CITY OF DOVER BOARD OF ADJUSTMENT AGENDA

Wednesday, January 23, 2019 at 9:00 AM

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

ROLL CALL

APPROVAL OF AGENDA

APPROVAL OF MINUTES of December 19, 2018 Meeting

COMMUNICATIONS & REPORTS

- 1. Reminder: The next Board of Adjustment regular meeting is scheduled for February 20, 2019 at 9:00am in the City Council Chambers.
- 2. Information from Planning Staff regarding elections and appointments for Board leadership

OLD BUSINESS

Applicant #V-18-08

360 Nottingham Court. Claude and Gwen Pritchett have requested an area variance from the requirements of the *Zoning Ordinance*, Article 4 §4.41 pertaining to the minimum rear yard setback requirement in the R-8 (One Family Residence) Zone. Specifically, the minimum rear yard setback requirement for the R-8 zone is 30 ft, and the applicant proposes to reduce the setback to 28 ft. Subject property is zoned R-8 (One Family Residence Zone). Tax Parcel is ED-05-085.12-04-26.00-000. The owners of record are Claude and Gwen Pritchett. *This application was originally submitted for the November 21, 2018 meeting of the Board of Adjustment with a requested rear yard setback of 26.4 ft. The applicant requested in writing on January 7, 2019 that the withdrawal they submitted on January 2, 2019 be disregarded and the case be heard.*

NEW BUSINESS

Applicant #V-18-11

127, 129, 133 and 135 Roosevelt Avenue. David Miller on behalf of Miller Investments LLC has requested variances from the requirements of the *Zoning Ordinance*, Article 4 §4.3; Article 5 §1.13; and Article 6 §5.3. Specifically, the applicant seeks to exceed the maximum 60% lot coverage of RG-2 (General Residence Zone) and permit construction on 65.4% of the lot area. The applicant also seeks to permit construction of accessory buildings totaling 38% of the side and rear yard areas, where the maximum allowed accessory building area for these yards is 30%. Finally, the applicant seeks to allow parking of vehicles within 15 feet of a wall belonging to a multiple dwelling. Subject property is zoned RG-2 (General Residence Zone). Tax Parcels: ED-05-077.18-02-71.00-000, ED-05-077.18-02-72.00-000, and ED05-077.18-02-73.00-000. The owner of record is Miller Investments LLC. *This application was originally submitted for the December 19, 2018 meeting of the Board of Adjustment. Two of the requested variances have been reduced; the original requested maximum lot coverage was 76.7%, and the original requested maximum accessory building area for the side and rear yards was 56.1%.*

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 December 19, 2018

A Regular Meeting of the City of Dover Board of Adjustment was held on Wednesday, December 19, 2018 at 9:00 A.M. with Chairman Sheth presiding. Members present were Chairman Sheth, Mr. Keller, Mr. Hufnal, and Mr. Senato. Colonel Ericson was absent.

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

APPROVAL OF AGENDA

Mr. Keller moved to approve the amendment of the agenda order in light of the previous postponement a month ago and the withdraw of application V-18-11 per the applicant's request. The order of the agenda will be as follows: V-18-09, V-18-13, V-18-10, V-18-12, and V-18-08. The motion was seconded by Mr. Hufnal and unanimously carried 4-0. Colonel Ericson was absent.

APPROVAL OF THE REGULAR BOARD OF ADJUSTMENT MEETING MINUTES OF SEPTEMBER 19, 2018

Mr. Keller moved to approve the meeting minutes of September 19, 2018 as submitted. The motion was seconded by Mr. Hufnal and unanimously carried 4-0. Colonel Ericson was absent.

APPROVAL OF THE REGULAR BOARD OF ADJUSTMENT MEETING MINUTES OF NOVEMBER 21, 2018

Mr. Hufnal moved to approve the meeting minutes of November 21, 2018 as presented. The motion was seconded by Mr. Senato and unanimously carried 4-0. Colonel Ericson was absent.

Mr. Hugg stated that for the benefit of the Board and any others interested the Board of Adjustment regular meeting will be held January 16, 2019 at 9:00am in Council Chambers. Included in the packets of the materials that were provided to you was a Schedule of Deadlines and Meetings of the Board of Adjustment for 2019.

