Industrial Park Manufacturing Zone) and the uses permitted within the zone are given in the *Zoning Ordinance,* Article 3 Section 20 as well as the procedures for establishment of uses on the property.

- **Exhibit 3A – Zoning Ordinance excerpt for IPM zone.**

AEOZ (Airport Environs Overlay Zone)

The AEOZ (Airport Environs Overlay Zone) establishes additional standards and requirements for properties within the zone including compatibility of land uses, noise attenuation requirements, and height limits in order to project areas impact by aircraft operations of Dover Air Force Base. These provisions are outlined in *Zoning Ordinance,* Article 3 Section 22.

- **Exhibit 3B – Zoning Ordinance excerpt for AEOZ zone.**

Site Development Plan Procedures

The procedures for a Site Development Plan are given in the Zoning Ordinance, Article 3 Section 20.6 for activities in the IPM Zone and within the referenced *Zoning Ordinance,* Article 10 Section 2. (It is noted that *Zoning Ordinance,* Article 10 Section 2 was amended with the adoption of Ordinance #2011-14 on August 8, 2011 and with the adoption of Ordinance #2014-08 on July 14, 2014.)

- **Exhibit 3C – Zoning Ordinance excerpt for Site Development Plan Procedures**

Property Information:
Lands of Mitten on South Side of Lafferty Lane (Identified as 4.9 ac on Lafferty Lane and as 141 Lafferty Lane), Dover:

- Property Ownership: From our records it appears that the ownership of these properties changed in 2003 from Julian Dev. Co. to Mathew E. Mitten.

- Business License:
  - There are no Business Licenses issued for the subject properties on Lafferty Lane.
  - Mid-Atlantic Dismantlement has an active Business License as a Contractor: however, is associated with outside of City address. License was renewed as #15-00010454 for license year beginning 7/1/2014; this license was initially issued in July 2003 as #04-00010454 and has been renewed yearly.

- Building Permits: No Building Permits associated with the properties since 1998 other than a Fence Permit #03-1000 that was withdrawn.

- Code Enforcement Case #06-00002574 entered 9/27/2006 – Violation of permitted uses in IPM zone and lack of Site Plan for property. On-going Code Enforcement case activity from 2006 to the present.

- Site Development Plan Applications: The following Site Development Plans were filed for review with the Planning Commission for this property. A summary of each application and its status is provided. The complete Application files are available in the Planning Office.

  - S-07-24 Mitten Industrial Park – Application filed for seven commercial buildings and a processing area. Application held by Development Advisory Committee (DAC) due to compliance issues. Application superseded by Application S-08-06.

  - Preliminary Land Use Services Review (PLUS): PLUS Review (#2008-01-12) of the Mitten Industrial Park project occurred on January 23, 2008.

  - S-08-06 Mitten Property: Site Development Master Plan - An application for a Site Development Master Plan (S-08-06) for industrial park and processing area was granted Conditional Site Development Mater Plan Approval by the Planning Commission on March 17, 2008. A one-year extension of approval was granted by the Planning Commission at their March 16, 2009 meeting. This plan expired in 2010 as there was no submission of an Administrative Site Plan for Phase 1 and no there was construction to make site improvements.

  - S-10-10 Mitten Industrial Park: Site Development Master Plan – An application for a Site Development Master Plan (S-10-10) for nine buildings and a processing area was granted Conditional Site Development Master Plan Approval by the Planning Commission at their May 17, 2010 meeting. The Planning Commission granted the first one-year extension of approval on April 18, 2011 and the final

second one-year extension of approval on April 16, 2012. This Master Plan expired on May 31, 2013 as there was no approval for the Administrative Site Plan for Phase 1 and no submission of a Building Permit and construction to make site improvements did not commence.

- S-13-14 Mitten Industrial Park: Phase 1 – Administrative Site Plan filed on 5/14/2013 for Phase 1 of the project and was working through the agency review process. The associated Site Development Master Plan expired 5/31/2013 voiding this Administrative Site Plan.

- S-13-16 Mitten Industrial Park: Site Development Master Plan – Application filed on 6/6/2013 for Site Development Master Plan Review to permit the construction of nine 9,600 S. F. buildings for a total of 86,400 SF and a 4.591 acre Processing Area on two parcels of land. The plan also consists of a Parcel Consolidation Plan to consolidate the two parcels of land into one parcel of land. Application was held by Development Advisory Committee (DAC) and Staff due to compliance issues on July 3, 2013; application was not heard by Planning Commission in July 2013. No additional activity with application to date.

Exhibit 1A

City of Dover, DE
Department of Planning and Inspections
P.O. Box 475, Dover, Delaware 19903
(302) 736-7010 Fax: (302) 736-4217
www.cityofdover.com

_____ Area Variance
_____ Use Variance
__X__ Appeal
_____ Pre-App Date

Board of Adjustment Application

Application Information

Property Address: 4.9 acres on the south side of Lafferty Lane, Dover, Delaware

Tax Parcel Number: ED-05-077.00-01-260.000-000

Owner Name: Mathew E. Mitten

Property Zoning: IPM

Variance (s) Requested: See attached

*Provide eight (8) copies of any survey, drawings, photos, site plan, etc. that may help support your application, and your response to the criteria. The criteria for a use variance and appeal are on the back of the form.

Area Variance

An area variance shall be evaluated on the following criteria: **Please state how your request meets each of these four (4) criteria.**

Received
AUG 15 2014
Planning & Inspections

1. The nature of the zone in which the property lies;
2. The character of the immediate vicinity and the contained uses therein;
3. Whether, if the restriction upon the applicant's property were removed, such removal would seriously affect neighboring properties and uses; and
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 permitted uses under the provisions of the zoning ordinance.

Signature

I Mathew E. Mitten do affirm that I am the property owner on which the variance is sought and that all the information provided in this application is accurate to the best of my knowledge and belief.

Signature _____ Title _____ Date 7/17/14

Exhibit 1B

RECEIVED

AUG 18 2014

CITY OF DOVER
PLANNING & INSPECTIONS

PRICKETT, JONES & ELLIOTT
A PROFESSIONAL ASSOCIATION
11 NORTH STATE STREET
DOVER, DELAWARE 19901
TEL: (302) 674-3841
FAX: (302) 674-5864
http://www.prickett.com

JOHN W. PARADEE
NICOLE M. FARIES

WILMINGTON OFFICE
1310 KING STREET, P.O. 1328
WILMINGTON, DE 19899
TEL: (302) 888-6500
FAX: (302) 658-8111

Writer's E-Mail Address: jwparadee@prickett.com

August 18, 2014

Hand Delivery

City of Dover
Department of Planning
15 Loockerman Plaza
Dover, Delaware 19903

Attn: Maretta,

RE: Mathew E. Mitten
Property: 4.9 acres on the south side of Lafferty Lane, Dover, Delaware
Tax Parcel Number ED-05-077.00-01-260.000-000

Dear Maretta:

Per your telephone conversation with my secretary, Leslee Wing, on today's date, enclosed is the Attachment to the Board of Adjustment Application that was omitted from the original filing hand-delivered to your office on August 15, 2014 re: Mathew E. Mitten regarding the property identified as 4.9 acres on the south side of Lafferty Lane, Dover, Delaware, Tax Parcel Number ED-05-077.00-01-260.000-000.

Thank you for your assistance and cooperation. Should you have any questions, please do not hesitate to contact our office.

Very truly yours,

John W. Paradee (lmw)

John W. Paradee

JWP:lmw
Enclosure

DICTATED BUT NOT READ DUE TO ABSENCE FROM OFFICE

Exhibit 1B

Appeal to Board of Adjustment

Mathew E. Mitten, d/b/a Mid-Atlantic Dismantling Corporation

Mathew E. Mitten, d/b/a Mid-Atlantic Dismantling Corporation ("Mr. Mitten") is the owner and operator of a "processing" business (the "Business") situated on a 4.9+/- acre parcel of property zoned for IPM industrial use and located on the south side of Lafferty Lane in Dover, Delaware, otherwise known as Tax Parcel #ED-05-077.00-01-26.00-000 (the "Property"). The principal activity of the Business is receiving, dismantling, sorting, storing, repackaging, and redistributing various items of steel, metal, and other construction and/or demolition byproducts (e.g., metal poles, pipes, frames, tanks, wire, etc.). This is the very sort of operation permitted within the Industrial Park Manufacturing (IPM) Zone under Article 3, Section 20 of the City of Dover Code, which allows buildings and premises in the IPM Zone to be utilized for "manufacturing, ***assembling, converting, altering,*** finishing, cleaning cooking, baking ***or any other type of manufacturing or industrial processing of any goods, materials, products, instruments, appliances, and devices***" and "printing, publishing, ***binding, packaging, storage, warehousing, transshipment and distribution***, and trucking terminals" [emphasis added]. Mr. Mitten's business operation is not a "dump" or a "junkyard", and therefore, Mr. Mitten's business operation is not a prohibited use within the meaning of Article 3, Sections 20.26 or 20.28 of the City of Dover Code.

On May 22, 2014, the City of Dover Department of Planning and Inspections issued an "Official Citation" and "Fourth Notice" to Mr. Mitten, which appear to cite Mr. Mitten for violating Article 3, Section 20.6 and Article 10, Section 2 of the City's Zoning Code.

Mr. Mitten respectfully submits that (1) Article 3, Section 20.6 and Article 10, Section 2 of the City's Zoning Code do not apply to the Business or the Property here at issue, and (2) in the alternative, if Article 3, Section 20.6 and Article 10, Section 2 of the City's Zoning Code do apply to the Business or the Property here at issue, then Mr. Mitten has achieved substantial compliance with same, in so far as (a) Mr. Mitten has previously obtained master site plan approval for the Business and the Property from the City of Dover Planning Commission, and (b) Mr. Mitten is presently pursuing a revised site plan application for the Business and the Property with the City of Dover Planning Commission.

For all of the foregoing reasons, Mr. Mitten respectfully prays that the City of Dover Board of Adjustment void the citation issued by the Building Inspector on May 22, 2014.

Exhibit 2D

City of Dover

June 5, 2013

Matthew Mitten
P.O. Box 1192
Dover, DE 19903

COPY

Re: Expiration of Site Development Master Plan Application: Mitten Industrial Park at Lafferty Lane, Dover, Delaware
S-10-10 & S-13-14

Dear Mr. Mitten:

The Site Development Master Plan for the construction of nine 9,600 S.F. buildings and processing area expired on May 31, 2013.

As the Site Development Master Plan has expired, and the use on the site is not permitted unless part of an approved Site Development Plan, all business activities on the site must cease immediately. Removal of items from the site is the only activity authorized on the site until a Site Development Plan is approved and associated improvements are constructed.

The site has been subject of Code Enforcement action for Zoning Violations since 2006. A Site Development Plan is required to correct the non-compliance issues with the use and development of the site. A Pre-Application meeting was held on June 4, 2013 and the Planning Office is expecting an application to be submitted for the June 7, 2013 filing deadline for review by the Planning Commission at their July 2013 meeting.

An application for a Site Development Master Plan (S-08-06) was granted Conditional Site Development Mater Plan Approval by the Planning Commission at their March 2008 meeting. A one-year extension was granted by the Planning Commission at their March 16, 2009 meeting. This plan expired in 2010 as there was no submission of an Administrative Site Plan for Phase 1 and no there was construction to make site improvements.

A second Site Development Master Plan (S-10-10) was granted Conditional Site Development Master Plan Approval by the Planning Commission at their May 10, 2010 meeting. The Planning Commission granted the first one-year extensions on April 18, 2011 and the final second one-year extension on April 16, 2012. This plan expired on May 31, 2013 as there was no approval for the Administrative Site Plan for Phase 1 and no submission of a Building Permit and construction to make site improvements did not commence.

Should you have any questions, or require further assistance, please contact me at (302) 736-7196.

Sincerely,
Planning Office

Ann Marie Townshend

Ann Marie Townshend, AICP
Director of Planning and Community Development

Cc: David C. Braun, P.E.
John Paradee of Prickett, Jones & Elliott

Exhibit 2E

Taraila, Tim

From: Townshend, Ann Marie
Sent: Monday, June 25, 2012 5:54 PM
To: Paradee, John W.
Cc: Taraila, Tim; Melson-Williams, Dawn; Cornwell, Janelle
Subject: RE: Mitten Industrial Park

John,

I was out of town when your e-mail was sent. Please call Maretta at 736-7196 and she'll find some time on Tuesday or Wednesday for us to meet.

The problem here is that while the Site Plan Approval does not expire until April 2013, there has been very little progress on the Site Plan since we first started discussing this in 2006, and yet the intensity of the use on the site has increased during this time. The use on the property is not in the location or with any of the screening that would have been called for in the Site Plan. The City has been more than patient for six years while this violation has continued and even expanded.

I am amenable to a reasonable extension until the end of July 2012 to have the site cleaned up until a use is commenced in accordance with an approved Site Plan.

Ann Marie

Ann Marie Townshend, AICP
Director, Planning & Community Development
City of Dover
P.O. Box 475
Dover, DE 19903

(302) 736-7196 (Phone)
(302) 736-4217 (FAX)

From: Paradee, John W. [mailto:JWParadee@Prickett.com]
Sent: Tuesday, June 19, 2012 8:09 PM
To: Townshend, Ann Marie
Subject: Mitten Industrial Park
Importance: High

I need to come see you ASAP regarding the above matter. Unfortunately, my calendar is rather jammed up through next Monday. I think we are meeting tomorrow afternoon regarding the Harman matter, so I could talk with you about the above matter then. Alternatively, I could come see you late Thursday afternoon. I am out of town Friday (6/22) and Monday (6/25).

It is my understanding that your recent letter to the property owner threatened to shut down the facility on June 27th (which, frankly, is a shock to me). Were you aware that the site plan approval for this property does not expire until April of 2013? The property owner is planning to move forward with the approved site plan, and I have information from his engineer (David Braun) that indicates the project is well ahead of schedule. So shutting down the operation would seem to run counter to everything we have worked so hard to accomplish over the past couple of years. At a minimum, I need to ask that you forbear upon any cease and desist action (i.e., give us both a little more time) to review and assess the situation. Shutting down the operation is, in my humble opinion, both unwarranted and unjustifiable under the facts as I understand them.

Please let me know when we can get together to discuss ASAP.

Thanks very much, and best regards.

Exhibit 2F

City of Dover

June 13, 2012

Matthew E. Mitten
109 Tuckahoe Lane
Bear, DE 19701

RE: Property Located on the South Side of Lafferty Lane (S-08-06 and S-10-10)
Parcel ID# ED05-077.00-01-26.00-000

Dear Mr. Mitten:

In 2006, the City of Dover began enforcement action with regard to your property located on the south side of Lafferty Lane. The activities taking place on the property had not received the required Site Plan approval, and the use of the property without review and approval for compliance with code requirements is a violation of the *Zoning Ordinance*. On November 15, 2006, the City issued a "stop work" order and fines were issued on multiple occasions in 2006 and 2007. After several meetings and exchanges of correspondence, we determined that you would submit a Site Development Plan to bring the site into conformance with the requirements of the *Zoning Ordinance* and other applicable codes.

A Site Development Plan (S-08-06) was submitted and conditionally approved by the Planning Commission on March 17, 2008. The Planning Commission granted a one-year extension on March 16, 2009, and the Site Plan expired on March 31, 2010. No check prints were submitted, and no construction to make the site improvements commenced.

A second Site Development Plan (S-10-10) was submitted and conditionally approved by the Planning Commission on May 17, 2010. The Planning Commission granted two one-year extensions on April 18, 2011, and on April 16, 2012. To date, the City has not received a check print for review and no documentation of agency approvals has been submitted.

Inspection of the site from Lafferty Lane on June 6, 2012 and June 11, 2012, revealed that the usage of the site has intensified, and the violations are worse than they were in 2006. The City has been patient for six years to allow you to complete a Site Plan, make site improvements, and achieve compliance on the site. The amount of time has been more than adequate, and no progress has been made to improve the site.

Current operations on the site must cease by June 27, 2012, or the City will begin to issue daily fines until the operations cease. Operations on the site may only recommence after Final Site Plan approval is received and associated improvements made to the site.

If you have any questions, please call me at (302) 736-7196.

Sincerely,

Ann Marie Townshend

Ann Marie Townshend, AICP
Director, Planning & Community Development

cc: Janelle Cornwell, AICP, Planner II
Tim Taraila, Code Enforcement Supervisor

Exhibit 2G

Townshend, Ann Marie

From: Cornwell, Janelle
Sent: Thursday, June 07, 2012 4:15 PM
To: Townshend, Ann Marie
Subject: RE: Property on Lafferty Lane Owned By Matt Mitten

Ann Marie,

The first Site Plan (S-08-06) application was reviewed by the Planning Commission on March 17, 2008. A one year extension was granted on March 16, 2009. The plan expired on March 31, 2010. There were no check prints submitted for this application.

The second Site Plan (S-10-10) application was reviewed by the Planning Commission on May 17, 2010. The first one year extension was granted on April 18, 2011. The second one year extension was granted on April 16, 2012. The plan will expire on May 31, 2013. There have been no check print submissions for this application.

Janelle

From: Townshend, Ann Marie
Sent: Thursday, June 07, 2012 3:24 PM
To: Cornwell, Janelle; Taraila, Tim
Cc: Melson-Williams, Dawn
Subject: Property on Lafferty Lane Owned By Matt Mitten

Janelle & Tim,

As you know, there has been a long-standing code violation with the operation on Matt Mitten's property on Lafferty Lane. There was a site plan filed to correct the violation, which expired and a subsequent plan was filed to supersede the expired plan. More than four years have gone by since we began on the course to correcting the violation. While this was happening, I backed off on code enforcement on the property to allow Mr. Mitten to develop a compliant site. I drove by the site for the first time in quite a while yesterday and see that the site is worse, and looks more like a junk yard, than it ever did. We need to resume enforcement.

Janelle,

Can you please give me a timeline of the site plan/check print submissions and where they are in this process?

Tim,

Can you take pictures and try to document what is actually occurring on the site now?

I am going to set up a meeting for next week so that we can start to move forward on this. The violation has existed for nearly a decade (possibly longer), and I believe we have been more than patient.

Thank you!

Ann Marie Townshend, AICP
Director, Planning & Community Development
City of Dover

Exhibit 2H

BRAUN ENGINEERING & SURVEYING

429 South Governors Avenue • Dover, Delaware 19904
Telephone: 302-674-2903 • Fax: 302-674-3826
www.braunengineering.net

October 3, 2007

Mr. Matthew E. Mitten, President
Mid-Atlantic Dismantlement Corporation
109 Tuckahoe Lane
Bear, DE 19701

RE: Site Plan Proposal
Mitten Industrial Park

Dear Mr. Mitten:

Braun Engineering & Surveying is pleased to offer this proposal to provide the necessary services to obtain site plan approval for the proposed Mitten Industrial Park on Lafferty Lane in Dover, Delaware.

This proposal is based on obtaining the electronic data of the work previously completed for the site. We have reviewed the City of Dover's preliminary plan review report, and will provide the necessary work to make those corrections.

We will provide the following services:

1. Site Plan - The required site plans will be completed for submittal to the City of Dover and their planning process. This work will include the revisions outlined in the City's review report dated May 3, 2007. We will attend all required Development Advisory Committee and Planning Commission meetings, and will complete the required public notices.

   In addition, the City of Dover requires the following at the time of site plan submittal:

   A. Architectural Elevations – The City recently adopted an ordinance requiring review of the architectural elevations as part of the site plan process. The Planning Department will determine this during their review. Our costs outlined in this proposal do not include this item.

   B. Tree Planting and Preservation Plan – A plan meeting the requirements of the City of Dover Zoning Ordinance will need to be completed. We will use the certified nursery professionals at All Seasons Landscaping for this work.

2. Lot Line Adjustment Plan · We will complete the required Lot Line Adjustment Plan which will combine the three parcels into one. We will have the plan approved by the City of Dover and recorded at the Kent County Office of the Recorder of Deeds.

3. Construction Plans · Based on the comments received during the City's planning process, plans will be submitted to the required agencies for their review and approval. These plans will also be used for the bidding and construction process. The following agencies are anticipated to require plans:

- Kent Conservation District
- Delaware Department of Transportation
- City of Dover Department of Public Utilities
- City of Dover Department of Planning

The plans will include the following:

A. Grading plans - Preparation of plans per City of Dover and Kent Conservation District regulations, submission to agencies for review, revisions as necessary.

B. Stormwater Management and Erosion and Sediment control plans - Preparation of plans per Kent Conservation District regulations, submission to agencies for review, revisions as necessary.

C. Utility Plans – Preparation of sanitary sewer plans per City of Dover Department of Public Utilities regulations, preparation of water distribution plans per City of Dover Department of Public Utilities and Office of Drinking Water regulations, revisions as necessary.

D. Entrance plans - Preparation of plans per DelDOT regulations, submission to agencies for review, revisions as necessary.

Fees

Our fees during this project will be based on the following hourly rates:

Professional Engineer	$140.00/hour
Professional Land Surveyor	$90.00/hour
2-man Survey Crew	$110.00/hour
3-man Survey Crew	$140.00/hour
Survey Technician	$50.00/hour
Civil Engineer	$75.00/hour
Engineering Technician	$60.00/hour

The prices included above are the maximum for each phase. Only the actual time and materials spent on the project will be billed. Invoices will be submitted monthly for the amount of work completed to that point and will be payable within 30 days of the date of the invoice. If any invoice is not paid within 30 days, interest in the amount of 1.5% per month on the outstanding balance will be added to the amount due, and work on the project will be stopped until such time as all outstanding balances are cleared.

Costs for such expenses as application fees, recording fees, and reproductions are not included in the above fee and will be billed as incurred. The following fees are anticipated, and shown with the current fee:

City of Dover Site Plan Application Fee - $325.00 (this may have already been paid)
Kent Conservation District - $2,250.00
DNREC – Notice of Intent - $195.00
Delaware Department of Transportation Initial Stage Fee – $500.00 plus $20x1,000 gross square feet (building)
Delaware Department of Transportation Construction Stage Fee – 150% of Initial Fee

Work Not Included

This proposal does not include the following:

1. Revisions to plans, designs, documents or specifications already approved.
2. Services in connection with obtaining variances or waivers from regulating agencies.
3. Geotechnical services, including soil borings, layout or location of soil borings to be performed by others.
4. Site lighting or electrical design.
5. Wetlands delineation, or field location of wetlands delineated by others.
6. Woodlands delineation.
7. Traffic Impact Study.
8. Construction Permits not needed for plan approval.
9. Construction Layout.

Schedule

If authorization to proceed is received by October 19, 2007, the project is estimated to proceed as follows:

Completion of Revised Site Plan:	November 30, 2007
Site Plan Submission:	January 4, 2008
Planning Commission Meeting:	February 18, 2008
Construction Plan Submission to Agencies:	March 31, 2008
Final Approvals from Agencies:	August 31, 2008

Please be reminded that this schedule is only an estimate at this time. We cannot control the timing of agency plan reviews that will be a large part of the process.

If this proposal is acceptable, please sign, date and return one copy of this proposal to our office indicating your acceptance and authorization to proceed, **along with a deposit in the amount of**

If you have any questions or would like clarification on any of these matters, please do not hesitate to contact me.

Very truly yours,

David C. Braun

David C. Braun, P.E.
President
dcbraun@braunengineering.net

Accepted By: _____ (Signature)

_____ (Print Name)

_____ (Date)

Exhibit 21

City of Dover

September 14, 2007

John W. Paradee
Prickett, Jones & Elliott
11 North State Street
Dover, DE 19901

RE: Property Owned by Matthew E. Mitten
4.9 +/- Acres Located on Lafferty Lane
Tax Parcel ED-05-077.00-01-260.000-000
Case No. 06-00002574

Dear John:

I received your letter of August 30, 2007, appealing the summons issued to Matthew Mitten on August 23, 2007, for his property located on Lafferty Lane. Unfortunately, the City has no internal appeal process for summonses issued on code enforcement cases.

As we have previously discussed, Mr. Mitten's property is in violation of the *Zoning Ordinance*, not necessarily because of the use on the site, but because the use is subject to Site Plan approval in accordance with the *Zoning Ordinance,* Article 3, Section 20.6 and Article 10, Section 2. The Planning Commission has not reviewed or approved a site plan for this site. Additionally, because an application has not been approved and proper amenities are not located on the site as required by the *Zoning Ordinance*, the appearance of the site from the road is that of a junk yard. During the site plan review process, both staff and Planning Commission will gain a better understanding of the site to confirm that it is, as you state, a use permitted in the IPM (Industrial Park Manufacturing Zone), rather than a dump or junkyard, uses which would be prohibited.

Because of the length of time that this property has been in violation of the *Zoning Ordinance*, it is imperative that an application meeting the requirements for Site Development Plan applications be submitted for review and approval by the Planning Commission immediately. Failure to do so, and to bring the property in compliance with all applicable regulations, will result in further summonses and other actions by the City to compel the site into compliance.

I would be happy to meet with you and/or Mr. Mitten in the near future so that we can bring this matter to close and gain long-term code compliance on the subject property. Please call Diane Metsch at 736-7196 to schedule a meeting at your earliest convenience.

Sincerely,

Ann Marie Townshend

Ann Marie Townshend, AICP
Director, Planning & Inspections

cc: Matthew E. Mitten
Permit Address File
Tim Taraila

Exhibit 2J

PRICKETT, JONES & ELLIOTT
A PROFESSIONAL ASSOCIATION
11 NORTH STATE STREET
DOVER, DELAWARE 19901
TEL: (302) 674-3841
FAX: (302) 674-5864
http://www.prickett.com

WAYNE N. ELLIOTT
GARY F. TRAYNOR
JOHN W. PARADEE
D. BENJAMIN SNYDER*
GLENN C. MANDALAS*

* ALSO ADMITTED IN PA

WILMINGTON OFFICE
1310 KING STREET, P.O. 1328
WILMINGTON, DE 19899
TEL: (302) 888-6500
FAX: (302) 658-8111

Writer's E-Mail Address: JWParadee@prickett.com

RECEIVED
SEP - 4 2007
CITY OF DOVER
INSPEC & PLANNING

August 30, 2007

VIA FACSIMILE (#736-4217) & REGULAR MAIL

Anne Marie Townshend, AICP
Director of Planning and Inspections
City of Dover
City Hall/The Plaza
Dover, Delaware 19901

RE: Property Owned by Matthew E. Mitten
4.9+/- Acres Located on Lafferty Lane
Tax Parcel #ED-05-077.00-01-260.000-000
Case No. 06-00002574

Dear Anne Marie:

As you know, I represent Matthew E. Mitten with regard to the above-referenced matter. Mr. Mitten has provided me with copies of your August 23, 2007 correspondence and the summons enclosed therewith.

It should come as no surprise to you that my client firmly denies that either he or his property are in violation of any provision of the City of Dover Code, for all of the reasons I have previously articulated to you. That is, the business being operated by my client at the above-referenced property is a "processing" operation which entails the receiving, dismantlement, sorting, storage, repackaging, and redistribution of steel, metal, and other construction and/or demolition byproducts (e.g., metal poles, pipes, frames, tanks, wire, etc.). This is the very sort of operation permitted within the Industrial Park Manufacturing (IPM) Zone under Article 3, Section 20 of the City of Dover Code, which allows buildings and premises in the IPM Zone to be utilized for "manufacturing, ***assembling, converting, altering,*** finishing, cleaning cooking, baking ***or any other type of manufacturing or industrial processing of any goods, materials, products, instruments, appliances, and devices***" and "printing, publishing, ***binding, packaging, storage, warehousing, transshipment and distribution***, and trucking terminals" [emphasis added]. My client's business operation is not a "dump" or a "junkyard", and therefore, my client's business operation is not a prohibited use within the meaning of Article 3, Sections 20.26 or 20.28 of the City of Dover Code.

For all of the foregoing reasons, please accept this letter as my client's formal appeal from the aforesaid citation. At your earliest possible convenience, please advise me what steps my client needs to take in order to preserve and protect his appellate rights.

Having said all of the foregoing, my client and I readily acknowledge that you have been more than courteous and patient in allowing my client to explore the prospect of resolving this matter by filing an application for site plan approval with the City pursuant to Article 10, Section 2 of the City of Dover Code, in order to formally define and sanctify both the nature and the scope of my client's business operation at the above-referenced property. For that, my client and I are genuinely appreciative and grateful.

As your August 23rd correspondence acknowledges, my client did in fact file an application for site plan approval on April 4, 2007. Unfortunately, that application has been deemed deficient in certain respects, and my client's engineer has not been as prompt about rectifying those deficiencies as both your office and my client had anticipated. I offer this not as an excuse, but merely as an explanation. The reality is that rectifying the deficiencies in the site plan submission has proven more difficult and time consuming that anyone involved in the process could have reasonably anticipated. Nevertheless, my client is committed to completing and resubmitting the site plan application as expeditiously as possible.

I cannot guarantee you that my client and his engineer will be able to meet your September 7, 2007 submission deadline, but they will certainly try to do so. In the meantime, I respectfully request that you hold any citations in abeyance for at least thirty (30) days, and give my client one last opportunity to resubmit his site plan application. I further request that, in any event, you grant me and my client an opportunity to sit down with you and review this matter one last time before you proceed with the prosecution of any citations. At your earliest opportunity, please advise when you might be available to meet and review this matter, and my client and I will make ourselves available at your convenience.

Thank you for your prompt attention, courtesy, and consideration. I look forward to hearing from you shortly.