OPENING REMARKS CONCERNING APPLICATIONS

Mr. Dave Hugg, Planning Director stated that the meeting today will be conducted in accordance with the motion of the amended Agenda. There are five (5) applications on the agenda under New Business. Each Application file will be read, and the floor will be opened for questions of the applicant by the Board and for public testimony. If the Board needs to consult the City Solicitor, they will recess to discuss legal matters. If the applicant must leave, they can contact the Planning Office at 736-7196 to learn of the Board's decision. A formal notice of the decision will be mailed to the applicants. Approved variances expire after one year if the approved project has not commenced.

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

Chairman Sheth apologized for the cancellation of the November meeting due to a legal issue but stated that everything has been resolved.

NEW BUSINESS

Applicant #V-18-09

100, 250, 350, 400 & 550 Shrewsbury Court. Blue Hen Apartments, LLC has requested a variance from the requirements of the *Zoning Ordinance*, Article 5 §1.12 pertaining to the minimum setback of an accessory building in a residential zone such as RG-2 (General Residence Zone). Specifically, the applicant is seeking a variance for five newly built parking garages, with a setback of 4.85 ft. (4 ft. 10.2 inches) away from the property line. The minimum setback required for an accessory structure under the zoning is 5 ft. Subject property is zoned RG-2 (General Residence Zone). Tax Parcel is ED-05-077.00-01-01.00-000. The owner of record is Blue Hen APT, LLC. *AS AMENDED: The applicant has revised their request for the December 19, 2018 meeting and now seeks a setback of 4.7 feet (4 ft. 8.2 inches).*

Exhibits for the Record: Staff Report, zoning exhibit, and statement and plans submitted by the applicant. Legal Notice was published in the Delaware State News on December 9, 2018. The public was notified in accordance with regulations.

Mr. Swierczek gave a summary presentation of the Variance Application Request. As a note there was a typing error in the report that was sent stating there was a revised figure of 4 ft. 8.2 inches, but it is actually 4 ft. 8.4 inches. The altered figure is due to a new more detailed survey having been conducted. The new request should be the one the Board considers in its evaluation.

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

Representative: Mr. Doug Liberman, Vice President of Larson Engineering Group, Inc.

Mr. Liberman was sworn in by Mr. Rodriguez.

Mr. Liberman testified that when they initially started the development there was a 150 ft. strip that was first rezoned and separated off the Corporate Center. They later found that there were significant underground utilities that ran down along the property lines between the two (2) centers. That caused all the buildings from the apartments, parking lots and garages to shift closer to the Corporate Center. This put the garages that were showing in yellow and the five (5) that were mentioned by Mr. Swierczek right on the setback line. They thought that they would be able to do it and build in this area but during the construction process it ended up pushing them slightly over the setback line. As far as the nature of the neighborhood, there are grass islands and landscaping around all the garages that provides a buffer and decreases what would look like a decreased nonconformity that would exist out there. He mentioned as he referred to the picture in

the upper left-hand corner that was included in the packet noting that one of the garages is legal and the other garage was not legal. Just by looking at it you probably could not tell which one was legal and which one was not legal. They are requesting this minor adjustment to the standard.

Mr. Hufnal stated that he did not have any questions. He thought that Staff presentation was very through and he understood perfectly the reasoning.

Mr. Keller commented that with the photographs and the revised measurements which is extremely minor in nature that should resolve any future problems with the adjustment of the siding on the subject garage buildings.

Chairman Sheth opened the public hearing.

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

Chairman Sheth questioned if there was any additional correspondence for the record. There was no other correspondence.

Mr. Hufnal moved to approve variance application V-18-09 for the reasons stated by the applicant and of the very good presentation by Staff. The motion was seconded by Mr. Keller. The motion unanimously carried 4-0.