Very truly yours,



John W. Paradee

JWP/lwr
cc: Mr. Matthew E. Mitten

Exhibit 2K

PRICKETT, JONES & ELLIOTT
A PROFESSIONAL ASSOCIATION
11 NORTH STATE STREET
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WAYNE N. ELLIOTT
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GLENN C. MANDALAS*

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WILMINGTON, DE 19899
TEL: (302) 888-6500
FAX: (302) 658-8111

*ALSO ADMITTED IN PA

Writer's E-Mail Address: JWParadee@prickett.com

June 3, 2007

VIA FACSIMILE (#736-4217) & REGULAR MAIL

Anne Marie Townshend, AICP
Director of Planning and Inspections
City of Dover
City Hall/The Plaza
Dover, Delaware 19901

RE: Site Plan Application for Properties Owned by Matthew E. Mitten
Tax Parcel #ED-05-077.00-01-260.000-000 and
Tax Parcel #ED-05-077.00-01-270.000-000

Dear Anne Marie:

This letter follows our meeting in your office on May 24, 2007 concerning the above-referenced matter, and is intended to set forth the "use description" which you had requested my client to provide in order to definitively establish, for purposes of the above-referenced site plan application, the precise nature and scope of the uses conducted by my client at the subject property.

As we observed during our November 29, 2006 site visit, the business being operated by Mid-Atlantic Dismantlement Corporation at the above-referenced property is best characterized as a "processing" operation which entails the receiving, dismantlement, sorting, storage, repackaging, and redistribution of steel, metal, and other construction and/or demolition byproducts (e.g., metal poles, pipes, frames, tanks, wire, etc.). A typical load of materials received at my client's business premises arrives in a tractor trailer, having already been presorted and (to the extent necessary) processed at the original site of construction or demolition (e.g., air conditioners are evacuated of Freon, and steel tanks are flushed of all contents, before coming on site), so that no cleaning, rinsing, evacuation, or other discharging of contents is necessary. Hence, all that transpires with the "dry" construction and/or demolition byproducts received at my client's operation is the dismantlement, sorting, storage, repackaging, and redistribution of said byproducts. Perhaps the most succinct description of the use conducted at the subject property is "the industrial dismantlement, processing, assembling, converting, altering, packaging, storage, and distribution of goods, materials, products, instruments, appliances, and devices", or, if you prefer something more manageable, "industrial processing and storage". This is the very sort of operation permitted within the Industrial Park Manufacturing (IPM) Zone under Article 3, Section 20 of the City of Dover Code, which allows buildings and premises in the IPM Zone to be utilized for "manufacturing, ***assembling,***

converting, altering, finishing, cleaning cooking, baking ***or any other type of manufacturing or industrial processing of any goods, materials, products, instruments, appliances, and devices***" and "printing, publishing, ***binding, packaging, storage, warehousing, transshipment and distribution***, and trucking terminals" [emphasis added].

At our meeting, you acknowledged that the outside storage of materials is not prohibited by the City of Dover Code. We nevertheless agreed that my client would submit a revised site plan which provides for a substantial landscape buffer around the entire perimeter of the subject property and distinctly designated areas for the storage of all materials.

By copy of this letter to my client and his engineer, I remind my client to contact Chip McDaniel at the State of Delaware Department of Natural Resources and Environmental Control (DNREC), and ask Mr. McDaniel to contact you and provide the assurances you sought that DNREC will not require outside storage areas to be paved. As we discussed, my client would prefer to employ a more pervious (but nevertheless solid) surface composed of crushed concrete materials.

Again, thank you for your time, attention, courtesy, and consideration in this matter. If you should have any questions whatsoever, please do not hesitate to contact me.

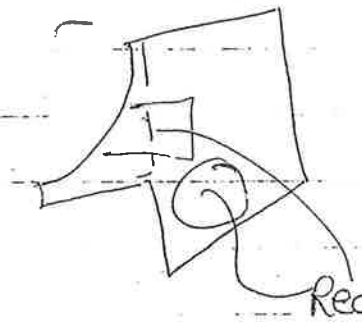
Very truly yours,

John W. Paradee

JWP/lwr
cc: Mr. Matthew E. Mitten (Mid-Atlantic Dismantlement Corporation)
Bob Wood (Asset Builders, Inc.)

Exhibit 2L

12.19.08 Pre-App Mtg. w/ Matt Mitter, Paul Smith, AMT, Dawn



IPM conventional
AEOZ Noise Zone D, APZI

COPY

Multiple bldgs
Reclamation area → must be shown (relocation of current activity)

- DelDOT entrance loc. w/ contact to discuss
- Current site conditions ~ sheet
- Landscape Plan - show woodland to be preserve <50% clearing
- Site Plan Application:

Deadline	1/5/07
Staff DAC	2/1
Applic. DAC	2/8
PC mtg	2/20 Tues

Exerpt from
Pre Application Mtg of 12/19/06
w/ Matt Mitten + Paul Smith

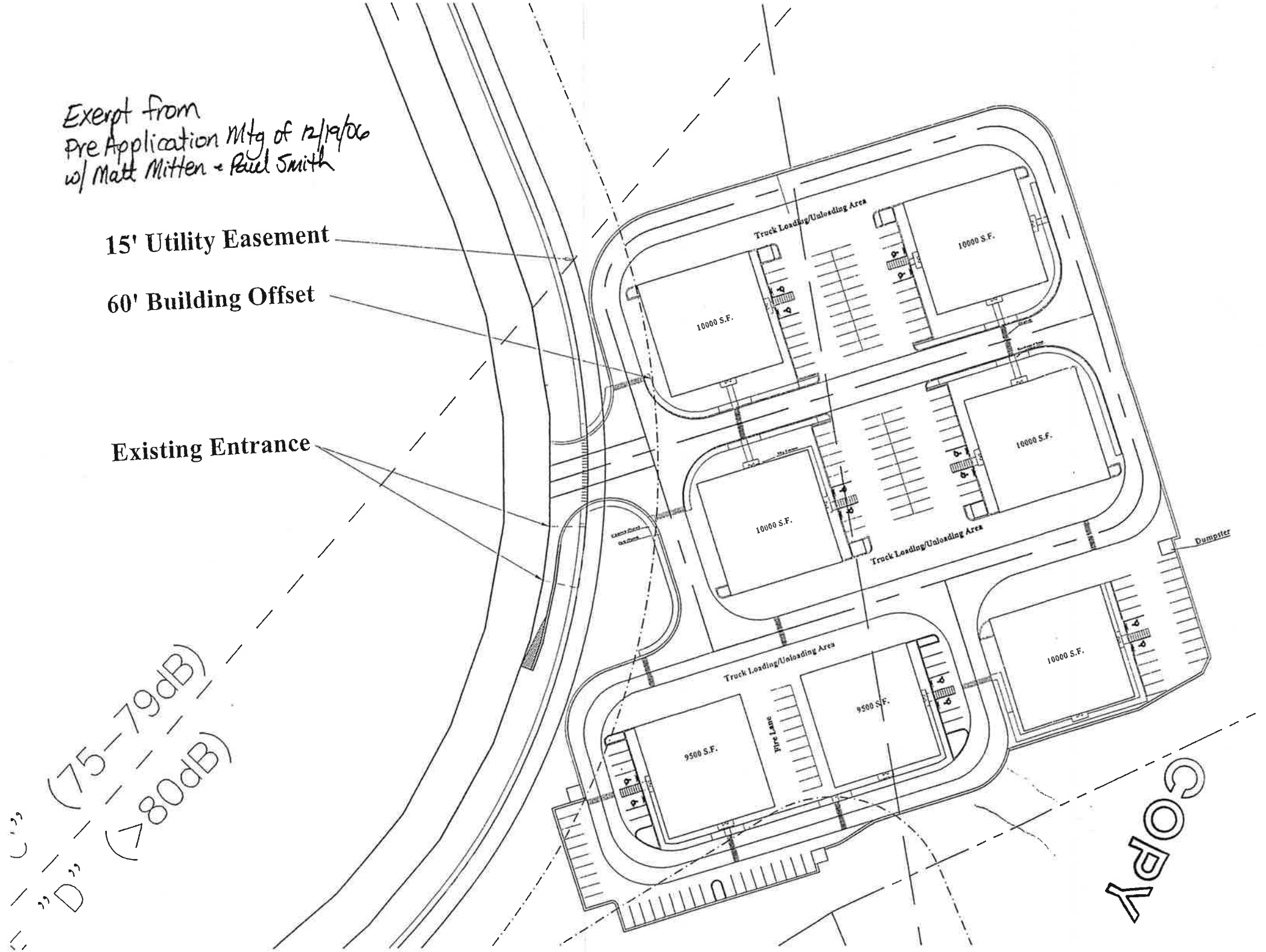


Exhibit 2M

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11 NORTH STATE STREET
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WAYNE N. ELLIOTT
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* ALSO ADMITTED IN PA

Writer's E-Mail Address: JWParadee@prickett.com

WILMINGTON OFFICE
1310 KING STREET, P.O. 1328
WILMINGTON, DE 19899
TEL: (302) 888-6500
FAX: (302) 658-8111

5 2006

December 4, 2006

VIA FACSIMILE (#736-4217) & REGULAR MAIL
Anne Marie Townshend, AICP
Director of Planning and Inspections
City of Dover
City Hall/The Plaza
Dover, Delaware 19901

RE: Property Owned by Matthew E. Mitten
4.9+/- Acres Located on Lafferty Lane
Tax Parcel #ED-05-077.00-01-260.000-000
Case No. 06-00002574

Dear Anne Marie:

This letter follows our site visit at the above-referenced property on Wednesday, November 29, 2006, and is intended to set forth a proposed basis and timeframe for resolving certain concerns which your office has raised regarding the business being operated at the above-referenced property by my client, Matthew E. Mitten, d/b/a Mid-Atlantic Dismantlement Corporation.

As we observed during our November 29th site visit, the business being operated by my client at the above-referenced property is best characterized as a "processing" operation which entails the receiving, dismantlement, sorting, storage, repackaging, and redistribution of steel, metal, and other construction and/or demolition byproducts (e.g., metal poles, pipes, frames, tanks, wire, etc.). A typical load of materials received at my client's business premises arrives in a tractor trailer, having already been presorted and (to the extent necessary) processed at the original site of construction or demolition (e.g., air conditioners are evacuated of Freon, and steel tanks are flushed of all contents, before coming on site), so that no cleaning, rinsing, evacuation, or other discharging of contents is necessary. Hence, all that transpires with the "dry" construction and/or demolition byproducts received at my client's operation is the dismantlement, sorting, storage, repackaging, and redistribution of said byproducts. This is the very sort of operation permitted within the Industrial Park Manufacturing (IPM) Zone under Article 3, Section 20 of the City of Dover Code, which allows buildings and premises in the IPM Zone to be utilized for "manufacturing, ***assembling, converting, altering,*** finishing, cleaning cooking, baking ***or any other type of manufacturing or industrial processing of any goods, materials, products, instruments, appliances, and devices***" and "printing, publishing, ***binding, packaging, storage, warehousing, transshipment and distribution***, and trucking terminals" [emphasis added]. My client's business operation is not a "dump" or a "junkyard", and

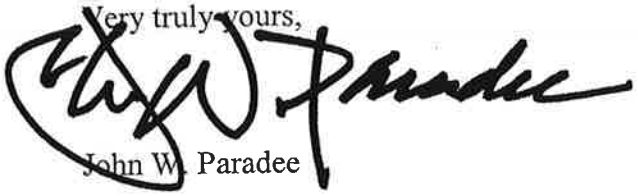
therefore, my client's business operation is not a prohibited use within the meaning of Article 3, Sections 20.26 or 20.28 of the City of Dover Code.

That said, it is my understanding (and my client is willing to concede) that formal "site plan" approval, pursuant to Article 10, Section 2 of the City of Dover Code, is required for the continued operation of my client's business at the above-referenced property. Accordingly, as we discussed during our November 29th site visit, my client does hereby confirm his intention to file and pursue approval of a site plan application which will formally define and sanctify both the nature and the scope of my client's business operation at the above-referenced property. Indeed, it is anticipated that my client will file a comprehensive site plan application for the entire 30+/- acres of his property (of which the above-referenced property is merely a part), seeking site plan approval for the above-described business operations on the rear 10+/- acres and an industrial office park on the front 20+/- acres. Mr. Bob Wood of Delaware Land Development Company is in the process of preparing just such an application, and my client expects that the application will be ready for filing within the next week or so. In any event, consistent with our November 29th on-site discussion, my client is committed to file such an application no later than February 1, 2007, so that the application may be heard and considered by the City of Dover Planning Commission during March of 2007.

In closing, there is one final point for which I respectfully request some clarification. During our November 29th site visit, I believe you made it clear that, in your view, the City of Dover Code prohibits any outside storage of materials whatsoever. And while I must confess that I am certainly no authority on the application and interpretation of the City Code, it seems to me that "storage" is an expressly permitted use of my client's property under Article 3, Section 20.13 of the City Code. Perhaps, however, you can point me to some authority in the City Code for the proposition that the *outside* storage of construction and demolition byproducts is not a permitted use of my client's property. My client certainly intends to fully cooperate with the City Planning Department to insure that his business operation complies entirely with all City Code requirements, including Code requirements governing the outside storage of materials, but at this juncture I am simply unaware what the City Code specifically permits or prohibits with regard to the outside storage of materials in the IPM Zone. Surely you can understand and appreciate that it is both unrealistic and unreasonable to expect that all construction and/or demolition byproduct materials can or would be stored in a completely enclosed structure. Likewise, my client understands and appreciates that such materials should not be stored in a manner completely exposed to plain view. Perhaps there is some middle ground we can explore in this regard, which provides a satisfactory visual screen and buffer without infringing upon the practical realities of my client's business operations. At your earliest opportunity, please review and suggest whatever alternatives the City might find acceptable in this regard. If you believe it would be helpful, my client and I are certainly willing to sit down with you and your staff to discuss the numerous alternatives which must be available.

Again, thank you for your time, attention, courtesy, and consideration in this matter. If you should have any further questions whatsoever, please do not hesitate to contact me.

Very truly yours,



John W. Paradee

JWP/lwr
cc: Mr. Matthew E. Mitten

Exhibit 2N

City of Dover

November 15, 2006

Matthew E Mitten
109 Tuckahoe Lane
Bear, De 19701

RE: Tax Parcel Number: ED-05-077.00-01-260
Case Number: 06-00002574

Dear Mr. Mitten:

This letter is in regard to the business that is being operated at the above parcel on Lafferty Lane. This business has been found to be in violation of the permitted uses as defined in the Dover City Zoning Code under the industrial park manufacturing zone. All materials on site associated with this business must be removed. No further materials will be permitted on site. A modified stop work order has been posted on this property allowing the owner to remove such materials and debris as needed to bring this property into compliance with city codes, but it is important to understand that no further materials may be brought on to the property. Any violations of bringing materials on to the site will result in fines for each day the violation exist and a stop of all work.

If you have any questions or concerns regarding this letter please call me at 736-7011.

Sincerely:

Timothy M. Taraila
Inspector III

Refused to sign FOL

Matthew E Mitten

file

Exhibit 20

PRICKETT, JONES & ELLIOTT
A PROFESSIONAL ASSOCIATION
11 NORTH STATE STREET
DOVER, DELAWARE 19901
TEL: (302) 674-3841
FAX: (302) 674-5864
http://www.prickett.com

WAYNE N. ELLIOTT
GARY F. TRAYNOR
JOHN W. PARADEE
D. BENJAMIN SNYDER*
GLENN C. MANDALAS*

* ALSO ADMITTED IN PA

Writer's E-Mail Address: JWParadee@prickett.com

WILMINGTON OFFICE
1310 KING STREET, P.O. 1328
WILMINGTON, DE 19899
TEL: (302) 888-6500
FAX: (302) 658-8111



November 15, 2006

VIA FACSIMILE (#736-4217) & REGULAR MAIL

Anne Marie Townshend, AICP
Director of Planning and Inspections
City of Dover
City Hall/The Plaza
Dover, Delaware 19901

RE: Property Owned by Matthew E. Mitten
4.9+/- Acres Located on Lafferty Lane
Tax Parcel #ED-05-077.00-01-260.000-000
Case No. 06-00002574

Dear Anne Marie:

Please be advised that I have been retained to represent the interests of Matthew E. Mitten with regard to the above-referenced matter.

I have received and reviewed copies of several correspondences issued by your office over the past eight (8) months concerning the above-referenced property, including correspondence from City Inspector Timothy M. Taraila which encloses a "Violation Detail" and Summons #S06933. The Summons cites Mr. Mitten for allegedly violating Section 302.1 of the City of Dover Code, directs Mr. Mitten to "remove debris &/or stop work by 2:00pm on 11/14/2006", and assesses a "fee" of $100.00, while the "Violation Detail" purports to assess a $250.00 fine "for each additional day that work continues".

My purpose in writing to you is two-fold: (1) to tender my client's formal appeal from the aforesaid citation(s), and (2) to respectfully request that we schedule a meeting with your office, as soon as possible, for the purpose of discussing an amicable resolution of this matter. Mr. Mitten firmly denies that he is in violation of Section 302.1 of the City Code, and frankly, based upon my preliminary review of this matter, I do not see any rational basis for concluding otherwise. That said, Mr. Mitten wants to be a good corporate citizen and "do the right thing". If his property ***is*** in violation of any provision of the City Code, which we of course deny, then Mr. Mitten would like to explore alternatives for bringing his property into compliance.

Accordingly, at your earliest possible convenience, please advise me what steps my client needs to take in order to preserve and protect his appellate rights, and further, please let me know when you and your staff might be available to discuss an amicable resolution of this matter.

Thank you for your prompt attention, courtesy, and consideration. I look forward to hearing from you shortly.

Very truly yours,

John W. Paradee

JWP/lwr
cc: Mr. Matthew E. Mitten

Exhibit 2P

COPY

Mitten property on Lafferty Lane 7.05.06

4ac + 36.1ac parcel 27

698-5402 Matt Mitten Ann Dav

IPM (conv.) NO Design Professional present

Delaware Land Develop Inc.
Assert Builders

AEOZ Noise Zone D / APZ1

- Uses
- Tree Preservation / Planting Opaque Barrier
- Sizes?

110,000 SF Building → *Requires PLUS Review
< 10,000 SF each

August 1 submission
(no city applic prior to Sept)

Sewer from LL thru adjoining property First State Business Park

driveway assess off LL

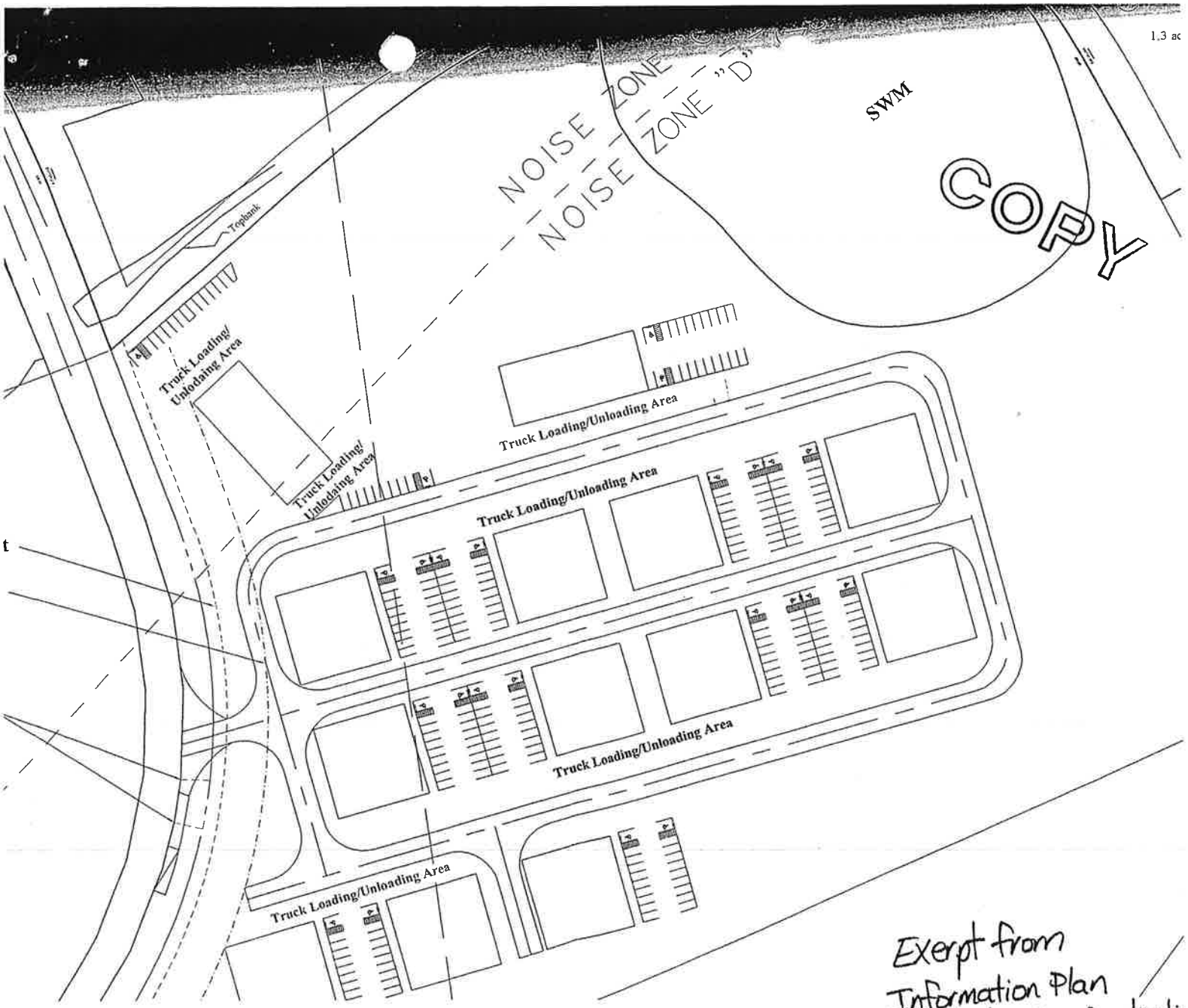
Loading Space Bldg setback 100' from Res.

Plan needs to show
- Sidewalks
- Dumpster
- Landscape
- Opaque Barrier
- Arch. Elev.

IPM-conv.
Lot area 2½ac
W-200
D-300
FY-60
SY-40
RY-40
SY/RY-100 adj. res
Parking 1/300 or 1/employ
stories not limited/distance to nearest lotline
FAR 0.5

AEOZ
APZ1 < 60
Land Use

- Zoning ordinance quick list for preapp mtg.



Exerpt from
Information Plan
at 7/5/06 Pre Applicatio
Mtg. with Matt Mitten

Exhibit 2Q

City of Dover

May 16, 2006

Matthew E. Mitten
109 Tuckahoe Lane
Bear, Delaware 19701

RE: Use of Property
4.9 Acres on the South side of Lafferty Lane
Map No. ED-05-077.00-01-260.000-000

Dear Mr. Mitten,

This letter is to serve as notice that the activity taking place at the above referenced property is still in violation of the Permitted Uses in the Industrial Park Manufacturing Zone as outlined in a letter sent to you on March 9, 2006. All activity on this site must cease immediately. The site is also to be cleaned up with all scrap metals, concrete, bricks and other assorted debris removed from the site by May 26, 2006. After the site has been cleaned no other materials are to be brought to and or placed on the site.

Failure to clean and discontinue using the site by May 26, 2006 will result in summons being issued in the amount of not less than twenty-five dollars ($25.00) nor more than one thousand dollars ($1,000.00) Each day the site is in violation is considered a separate violation. Fines not paid within fourteen (14) days of the issued date shall automatically double.

If you have any questions, concerns or would like to appeal this notice please contact the Department of Planning and Inspections at 736-7011.

Sincerely,

Ronald L Coburn Jr.

Ron Coburn Jr.
Inspector II

cc: Anthony DePrima, City Manager
Scott Koenig, Public Services Manager
Ann Marie Townshend, AICP, Director of Planning and Inspections
William Pepper, City Solicitor
File

Exhibit 2R

City of Dover

March 9, 2006

Mathew E. Mitten
109 Tuckahoe Lane
Bear, Delaware 19701

Re: Use of Property
4.9 Acres on the South side of Lafferty Lane
Map No. ED-05-077.00-01-260.000-000
Site Plan Approval Required.

Mr. Mitten,

The activity taking place on the above referenced property is in violation of the Permitted Uses in the IPM (Industrial Park Manufacturing Zone). Uses in the IPM Zoning District are subject to site development plan approval as set forth in Article 10, Section 2.

Code Reference(s):

Article 3. District Regulations
Section 20. Industrial park manufacturing zone (IPM).
20.1 *Uses permitted.* 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, and in accordance with performance standards procedure as set forth in article 5, section 8, and subject to site development plan approval as set forth in article 10, section 2:
20.11 Manufacturing, assembling, converting, altering, finishing, cleaning, cooking, baking or any other type of manufacturing or industrial processing of any goods, materials, products, instruments, appliances and devices, provided that the fuel used shall be oil, gas or electricity; together with incidental clinics, cafeterias and recreational facilities for the exclusive use of employees of the concern engaged in such undertaking.

Article 10, Planning Commission
Section 2. Site development plan approval.
2.1 Site development plan approval shall be required for the erection or enlargement of all structures and establishments or any use for which site development plan approval is required by this ordinance.

2.4 *Procedure.*
2.41 *Presubmission conference.* Prior to the submission of a site development plan, the applicant or his representative shall meet in person with the city planner with a sketch plan. The purpose of this conference shall be to discuss proposed uses or developments in order to determine, first, whether the site development plan application shall be submitted to the city planner for consideration and review through his office or shall be referred to the planning commission.

Please schedule a presubmission conference with the Department of Planning as soon as possible. Failure to contact the Department of Planning and Inspections prior to close of business on March 15, 2006 will cause the City to take whatever appropriate actions deemed necessary to correct the violations including a summons being issued for each day the violation and use of the property is continued.

If you have any questions or would like to appeal this notice, please contact the Department of Planning and Inspections, at 736-7010.

Sincerely,

Grant D. Prichard
Chief Building Inspector
City of Dover

cc:

Anthony DePrima, City Manager
Scott Koenig, Director of Public Works
Dawn Melson – Senior Planner, City of Dover
Hand Delivered to Site

City of Dover Code Reference:

ARTICLE 10. PLANNING COMMISSION

Section 2. Site development plan approval

2.1 Site development plan approval shall be required for the erection or enlargement of all structures and the establishment of any use for which site development plan approval is required by this ordinance.

2.2 In considering and acting upon site development plans, the public health, safety and welfare, the comfort and convenience of the public in general and of the residents of the immediate neighborhood in particular shall be taken into consideration and appropriate conditions and safeguards may be prescribed as may be required that the results of its action may, to the maximum extent possible, further the expressed intent of this ordinance and the accomplishment of the following objectives in particular:

2.21 Maximum safety and convenience of vehicular and pedestrian traffic by ensuring that all proposed and impacted streets, driveways and walkways are adequate, but not excessive in number, adequate in width, grade, alignment, capacity, and visibility, and suitably located, particularly with respect to their connections with public streets.

2.22 The provision of adequate access to all proposed structures, equipment, or material on the site for fire and police protection.

2.23 The provision of adequate off-street parking to accommodate the vehicles of persons connected with or visiting the use and to obviate the parking of such vehicles in public streets.

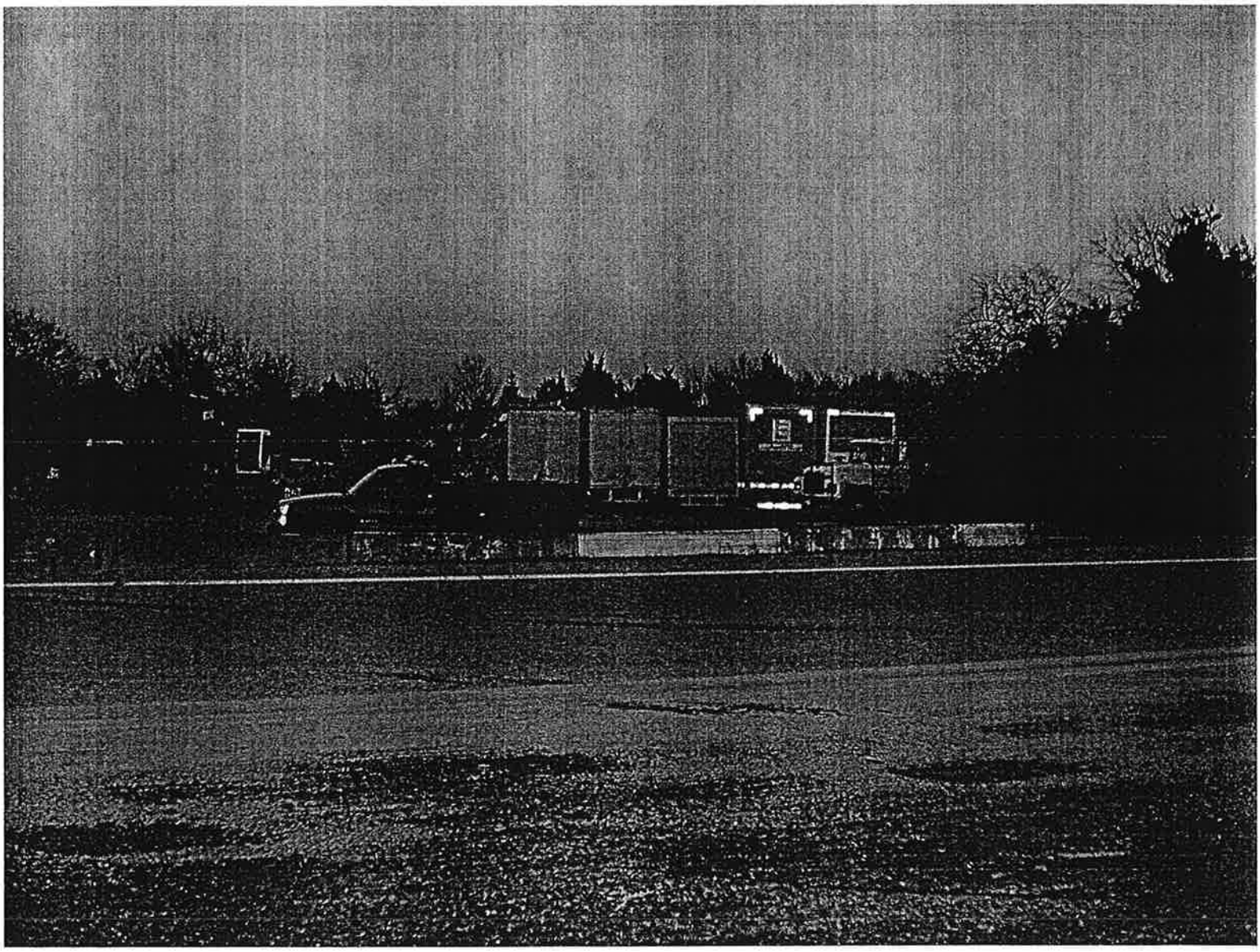
PENALTY FOR NON-COMPLIANCE:

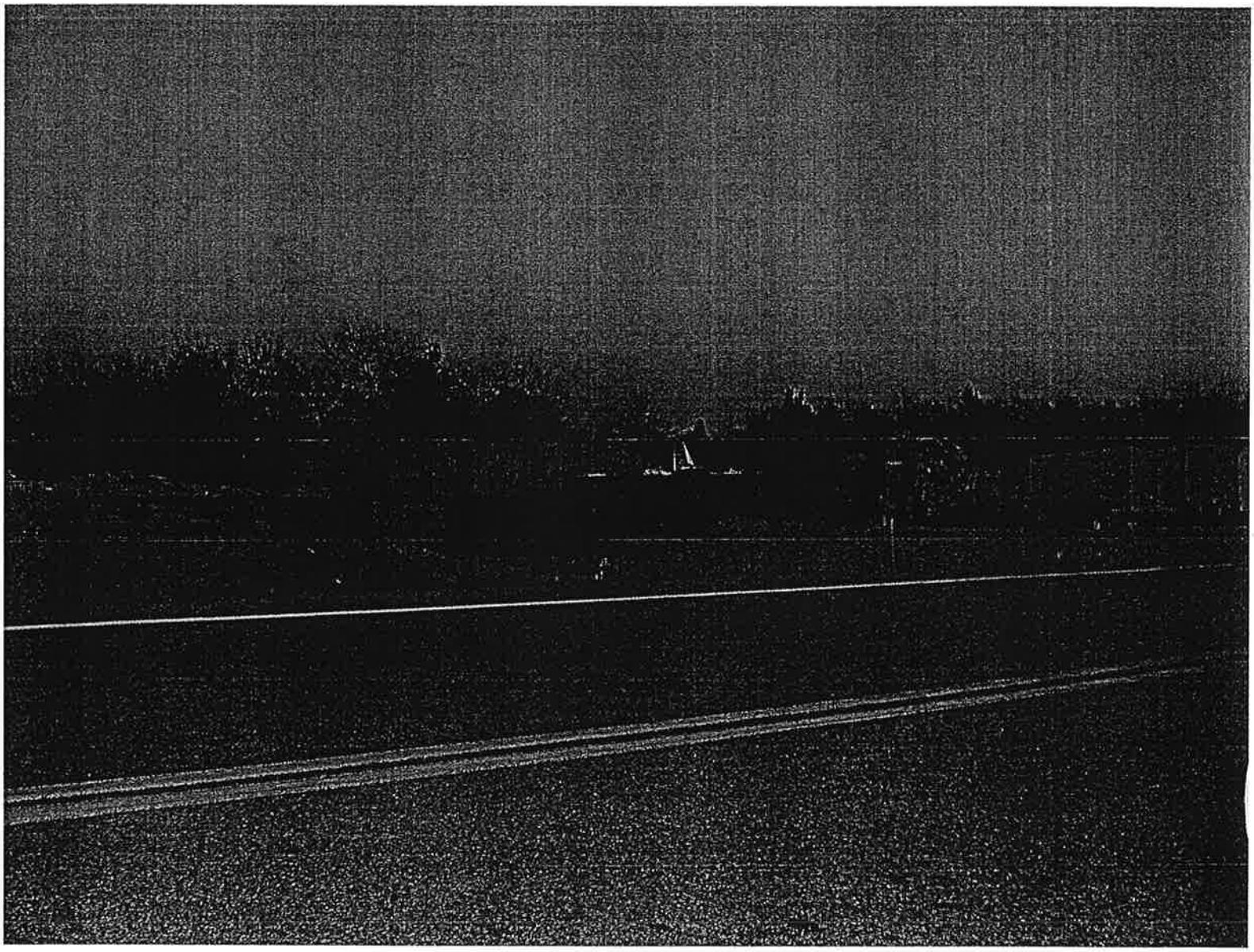
Dover Code of Ordinances

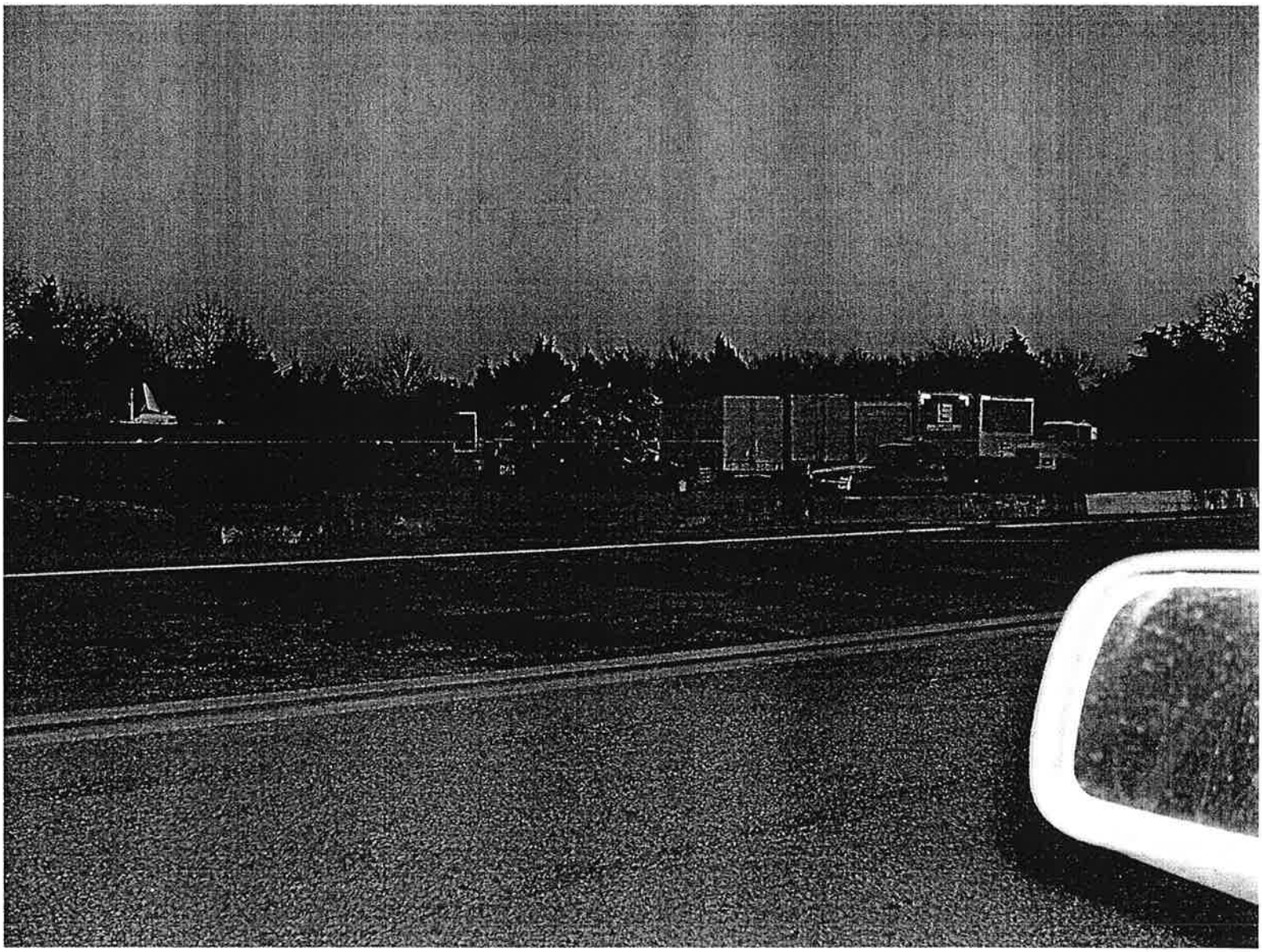
Chapter 1, General Provisions

Sec. 1-10. General penalty for violation of Code; separate offenses.

Whenever in this Code or in any ordinance of the city any act or omission is prohibited or is made or declared to be unlawful or a violation, or whenever in said Code or ordinance the doing of any act is required or the failure to do any act is declared to be unlawful or a violation, and no specific penalty is provided therefore, the violation of any such provision of this Code or any ordinance shall be punishable by a fine not less than twenty-five dollars ($25.00) nor more than one thousand dollars ($1,000.00). Unless specifically provided otherwise, or the context thereof so dictates, each day any violation of any provision of this Code or any ordinance shall continue shall constitute a separate offense. Fines not paid within fourteen (14) days of the day the fine was issued, including the day the fine was issued, shall be automatically doubled in amount.







LANDSCAPE
ARCHITECTURAL
SERVICES, L.L.C.
Registered Landscape Architects
LAND, SITE & PARK PLANNING • WETLANDS SCIENCES
ESTABLISHED 1984

Future site plan application

Matthew T. Spong
R.L.A., A.S.L.A.
Theo L. Mercer, Jr.
R.L.A.
Patricia Sawicki
A.S.L.A.

Exhibit 2S

City of Dover
Dept. of Planning & Inspections
The Plaza
Dover De 19901
Attn: Mr. James Galvin, A.I.C.P., Director

HAND DELIVERED
August 23, 2005

Re: Parcel B4.2466 Acres
Lands of Mathew E. Mitten Lafferty Lane

Dear Jim,

Attached is a sketch plan dated "revised 8/22/05" for the proposed development of an existing 4.2466 acre parcel belonging to the applicant.

The parcel is zoned IPM. The proposed building size is 6,000 sq. ft. with the required 60' front set-back, 40' sides and the 100' of the adjacent Kings Cliff Mobil Home Community. to the west

Parking required would be (1) per 800 sq. ft. of (8) spaces. However, 20 or (1) per 300 sq. ft. are proposed. The site is partially wooded 23% of the woods would be cleared 77% preserved. A small non tidal wetland area will not be impacted by the proposed development. A topographic survey will be performed next month and the owner is anticipating site plan submittal in October or November o this year.

Please review this information and let me know what comments you may have prior to our official submission.

With Best Regards,

matt

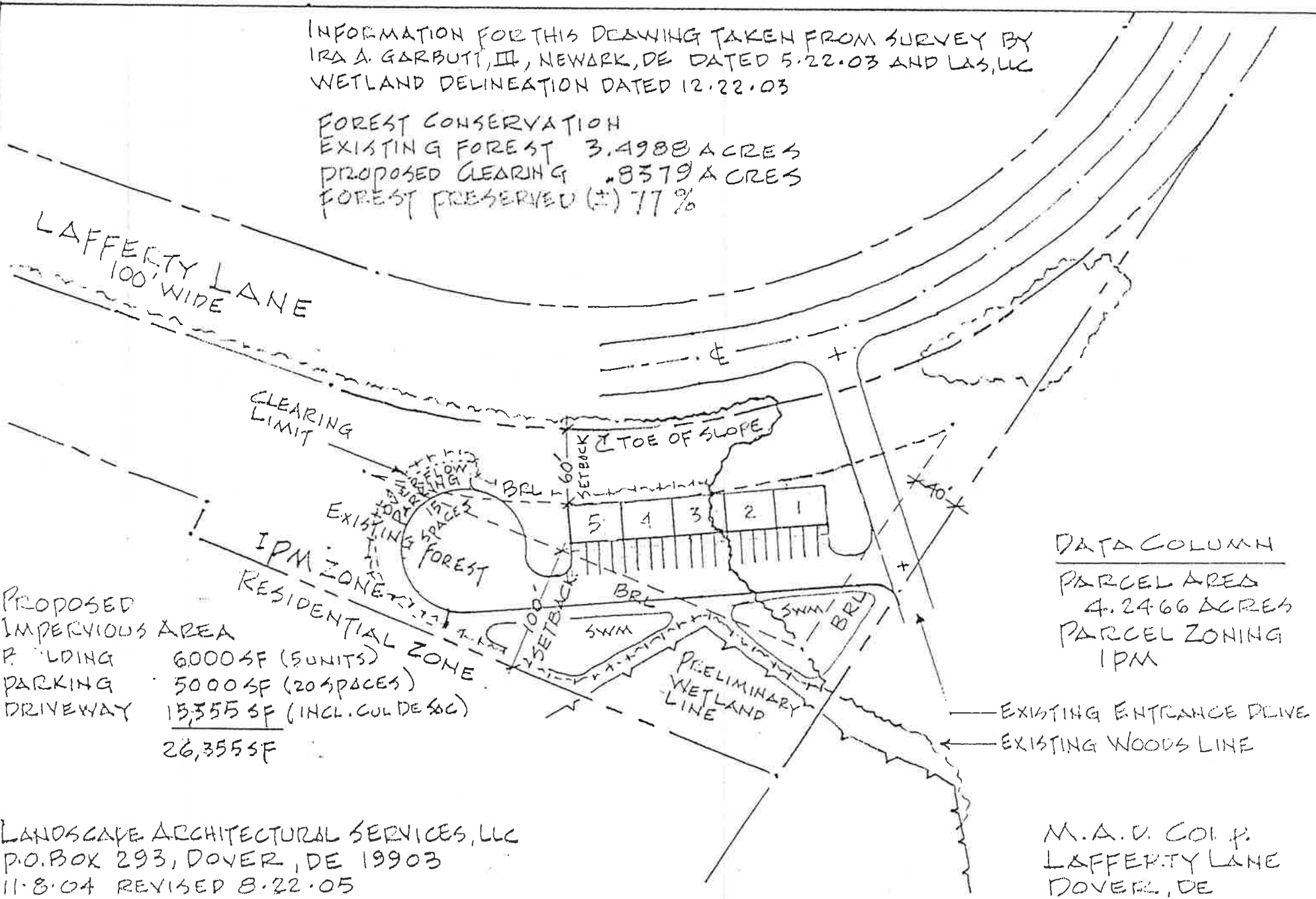
Matthew T. Spong, R.L.A., A.S.L.A., Principal
X.C. Mr. Mat Mitten, MAD Corp.