Applicant #V-18-13

101 Ipswich Court. Blue Hen Apartments, LLC has requested a variance from the requirements of the *Zoning Ordinance*, Article 4 §4.3 pertaining to the minimum setback of a multiple dwelling unit structure in the RG-2 (General Residence Zone). Specifically, the applicant is seeking a variance for a currently under construction apartment building, with a setback of 29.8 ft. (29 ft. 10.2 inches) away from the property line. The minimum setback required for a multiple dwelling unit structure under the zoning is 30 ft. Subject property is zoned RG-2 (General Residence Zone). Tax Parcel is ED-05-077.00-01-01.00-000. The owner of record is Blue Hen APT, LLC.

Exhibits for the Record: Staff Report, zoning exhibit, and statement and plans submitted by the applicant. Legal Notice was published in the Delaware State News on December 9, 2018. The public was notified in accordance with regulations.

Mr. Swierczek gave a summary presentation of the Variance Application Request. As noted, the application cites two (2) slightly different figures for the variance request. The application form and map list a front yard setback of 29.8 feet, (variance of 0.2 feet) which translates to 29 feet 9.6 inches. The Criteria Response document requests a reduction of 2 ½ inches meaning the variance requested is to reduce the setback to 29 feet 9.5 inches. For this application, the Board should consider the greater reduction requested to allow for a front yard setback of 29 feet 9.5 inches.

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

Representative: Mr. Doug Liberman, Vice President of Larson Engineering Group, Inc.

Mr. Liberman was sworn in by Mr. Rodriguez.

Mr. Liberman testified that again it was a similar type situation. This was an infill development that was placed in the last grass open area space within the site. They sat the building right along the setback 30.1 feet off the right of way line. Things then slightly shifted with the construction of the building. It is only a small portion that falls within that setback (even still that is where the location is). If you look at the pictures that were provided it shows what was mentioned by Mr. Swierczek. There is a tree buffer with a wooden fence on the north side and is the site of East Dover Elementary School and the recreational fields along there. So that the buildings even though they are in the setback lines does not infringe on anything or change the character of the neighborhood.

Mr. Hufnal questioned if Mr. Liberman was an Engineer with the firm. Mr. Liberman replied yes sir

Mr. Hufnal stated that he would hope in the future even though the foundations are within the setback lines that Mr. Liberman consider the siding that will be installed whether it be brick or any other siding so that he would not have to come back to the Board for a variance for a couple of inches. Mr. Liberman agreed.

Chairman Sheth opened the public hearing.

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

Chairman Sheth questioned if there was any additional correspondence for the record. There was no other correspondence.

Mr. Keller asked for clarification if the dimension was 29 feet 9.5 inches. Mr. Swierczek replied correct. There were two slightly differently figures, one being 29 feet 9.6 inches and the other 29 feet 9.5 inches. The Board should consider the 29 feet 9.5 inches to be the target reduction.

Mr. Hufnal moved to approve variance application V-18-13 for the reasons presented by the applicant and of the excellent presentation by Staff on the coverage of the variance needed. The motion was seconded by Mr. Senato. The motion unanimously carried 4-0.

Applicant #V-18-10

1240 McKee Road. Michael Graham on behalf of PAM Dover (Post-Acute Medical Rehabilitation Hospital of Dover) has requested a variance from the requirements of the *Zoning Ordinance*, Article 5 §4.7 pertaining to the maximum size of permitted signs. Specifically, the applicant seeks to permit one (1) wall sign sized 118.31 SF, in lieu of the maximum 32 SF per sign permitted. Subject property is zoned IO (Institutional and Office Zone) and subject to the COZ-1 (Corridor Overlay Zone). Tax Parcel is ED05-067.00-01-33.00-000. The owner of record is PAM Dover DE IRF LP.

Exhibits for the Record: Staff Report, zoning exhibit, and statement and plans submitted by the applicant. Legal Notice was published in the Delaware State News on December 9, 2018. The public was notified in accordance with regulations.

Mr. Diaz gave a summary presentation of the Variance Application Request.

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

Representative: Mr. Phillip McGinnis, Agent from McGinnis Commercial Real Estate Company

Mr. McGinnis was sworn in by Mr. Rodriguez.