ED-05-77.00-01-26.00

FAX 302-284-0301

INFORMATION FOR THIS DRAWING TAKEN FROM SURVEY BY IRA A. GARBUTT, III, NEWARK, DE DATED 5.22.03 AND LAS, LLC WETLAND DELINEATION DATED 12.22.03

FOREST CONSERVATION
EXISTING FOREST 3.4988 ACRES
PROPOSED CLEARING .8379 ACRES
FOREST PRESERVED (±) 77 %



PROPOSED IMPERVIOUS AREA

BUILDING	6000 SF (5 UNITS)
PARKING	5000 SF (20 SPACES)
DRIVEWAY	15,355 SF (INCL. CUL DE SAC)
	26,355 SF

DATA COLUMN

PARCEL AREA
4.2466 ACRES
PARCEL ZONING
IPM

EXISTING ENTRANCE DRIVE
EXISTING WOODS LINE

LANDSCAPE ARCHITECTURAL SERVICES, LLC
P.O. BOX 293, DOVER, DE 19903
11.8.04 REVISED 8.22.05

M.A.D. CORP.
LAFFERTY LANE
DOVER, DE
OWNER:
MATHEW E. MITTEN

PROPOSED OFFICE BUILDING
PLAN SCALE 1"=100'-0"

SKETCH PLAN #1
PROJECT NO. 2003-50-847

Appendix B: Zoning Ordinance
Article 3 – District Regulations

Section 20. - Industrial park manufacturing zone (IPM).

20.1 *Uses permitted.* 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, and in accordance with performance standards procedure as set forth in article 5, section 8, and subject to site development plan approval as set forth in article 10, section 2:

20.11 Manufacturing, assembling, converting, altering, finishing, cleaning, cooking, baking or any other type of manufacturing or industrial processing of any goods, materials, products, instruments, appliances and devices, provided that the fuel used shall be oil, gas or electricity; together with incidental clinics, cafeterias and recreational facilities for the exclusive use of employees of the concern engaged in such undertaking.

20.12 Research, design, testing and development laboratories.

20.13 Printing, publishing, binding, packaging, storage, warehousing, transshipment and distribution, and trucking terminals.

20.14 Business, professional or administrative offices; banks and financial institutions; hotels, motels and restaurants; public parks, playgrounds, and recreational facilities; and public utility uses, provided that these uses shall only be located upon a thoroughfare, arterial street or access highway with[in] the IPM zone. Retail sales and service establishments within planned industrial parks for local needs and local consumption of the employees and customers of the other permitted uses within the planned industrial park.

20.15 Signs shall meet the regulations found in article 5, section 4, supplementary sign regulations.

20.16 Agricultural or farm uses as defined and permitted in article 3, section 1.11.

20.17 The following uses may be permitted as conditional uses if approved by the planning commission in accordance with the provisions and procedures set forth in article 10, section 1 and any specified requirements set forth below:

(a) Associated retail uses in conjunction with and accessory to a permitted use, provided that the associated retail use does not occupy more than 30 percent of the gross floor area of the building or group of buildings on a lot. Parking shall be provided at a rate of one parking space per 300 square feet of retail space for the exclusive use of retail customers in addition to the bulk parking requirements of this zoning district for a particular use.

20.18 Mini-storage facilities, subject to the following regulations:

(a) No unit shall be placed within 30 feet of any other structure on the lot or a residential property line.

(b) No outside storage [is allowed], except for recreational vehicles, boats or personal automobiles when completely screened from view and parked in specifically approved locations. Parking for these vehicles shall not count toward the required parking set forth in subsection (e) below.

(c) No individual unit may be used for retail, garage sale or any other commercial activities.

(d) No storage of flammable, explosive, corrosive or other hazardous products may occur in the individual unit.

(e) Parking must be provided at a ratio of one space for each 25 rental units, plus a minimum of three spaces for an office outside of the enclosure. One row of parallel parking is permitted between buildings at a ratio of one space per 25 feet.

(f) All other bulk requirements of this ordinance are met.

20.2 *Uses prohibited.* The following uses are specifically prohibited:

20.21 Residences, except those existing at the time of adoption of this amendment.

20.22 Manufacturing uses involving primary production of the following products from raw materials: asphalt, cement, charcoal, and fuel briquettes; chemicals: aniline dyes, ammonia, carbide, caustic soda, cellulose, chlorine, and carbon black and bone black, creosote, hydrogen and oxygen, industrial alcohol, nitrates (manufactured and natural) of an explosive nature, potash, plastic materials, and synthetic resins, pyroxylin, rayon yarn, and hydrochloric, nitric, phosphoric, picric, and sulphuric acids: coal, coke, and tar products, including gas manufacturing; explosives; fertilizers; glue, and size (animal); linoleum and oil cloth; matches; paint, varnishes, and turpentine; rubber (natural or synthetic); [and] soaps, including fat rendering.

20.23 The following processes: nitrating of cotton or other materials; magnesium foundry; reduction, refining, smelting, and alloying of metal or metal ores; refining secondary aluminum; refining petroleum products, such as gasoline, kerosene, naphtha, [and] lubricating oil; distillation of wood or bones; [and] reduction and processing of wood pulp and fiber, including papermill operations.

20.24 Operations involving stockyards, slaughterhouses, and slag piles.

20.25 Storage of explosives, [and] bulk or wholesale storage of gasoline above [the] ground.

20.26 Dumps.

20.27 Quarries, stone crushers, screening plants, and storage of quarry screenings, accessory to such uses.

20.28 Junkyards, automobile dismantling plants or storage of used parts of automobiles or other machines or vehicles or of dismantled or junked automobiles.

20.3 *Development options.* Land zoned IPM may be developed on a conventional individual lot basis or as a planned industrial park development made up of multiple individual lots and containing an internal road system. Lot area, bulk and parking requirements for conventional development in an IPM zone shall be as set forth in article 4, section 4.16 of this ordinance. Development of land in an IPM zone as a planned industrial park shall be permitted only when certain eligibility requirements, as set forth in article 3, section 20.4 of this ordinance, and when specific design standards, as set forth in article 3, section 20.5 of this ordinance, are met.

20.4 *Eligibility for planned industrial park development.* No area shall be developed as a planned industrial park unless the following conditions are met:

(a) The development consists of a continuous area of at least 25 acres in single ownership.

(b) The development will be served by public water supply and public sewerage, which shall be in place at the time construction of the first stage of the industrial park begins.

(c) The frontage of the development shall be on an arterial road and be of sufficient width that safe and efficient access to the industrial park can be adequately spaced from accesses to adjacent properties, according to standards set forth by the Delaware Department of Transportation.

20.5 *Design standards for planned industrial parks.* The design standards, including dimensional requirements and sign regulations, for a planned industrial park shall be the same as required for conventional individual lot development for land in an IPM zone, as set forth in article 4, section 4.16 of this ordinance, unless specifically excepted in this article or unless waived by the planning commission, where the commission finds such a waiver to be necessary, desirable and consistent with the purposes of this article and of the comprehensive plan.

20.51 In a planned industrial park, no structure may be located within 100 feet of the property line of the development.

20.52 There shall be a landscaped buffer area of no less than ten feet along all property lines. Where adjacent to residential zones, the buffer shall consist of a landscape screen no less than 6½ feet high. All landscaping shall be properly maintained throughout the life of any use on the lot.

20.53 The average size of all individual lots in a planned industrial park shall be 2½ acres. The minimum individual lot size shall be 60,000 square feet. The minimum width of a lot shall be 150 feet.

20.54 Structures in a planned industrial park shall be restricted to two stories and 35 feet in height. The maximum floor area ratio shall be 0.5. The maximum area of an individual lot permitted to be covered by an enclosed structure is 35 percent. Not more than 65 percent of the total area of an individual lot may be covered by impervious surfaces.

20.55 Access to state highways and arterial roads shall be controlled by standards set forth by the department of transportation. There shall be no exceptions or waivers to this requirement. The internal circulation system shall be separated from the external public street system, and pedestrian traffic shall be separated from vehicular traffic by means of appropriate site design and traffic control devices.

20.56 No less than 35 percent of the site area shall consist of grass and landscaped areas. Parking areas shall be landscaped.

20.57 Permanent facilities shall be provided by the developer to handle increased stormwater runoff which will result from increasing the impervious surface area of the site in accordance with the State of Delaware soils erosion and sedimentation control act (7 Del. C. § 4001 et seq.) adopted and administered by the City of Dover. Such provision shall include contributions toward the cost of off-site facilities constructed by the city to the extent that the improvements are necessitated by the construction of the planned industrial park.

20.6 *Site development plan approval.* Site development plan approval, in accordance with article 10, section 2 hereof, shall be required for either conventional individual lot development or planned industrial park development of land zoned IPM prior to the issuance of building permits for the erection or enlargement of all structures and prior to the issuance of certificates of occupancy for any change of use. In the case of planned industrial parks, this requirement will apply to each individual lot within the development, in addition to the requirement to obtain site development plan approval for the development as a whole. The application for site development plan approval for a planned industrial park shall include, in addition to the usual requirements:

(a) Substantiation of the need for the planned industrial park, based on the developer's market analysis and expression of tenant's or buyer's interest.

(b) Nature of the applicant's interest in the development.

(c) The approximate use, height and floor area of all buildings and other structures.

(d) Preliminary traffic study and proposed methods for alleviating adverse impact on adjacent roads.

(e) Approximate size and capacity of all proposed parking areas.

(f) Proposed stormwater management plan.

(g) Plans of existing natural features showing topography, soils, drainage and vegetation.

(h) Site plans showing approximate locations of buildings, roads, parking, landscaping and utility and drainage easements.

(i) An outline or a draft text of any proposed protective covenants governing architectural controls, landscaping, lighting, etc., that the developer intends to impose on tenants or property owners within the planned industrial park.

20.7 *Performance standards.* All uses are subject to performance standards as set forth in article 5, section 8.1.

(Ord. of 3-24-1986; Ord. of 1-14-1991; Ord. of 6-10-1991; Ord. of 7-12-1993, §§ 2, 9; Ord. of 7-10-2000; Ord. of 2-12-2001; Ord. of 7-23-2001)

Appendix B: Zoning Ordinance
Article 3 – District Regulations

Section 22. - Airport environs overlay zone (AEOZ).

22.1 Purpose and intent. The airport environs overlay zone (AEOZ) is expressly intended to protect the public health, safety, and welfare by identifying areas impacted by high levels of aircraft noise, and the potential for aircraft accidents associated with airport operations, by regulating land use and the construction of buildings within such areas. The AEOZ is further intended to preserve and promote the integrity of the mission of Dover Air Force Base (DAFB) as a matter of local, regional and national importance, by regulating development and land use within the specific areas surrounding DAFB, and to protect DAFB from encroachment of incompatible land uses. The AEOZ shall serve as an overlay zone that applies additional standards and requirements to properties located therein.

(a) The AEOZ is based on information provided by the Dover Air Force Base's Air Installation Compatible Use Zone Study Update. The city shall work with the Dover Air Force Base to update the provisions of this section as needed.

(b) In case of conflicting standards and requirements, the more stringent standards and requirements shall apply. Uses prohibited by the underlying zoning designations of the properties within the AEOZ shall not be permitted by this section.

22.2 Definitions.

(a) Air installations compatible use zones (AICUZ): is a department of defense program to achieve compatibility between air installations and neighboring communities.

(b) Airport environs: is the geographic area that is affected by airport air traffic operations and defined on the basis of those areas immediately impacted by aircraft noise of the 65 decibels (dBs) and greater noise exposure areas as delineated by the current and approved DAFB air compatibility use zone study. This area is represented as the airport environs overlay zone (AEOZ).

(c) Day-night average A-weighted sound level (DNL): is a cumulative aircraft noise index which estimates the exposure to aircraft noise and relates the estimated exposure to an expected community response; a 24-hour energy average sound level expressed in decibels (dBs), with a ten-decibel penalty applied to noise occurring between 10:00 p.m. and 7:00 a.m.

(d) DNL contour: is an isoline linking together a series of points of equal cumulative noise exposure based on Ldn metric. Such contours are developed based on aircraft flight patterns, number of daily aircraft operations by type of aircraft and time of day, noise characteristics of each aircraft, and typical runway usage patterns.

(e) Decibel (dB): is a unit of measure of sound pressure or intensity.

(f) Ldn metric: is the average equivalent A-weighted sound level during a 24-hour day, obtained by adding ten decibels to the hourly noise levels measured during the night (10:00 p.m. to 7:00 a.m.).

(g) SLUCM: Standard Land Use Coding Manual, U.S. Department of Transportation.

22.3 Accident potential zones and noise zones. The AEOZ is comprised of two basic regulatory components: accident potential zones and noise zones. This section establishes three accident potential zones and four noise zones. The boundaries of each of these zones are delineated on the City of Dover Zoning Map and are further described as follows:

(a) Accident potential zones:

(1) Clear zone (CZ) is that area immediately adjoining the end of a runway and which extends outward from the edge of the runway a distance of 3,000 feet and which is 3,000 feet in width (1,500 feet to either side of the centerline of the airport runway);

(2) Accident potential zone I (APZ I) is that area immediately adjoining the outer edge of the CZ and which extends outward from the boundary of the CZ a distance of 5,000 feet, and which is 3,000 feet in width; and

(3) Accident potential zone II (APZ II) is that area immediately adjoining the outer edge of the APZ I and which extends outward from the boundary of the APZ I a distance of 7,000 feet, and which is 3,000 feet in width.

(b) Noise zones:

(1) Noise zone A (DNL A) is that area within and bounded by DNL contour lines of between 65 decibels and 69 decibels of noise pressure.

(2) Noise zone B (DNL B) is that area within and bounded by DNL contour lines of between 70 decibels and 74 decibels of noise pressure.

(3) Noise zone C (DNL C) is that area within and bounded by DNL contour lines of between 75 decibels and 79 decibels of noise pressure.

(4) Noise zone D (DNL D) is that area within and bounded by DNL contour lines of 80 decibels and subject to noise pressure of 80 decibels and greater.

22.4 Exemptions. The following uses and structures are exempt from compliance with the provisions of this section:

(a) Additions to existing one-family dwellings. Additions to existing one-family dwellings may be permitted when all other applicable zoning district bulk requirements are met.

(b) Additions to existing non-residential buildings.

(1) Additions to existing non-residential buildings designed for human occupation shall be limited to a maximum increase of 50% of the floor area.

(2) Additions to existing non-residential buildings designed for storage, warehousing and other uses not designed or intended for human occupancy as a primary use are unlimited in floor area.

(c) Temporary uses. Temporary uses which include but are not limited to public gatherings, celebrations and outdoor entertainment events are permitted, so long as the period of operation does not exceed five days.

(d) Temporary structures. Temporary buildings and structures such as tents, pavilions, bleachers, etc., that are not used for residential purposes, and which meet said

applicable requirements as contained within this zoning ordinance appendix are permitted, so long as such uses and associated structures are constructed incidental to a permitted use.

(e) Accessory uses and structures. Accessory uses and structures incidental to a permitted principal structure or use.

22.5 Land use and development standards. Any building or portion thereof constructed or placed within the AEOZ shall comply with the following standards:

(a) Unless specifically exempted under subsection 22.4 above, land uses shall be permitted or prohibited in accordance with subsection 22.6, land use compatibility table.

(b) Proposed structures situated within noise zones A through D shall be constructed with noise attenuation features to achieve the minimum interior noise level reductions specified by building type in subsection 22.6, land use compatibility table.

(c) In APZ I and APZ II, no structure may be erected over 60 feet in height, regardless of zoning district bulk regulations of the individual zoning district.

(d) All building permit applications for construction of new buildings or building additions not exempted under section 22.4, within AEOZ shall be accompanied by a written statement from a licensed architect or engineer, which lists all construction materials to be used and the resultant interior noise level reductions to be achieved. The written analysis provided by the engineer or architect shall demonstrate that the proposed construction will achieve compliance with the minimum required interior noise level reductions specified in subsection 22.6, land use compatibility table.

22.6 Land use compatibility table.

LAND USE COMPATIBILITY TABLE								
SLUCM No.	*Name*	*Accident Potential Zones*			*Noise Zones in DNL dBA*			
		Clear Zone	*APZ I*	*APZ II*	*A 65— 69*	*B 70— 74*	*C 75— 79*	*D 80+*
10	Residential							
11.12	Single units; semidetached and attached	N	N	N	Y1	Y2	N	N
11.31	Apartments	N	N	N	Y1	Y2	N	N
12	Group quarters	N	N	N	Y1	Y2	N	N
13	Residential hotels	N	N	N	Y1	Y2	N	N
14	Mobile home parks or courts	N	N	N	N	N	N	N
15	Transient lodgings	N	N	N	Y1	Y2	Y5	N

LAND USE COMPATIBILITY TABLE								
SLUCM No.	*Name*	*Accident Potential Zones*			*Noise Zones in DNL dBA*			
		Clear Zone	*APZ I*	*APZ II*	*A 65— 69*	*B 70— 74*	*C 75— 79*	*D 80+*
16	Other residential	N	N	N	Y1	Y2	N	N
20	Manufacturing							
21	Food & kindred products; manufacturing	N	N	Y	Y1	Y2	Y3	Y4
22	Textile mill products; manufacturing	N	N	Y	Y1	Y2	Y3	Y4
23	Apparel and other finished products made from fabrics, leather, and similar materials; manufacturing	N	N	N	Y1	Y2	Y3	Y4
24	Lumber and wood products (except furniture); manufacturing	N	Y5, 9	Y	Y1	Y2	Y3	Y4
25	Furniture and fixtures; manufacturing	N	Y5, 9	Y	Y1	Y2	Y3	Y4
26	Paper & allied products; manufacturing	N	Y5, 9	Y	Y1	Y2	Y3	Y4
27	Printing, publishing, and allied industries	N	Y5, 9	Y	Y1	Y2	Y3	Y4
28	Chemicals and allied products; manufacturing	N	N	N	Y1	Y2	Y3	Y4
29	Petroleum refining and related industries	N	N	Y	Y1	Y2	Y3	Y4
30	Manufacturing							
31	Rubber and misc. plastic products, manufacturing	N	N	N	Y1	Y2	Y3	Y4
32	Stone, clay and glass products manufacturing	N	N	Y	Y1	Y2	Y3	Y4
33	Primary metal industries	N	N	Y	Y1	Y2	Y3	Y4
34	Fabricated metal products; manufacturing	N	N	Y	Y1	Y2	Y3	Y4
35	Professional, scientific, and controlling instruments; photographic and optical goods; watches and clocks manufacturing	N	N	N	Y1	Y2	Y3	N
39	Miscellaneous manufacturing	N	Y5, 9	Y5, 9	Y1	Y2	Y3	Y4
40	Transportation, Communications and Utilities							
41	Railroad, rapid rail transit and street railroad transportation	N	N	Y	Y1	Y2	Y3	Y4
42	Motor vehicle transportation	N	Y	Y	Y1	Y2	Y3	Y4

LAND USE COMPATIBILITY TABLE								
SLUCM No.	*Name*	*Accident Potential Zones*			*Noise Zones in DNL dBA*			
		Clear Zone	*APZ I*	*APZ II*	*A 65—69*	*B 70—74*	*C 75—79*	*D 80+*
43	Aircraft transportation	N	Y10	Y	Y1	Y2	Y3	Y4
44	Marine craft transportation	N	Y10	Y	Y1	Y2	Y3	Y4
45	Highway & street right-of-way	N	Y	Y	Y1	Y2	Y3	Y4
46	Automobile parking	N	Y10	Y	Y1	Y2	Y3	Y4
47	Communications	N	Y10	Y	Y1	Y2	Y3	N
48	Utilities	N	Y10	Y	Y1	Y2	Y3	Y4
49	Other transportation communications and utilities	N	Y10	Y	Y1	Y2	Y3	N
50	Trade							
51	Wholesale trade	N	Y5	Y	Y1	Y2	Y3	Y4
52	Retail trade-building materials, hardware and farm equipment	N	Y5	Y	Y1	Y2	Y3	Y4
53	Retail trade-general merchandise	N	N	Y5	Y1	Y2	Y3	N
54	Retail trade-food	N	N	Y5	Y1	Y2	Y3	N
55	Retail trade-automotive, marine craft, aircraft and accessories	N	Y5	Y5	Y1	Y2	Y3	N
56	Retail trade-apparel and accessories	N	N	Y5	Y1	Y2	Y3	N
57	Retail trade-furniture, home furnishings and equipment	N	N	Y5	Y1	Y2	Y3	N
58	Retail trade-eating and drinking establishments	N	N	N	Y1	Y2	Y3	N
59	Other retail trade	N	N	Y5, 9	Y1	Y2	Y3	N
60	Services							
61	Finance, insurance and real estate services	N	N	Y5, 9	Y1	Y2	Y3	N
62	Personal services	N	N	Y5, 9	Y1	Y2	Y3	N
62.4	Cemeteries	N	N	Y11	Y1	Y2	Y3	N
63	Business services	N	Y5, 9	Y5,9	Y1	Y2	Y3	N
64	Repair services	N	Y5, 9	Y	Y1	Y2	Y3	Y4

LAND USE COMPATIBILITY TABLE								
SLUCM No.	*Name*	*Accident Potential Zones*			*Noise Zones in DNL dBA*			
		Clear Zone	*APZ I*	*APZ II*	*A 65— 69*	*B 70— 74*	*C 75— 79*	*D 80+*
65	Professional services	N	N	Y5, 9	Y1	Y2	Y3	N
65.1	Hospitals, nursing homes	N	N	N	Y1	Y2	N	N
65.1	Other medical facilities	N	N	N	Y1	Y2	Y3	N
66	Contract construction services	N	Y5, 9	Y	Y1	Y2	Y3	N
67	Governmental services	N	N	Y5, 9	Y1	Y2	Y3	N
68	Educational services	N	N	N	Y1	Y2	N	N
69	Miscellaneous services	N	N	Y5	Y1	Y2	Y3	N
70	Cultural, Entertainment and Recreational							
71	Cultural activities (including churches)	N	N	N	Y1	Y2	N	N
71.2	Nature exhibits	N	N	Y	Y1	N	N	N
72	Public assembly	N	N	N	Y1	N	N	N
72.1	Auditoriums, concert halls	N	N	N	Y1	Y2	N	N
72.11	Outdoor music shell, amphitheaters	N	N	N	N	N	N	N
72.2	Outdoor sports arenas, spectator sports	N	N	N	Y6	Y6	N	N
73	Amusements	N	N	Y9	Y1	Y2	N	N
74	Recreational activities (including golf courses, riding stables, water recreation)	N	N	Y	Y	Y	N	N
75	Resorts and group camps	N	N	N	Y1	Y2	N	N
76	Parks	N	Y9	Y9	Y	Y	N	N
79	Other cultural, entertainment and recreation	N	N	N	Y2	Y3	N	N
80	Resources Production and Extraction							
81	Agriculture (except livestock)	Y8	Y	Y	Y7	Y7	Y8	Y8
81.5 to 81.7	Livestock farming and animal breeding	N	Y	Y	Y7	Y7	N	N

LAND USE COMPATIBILITY TABLE								
SLUCM No.	*Name*	*Accident Potential Zones*			*Noise Zones in DNL dBA*			
		Clear Zone	*APZ I*	*APZ II*	*A 65—69*	*B 70—74*	*C 75—79*	*D 80+*
82	Agricultural related activities	N	Y	Y	Y7	Y7	N	N
83	Forestry activities and related services	N	Y	Y	Y7	Y7	N	N
84	Fishing activities and related services	N	N	N	N	N	N	N
N	Mining activities and related services	N	N	N	N	N	N	N
89	Other resources production and extraction	N	N	N	N	N	N	N

Y (Yes)—Land use and related structures are compatible without restriction.

N (No)—Land use and related structures are not compatible and are prohibited.

Yx (yes with restrictions)—Land use and related structures generally compatible; see Notes 1—12.

NLR (Noise Level Reduction)—NLR (outdoor to indoor) to be achieved through incorporation of noise attenuation measures into the design and construction of the structures.

NOTES:

1 Require NLR of 25dB for DNL A.

2 Require NLR of 30dB for DNL B.

3 Require NLR of 35dB for DNL C.

4 Require NLR of 40dB for DNL D.

5 Require NLR of noise zone and building location and site planning, and design and use of berms and barriers can help mitigate outdoor exposure, particularly from near ground level sources. Measures that reduce outdoor noise should be used whenever practical in preference to measures which only protect interior spaces.

6 Require NLR of noise zone and special sound reinforcement systems are installed.

7 Associated residential uses require NLR of noise zone.

8 Structures are not permitted and personnel should wear hearing protection devices.

9 Facilities shall be low intensity.

10 No passenger terminals and no major aboveground transmission lines in APZ I.

11 Excludes chapels.

12 Maximum density of one dwelling unit per acre.

22.7 Design standards.

(a) All buildings and structures to be constructed or placed within the AEOZ shall be situated on the portion of the lot that affords the least noise impact to the proposed building or structure, wherever and whenever practicable. Buildings and structures shall be designed and oriented to minimize exposure to the noise source and should take maximum advantage of existing physical features to minimize noise impact. Windows, doors and other building openings shall be located the greatest possible distance away from the noise source.

(b) Landscape buffer plantings and related screening material shall be used whenever practicable to deflect noise away from areas intended for human habitation.

22.8 Prohibited uses. In addition to uses prohibited by subsection 22.6, land use compatibility table, the following activities are prohibited within the CZ, APZ I and APZ II zones of the AEOZ, including, but not limited to:

(a) Storage of explosives;

(b) Hazardous or toxic materials/waste;

(c) Aboveground transmission lines;

(d) Uses that release into the air any substance which would impair visibility or otherwise interfere with the operation of aircraft (dust, smoke, etc.);

(e) Uses that produce light emission, direct or indirect, which would interfere with pilot vision;

(f) And uses that attract birds or water fowl, such as, but not limited to, landfills, wastewater treatment facilities, and associated settling ponds, artificial marshes, dredge spoil materials, sand and gravel dredging operations and open fish farming.

(Ord. of 2-12-2001; Ord. No. 2013-01, 3-11-2013)

Appendix B: Zoning Ordinance
Article 10 – Planning Commission

Section 2. - Site development plan approval.

2.1 *Required.* Site development plan approval shall be required for the erection or enlargement of all structures and the establishment of any use for which site development plan approval is required by this ordinance. Site development plan shall be required according to the following criteria:

2.11 *Planning commission site plan review.* Site development plans shall be subject to review and approval by the planning commission if they meet the following thresholds:

(A) *New structures.* Site plans for new structures of 5,000 square feet or greater in floor area; or

(B) *Additions to existing structures.* Site plans for additions to existing structures that (1) constitute 15 percent or more of the existing floor area, and (2) new floor area is greater than 5,000 square feet; or

(C) *Impervious surface additions.* Site plans with a total of 5,000 square feet or greater of new or added impervious surface, including new structures or building additions; or

(D) *Adjacent to residential.* Nonresidential site plans with site disturbance greater than 2,500 square feet and adjacent to residential uses or residential zones.

2.12 *Site development master plan.* Site development master plans shall be subject to review and approval by the planning commission in accordance with subsection 2.44.

2.13 *Zoning review.* For site development plans involving construction of a single-family detached, single-family attached, or single-family semidetached dwelling; an accessory structure; or a nonresidential change of use for which no building addition or increase in impervious cover is proposed, the city planner or his designee may approve the site development plan in conjunction with building permit review.

2.14 *Administrative site plan.* All site development plans that do not meet the thresholds for zoning review in accordance with subsection 2.13 or planning commission site plan review in accordance with subsection 2.11 shall be reviewed as administrative site development plans.

2.2 *Objectives.* In considering and acting upon site development plans, the public health, safety and welfare, the comfort and convenience of the public in general and of the residents of the immediate neighborhood in particular shall be taken into consideration and appropriate conditions and safeguards may be prescribed as may be required that the results of approval may, to the maximum extent possible, further the expressed intent of this ordinance and the accomplishment of the following objectives in particular:

2.21 Maximum safety and convenience of vehicular, transit, bicycle, and pedestrian traffic by ensuring that all proposed and impacted streets, driveways and walkways are adequate, but not excessive in number, adequate in width, grade, alignment, capacity, and visibility, and suitably located, particularly with respect to their connections with public streets.

2.22 The provision of adequate access to all proposed structures, equipment, or material on the site for fire, ambulance, police, and other emergency services.

2.23 The provision of adequate off-street parking to accommodate the vehicles of persons connected with or visiting the use and to obviate the parking of such vehicles in public streets.

2.24 A site layout (including the location, power, direction, and time of any outdoor lighting of the site) which would have no adverse effect upon adjacent properties.

2.25 Landscaping of the site in a manner which is in character with that generally prevailing in the neighborhood and which provides reasonable screening, at all seasons of the year, of all playgrounds, parking areas, and service areas from the view of adjacent residential properties and streets.

2.26 In applicable cases, a drainage system and layout which would afford the best solution to any drainage problems.

2.27 Ensure that large scale development projects involving extended construction periods are planned and implemented in accordance with an approved site development master plan.

2.28 Consideration shall be given to the physical orientation and architectural characteristics of proposed buildings, the relationship of proposed buildings to existing buildings and to other proposed buildings, and their contributions to the overall image of the immediate vicinity by considering the building and architectural design guidelines as set forth in article 5, section 19. Design characteristics of proposed buildings and building additions shall not detract or devalue existing buildings in the immediate vicinity.

(A) If the planning commission determines that the proposed physical orientation and architectural characteristics of the proposed buildings do not meet the intent and objectives of this section, then the planning commission shall refer the proposal to the architectural review oversight subcommittee for review and comment.

(B) The subcommittee shall meet and review the proposal with the applicant, and return its comments to the planning commission by the next regularly scheduled meeting.

(C) The architectural review oversight subcommittee shall be appointed by the commission at its annual meeting, and membership shall consist of two planning commission members, and two design professionals with experience in construction, and the mayor or the mayor's designee. Two alternate design professionals with experience in construction shall also be appointed.

2.3 *Effect of site development plan approval.* No building permit will be issued for any structure covered by this section until an approved site development plan or approved amendment of any such plan has been secured by the applicant. No certificate of occupancy will be issued for any structure or use of land covered by this section unless the structure is completed or the land is developed or used in accordance with an approved site development plan or approved amendment of any such plan.

2.4 *Application procedure.*

2.41 *Preapplication meeting.* Prior to the submission of a site development plan, the applicant or his representative shall meet in person with the city planner or his designee with a sketch plan. The purpose of this meeting shall be to discuss proposed uses or developments in order to determine, first, whether the site development plan application shall be submitted to the city planner for consideration and review as an administrative site plan or shall be referred to the planning commission. If the application is to be referred to the planning commission, the applicant shall be informed at the preapplication meeting which elements listed in subsection 2.5 below will be required in determination of conformity with the provisions and intent of this section, along with any other comments and suggestions intended to bring about conformity with the provisions and intent of this section.

2.42 *Administrative site plan review.*

(A) *Process for administrative site plan application.* If, as a result of the preapplication meeting as described in subsection 2.41, it is determined that the proposed uses or development is of a type that may be approved by the city planner, the applicant shall submit

the application for site development plan approval on forms approved for that purpose, to the city planner with the required documentation under the provisions of subsection 2.5, and a fee as provided for in Appendix F—Fees and Fines. The city planner shall coordinate the reviews of the various administrative departments of the City of Dover and outside regulatory agencies and approve the application within 30 days of the date of submission or refer it to the planning commission at their next scheduled meeting.

(B) *Final plans and working drawings.* Following initial review and comment by the city planner, the applicant shall develop final construction plans for approval by the planning office. The planning office shall determine that all necessary approvals have been issued by city departments and outside regulatory agencies prior to issuing final plan approval. No building permit shall be issued until such time that the planning office has issued final site plan approval.

(C) *Expiration.* Administrative site development plan approval shall expire on the last day of the 24th month after the date of final approval by the planning office if construction of the work authorized or use permitted has not started or unless an extension of time is applied for by the applicant and granted by the city planner. Approval shall also expire if the construction of work authorized has stopped for a period of one year unless an extension of time is applied for and granted by the city planner.

(D) *Circumventing zoning requirements.* Administrative site plans shall not be used to circumvent the requirement of planning commission site plan review. If the city planner determines that cumulative administrative site plans on a property are being used to circumvent the requirements of the zoning ordinance or other provisions of the Dover Code of Ordinances, he shall refer the application to the planning commission, subject to the requirements of subsection 2.43.

2.43 *Planning commission site plan review.*

(A) *Site development plan.* If, as a result of the preapplication meeting as described in subsection 2.41, it is determined that the proposed uses or development is of a type that would be reviewed by the planning commission and approval or disapproval of the application given by that body, the application for site development plan approval shall be submitted to the city planner on forms approved by the planning commission, at least 30 days prior to the planning commission meeting at which approval is to be requested. The application for site development plan approval shall be accompanied by a fee as provided for in Appendix F—Fees and Fines.

(B) *Land subdivision.* If a proposed use or development requires planning commission review under the land subdivision regulations of the City of Dover as set forth in appendix A, the application for conditional approval of the preliminary layout, under article IV, section B of that ordinance appendix A, and the application for site development plan approval under this ordinance shall be submitted and reviewed concurrently. The application for site development plan approval shall be revised and all changed elements resubmitted and reviewed concurrently with the application for plan approval under article IV, section C of the land subdivision regulations set forth in appendix A.

(C) *Public hearing.* Prior to the review and action on the site plan application, the commission shall hold a public hearing subject to the following public notification procedures:

(1) The applicant shall advertise the public hearing in a newspaper of general circulation at least 15 days prior thereto.

(2) The applicant shall notify, by mail, all property owners within 200 feet of the extreme limits of the site plan property as their names appear on the municipal tax record at least 15 days prior thereto.

(3) The applicant shall post a notice outlining the date, time, place, and nature of the hearing in a conspicuous location on the property. Such notice shall be designed in accordance with standards set forth by the planning commission.

(a) The applicant shall provide the planning office with a copy of the notice, verification of newspaper publication, a date-stamped photo of the property posting, and post office mail receipts including the date of mailing for all letters on or before the meeting date.

(4) Said notices shall state the date, time and place of the hearing, the site location, a brief description of the site plan and shall state that a copy of the site plan application and plan is filed with the planning office for public review.

(D) *City planner report.* For each site plan application to the planning commission the city planner shall issue a report to the planning commission including comments from other agencies detailing how the application conforms to the requirements of the zoning ordinance and other provision of city and state codes. This report shall not be deemed to represent a comprehensive list of all city and state code requirements. The city planner shall transmit copies of the proposed site development plan and the city planner's report to the planning commission at least seven days prior to the date of the meeting at which approval of the site development plan is to be requested.

(E) *Planning commission action.* The planning commission shall act to approve or disapprove any application for site development plan received by it either as an original review or as a referral from the city planner under the provisions of subsection 2.42(A) of this article within 45 days or within such additional time as may be consented to by the applicant. Planning commission disapproval shall include written findings upon any site development plan element found contrary to the provisions or intent of the zoning ordinance.

(F) *Notice of decision.* The planning office shall send the applicant a letter notifying the applicant of the planning commission's action regarding the site plan application. Such letter shall document any conditions and waivers approved or recommended as part of the application approval.

(G) Final plans and working drawings. Following approval by the planning commission, the applicant shall develop final site plans for approval by the planning office. The planning office shall determine that all necessary approvals have been issued by city departments and outside agencies regulating street access and stormwater management, prior to issuing final plan approval. No building permit shall be issued until such time that the planning office has issued final site plan approval

(H) *Amendments.* Substantial amendments to an approved site development plan shall be acted upon in the same manner as the original plan. The city planner shall review proposed amendments to determine if they are substantial in nature. Amendments that are not deemed substantial may be referred to the planning commission for consideration at the discretion of the city planner.

(I) *Expiration of planning commission approval.*

(1) Site development plan approval shall expire on the last day of the 24th month after the date of final or conditional approval of the planning commission if construction of the work authorized or use permitted has not started or unless an extension of time is applied for by the applicant and granted by the planning commission. Approval shall also expire if the construction of work authorized has stopped for a period of one year unless an extension of time is applied for and granted by the planning commission.

(2) Request for extension of approval shall be made no later than 30 days prior to the final approval expiration date. Upon receipt of such request, the matter shall be considered at the next regularly scheduled meeting of the planning commission.

(3) In considering a request for an extension of approval, the planning commission shall consider, but not be limited to, the following:

(a) Whether the project has been delayed for reasons beyond the control of the applicant, excluding economic or financial reasons.

(b) Whether the applicant has made substantial progress toward obtaining final approvals.

(c) Whether there have been any significant changes in the surrounding neighborhood.

(d) Whether there has been any related amendments to the zoning map or text, or the comprehensive plan, or if any waivers or variances have been granted.

(4) Requests for extensions shall be submitted in writing to the planning office.

(5) Under no circumstances shall the planning commission grant extensions beyond 36 months from the date of first approval.

2.44 *Site development master plans.* Conceptual site development master plans shall be reviewed by the planning commission in accordance with the provisions of subsection 2.43. Conceptual site development master plans shall depict a site development proposal that reflects general compliance with the provisions of the zoning ordinance and shall also reflect the following information on the plan:

(A) *Conceptual master plan.* Conceptual master plan shall include the proposed general layout of building, streets, parking, open space, landscape concepts, and stormwater management areas.

(1) Detailed site construction plans, details, and specifications are not required as part of a site development master plan submission.

(2) The plan shall illustrate distinct phase boundaries for each proposed construction phase and shall depict proposed construction and site improvements planned for each phase. Bulk quantities and area totals for each construction phase, and for the total site, shall be tabulated in a data column on the plan.

(3) Each construction phase shall be enumerated in sequential order on the site development master plan according to the order of construction contemplated by the plan. Phases shall be implemented in accordance with the approved site development master plan unless the city planner approves an alternate phasing.

(4) Each construction phase represented on the master plan shall be planned and designed to function independent of construction and site improvements contemplated in future construction phases in all respects, including but not limited to bulk area provisions of the zoning district in which the site is located, off-street parking requirements, site entrances, emergency access requirements, site utilities, and stormwater management improvements except where the requirements and needs of a later phase are met and remain met by a previous phase of completed construction.

(5) Any special agreements or conditions of approval relative to the overall development that have been specified by regulatory agencies shall be documented on the site development master plan.

(B) *Phased site plan approval.* Individual phased components of the conceptual master plan are to be reviewed and approved as an administrative site plan. Final site construction plans, including detailed site grading, paving, utilities, stormwater management, and tree planting and preservation plans shall be submitted for final approval by the city planner and/or authorized designee, and to other agencies having jurisdiction, on a phase by phase basis in accordance with the approved site development master plan, and all regulations of the City of Dover governing the approval of site plans as set forth in subsections 2.4 and 2.5.

(C) *Amendments.* Substantial amendments to an approved site development master plans shall be acted upon in the same manner as the original plan. The city planner shall review proposed amendments to determine if they are substantial in nature. Amendments that are not deemed substantial may be referred to the planning commission for consideration at the discretion of the city planner.

(D) *Expiration of planning commission approval.* For projects which are reviewed and approved by the planning commission as conceptual master plans, approval of the conceptual master plan shall remain valid for a period not to exceed five years from the date of planning commission approval, provided that the authorized construction or use has commenced within two years of approval and is proceeding toward completion. In addition, the time between the completion of one phase and the initiation of the next phase shall not exceed a period of two years.

2.5 *Site development plan elements submission requirements accompanying applications for site development plan approval.* The applicant shall cause a site development plan map to be prepared by a civil engineer, surveyor, land planner, or architect. The applicant shall submit copies of the site development plan to the city planner at the time of filing the formal application for site development plan approval under the provisions of subsection 2.42, subsection 2.43, or subsection 2.44. If the application is under the provisions of subsection 2.43 or 2.44, the city planner shall transmit copies of the site development plan map to the planning commission at least seven days prior to the meeting at which approval of the application for site development plan approval is to be requested. Site development plan elements shall include those listed below which are appropriate to the proposed development or use as indicated in the preapplication meeting required by the provisions of subsection 2.41.

2.51 *Scale dimensions.* Ten, 20, 30 or 40 feet to the inch, except that if the property has a maximum dimension over 900 feet, a scale of 50 feet to the inch may be used.

2.52 *Legal data.*

(A) Tax parcel identification number.

(B) Name and address of the owner of record.

(C) Name and address of the equitable owner, if any.

(D) Name and address of the person, firm or organization preparing the map.

(E) Date, north point and written and graphic scale.

(F) Sufficient description of information to define precisely the boundaries of the site, and total acreage of the site. All distances shall be given in feet and tenths of a foot. All angles shall be given to the nearest ten seconds or closer. The error of closure shall not exceed one in 10,000.

(G) The locations, names and existing widths of adjacent street rights-of-way and curblines.

(H) The locations and owners of record of all adjoining lands.

(I) Locations, widths and purposes of all existing and proposed easements, setbacks, reservations and areas dedicated to public use within or adjoining the property.

(J) A complete outline of existing or proposed deed restrictions or covenants applying to the property and recital of the deed references if they are of record.

(K) Existing zoning on the site and adjacent properties.

(L) Two location maps, one at a scale of 1,200 feet to the inch, and one at a scale of 400 feet to the inch, showing the distance along all adjacent roads to the nearest intersections.

(M) Record of any agreements between the applicant and the city regarding the proposed development.

2.53 *Natural features.*

(A) Contour lines at vertical intervals of two feet for land with an average existing slope of four percent or less, and at intervals of five feet for land with an average existing slope greater than four percent.

(B) Location of different soil types, as indicated by the soil survey of Kent County, prepared by the Natural Resources Conservation Service, and including locations of flood hazard areas as identified in the FEMA Flood Insurance Maps. The soils information shall be supplemented by soil boring and percolation test data, if requested by the city.

(C) Location of significant natural features, including bodies of water, wetlands, and forest areas.

2.54 *Proposed development.*

(A) Existing buildings and other structures.

(B) Location and width of all proposed streets and rights-of-way. Speed bumps or speed dips for the purpose of slowing down traffic on any street shall not be permitted.

(C) Location of all proposed structures, except one-family detached dwellings, and an indication of the total number of dwelling units.

(D) Location and dimensions of all lot lines.

(E) Building setback lines on all lots.

(F) Location of all uses not requiring structures, including parks, playgrounds and other open space areas.

(G) Location and plans for any outdoor signs.

(H) Location, direction, power and time of use for any proposed outdoor lighting.

(I) The location, size and arrangement of proposed sidewalks, driveways, loading areas, off-street parking areas and other paved areas.

(J) Indication of the total amount of impervious surfaces and the development coverage.

(K) Any proposed changes in elevation of the site and elevations of all streets, parking areas, and building foundations. The datum to which all elevations, including existing contour elevations, refer shall be clearly indicated on the plan.

(L) Plans for surface drainage of the site. Such plans shall include stormwater run-off calculations and shall show the proposed method of accommodating the anticipated run-off.

(M) Any proposed below-ground or above-ground utilities and any contemplated public improvements, including road improvements, on or adjoining the property. Plans for such utilities and improvements shall indicate whether the developer, the city, or other agency will bear the financial responsibility for the construction, and which improvements are intended to be dedicated to the city.

(N) Proposed grading, screening and other landscaping, including types and locations of proposed street trees.

(O) Architectural elevation drawings or other graphic representations illustrating exterior building characteristics of proposed buildings and/or building additions that would be visible from the public right-of-way. Elevation drawings shall be drawn to scale and shall reflect major architectural elements such as exterior surface materials, windows, doors, columns, and wall-mounted signage. Elevation plans are intended to provide a general depiction of the physical appearance, massing and scale of the proposed construction.

2.55 *Requested information.* Full and complete information requested by the city planner in accordance with the development information requirements set forth in section 4.

2.56 *Development in stages.* If the site development plan indicates more than one stage of the development, supplementary material shall be included to show compliance with article 5, section 9, Development in stages.

2.57 *Miscellaneous information.* Other information deemed by the planning commission to be necessary to determine conformity with the intent of this ordinance.

(Ord. No. 2011-14, 8-8-2011; Ord. No. 2014-08, 7-14-2014)