Mr. McGinnis testified that the applicant was present, and Mr. Matt Phillips from Phillips Sign was also present should the Board have any technical questions regarding the calculations used to develop the size of the letters. He had a great presentation, but he thinks Mr. Diaz hit all the points that he was going to hit. They have a project in the Corridor Overlay Zone that has been designated superior urban design. They have worked with Staff to get a sign that is readable from the road. McKee Road is a fairly high-speed limit road. It is a rehabilitation hospital that competes with other rehabilitation hospitals in the City, not necessarily in the neighborhood. The 32 square feet for one sign really does not present enough signage area for anyone passing as a motorist. They do have support of the neighbors. They have a Petition that they shared with the neighbors of what they were doing, and they signed the Petition.

Mr. Hufnal stated that in their Code they do not have any formula for the distance back from the road. He was aware that he was granted a greater distance than the 40-50 feet recommended. The formula in the USSC table was very helpful in his decision to determine the size of the letters needed. He would not have been able to determine the size of the letters without the USSC formula. As you go back from the road proportionally, you need a larger sign. If you had been closer to the road the standard may have been okay, but in moving back you need a larger sign to proportionally to be in line with where the building is located at 86 feet. Again, the formula was very helpful.

Mr. Keller stated as he added to Mr. Hufnal comments that he was very pleased to see the extent in which the applicant has gone with the matters of the sign, site safety, elimination of the sign and its potential effect on neighboring properties which has been downplayed by virtue largely of the setback. He also mentioned how the applicant has worked with the Planning Staff to bring about this representation. The site safety, effects of lighting, and matters regarding the revised sign, size, lettering, etc. looks very favorable upon the work that has been done in that regard.

Chairman Sheth opened the public hearing.

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

Chairman Sheth questioned if there was any additional correspondence for the record. There was no other correspondence.

Mr. Keller moved to approve variance application V-18-10 based upon applicant submission and testimony this morning and additionally the City's Report presented by Mr. Diaz which was commendable and covered the various areas to which the Board gives their attention. The motion was seconded by Mr. Hufnal. The motion unanimously carried 4-0.

Applicant #V-18-12

1738 Forrest Avenue. Louise Warren on behalf of Dover Christian Church has requested a variance from the requirements of the *Zoning Ordinance*, Article 5 §4.7 pertaining to the maximum size of permitted signs. Specifically, the applicant seeks to permit one (1) monument sign sized 32 SF, in lieu of the maximum 12 SF permitted for such a sign based on the zoning. Subject property is zoned R-10 (One Family Residence Zone) and subject to the COZ-1 (Corridor Overlay Zone). Tax Parcel is ED05-075.00-01-04.00-000. The owner of record is Dover Christian Church Inc.

Exhibits for the Record: Staff Report, zoning exhibit, and statement and plans submitted by the applicant. Legal Notice was published in the Delaware State News on December 9, 2018. The public was notified in accordance with regulations.

Mr. Diaz gave a summary presentation of the Variance Application Request.

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

Representative: Ms. Eddie Louise Warren, Financial Secretary; Mr. Theodore Allen Henderson, Pastor of Dover Christian Church

Ms. Warren was sworn in by Mr. Rodriguez.

Ms. Warren testified that she did not have much to say because Mr. Diaz disclosed exactly what Dover Christian Church is looking and asking for. She noticed that she did not include a photo of the church itself. The church does sit quite a distance from Route 8. The 12 square foot sign would not be substantial enough so that it would be readable or for anyone to see.

Ms. Warren handed out two (2) photos to Board members for the record. She stated that the photos were the traffic flow and Dover High School.

Ms. Warren thanked the Board for their consideration.

Mr. Keller questioned whether the appropriate acquisitions from the Capital School District and/or Leander Lakes LLC cross easements have been obtained in order to provide for the entrance crossing lands of others to access the church site as he referred to Exhibit F. Mr. Diaz replied yes, the church has been built and is occupied under use. The property has a cross access easement to construct an entrance to cross the lands of the Capital School District so that the

church parking lot could be accessed. Those were all put in place before the building was constructed.

Mr. Keller mentioned as he referred to Exhibit E about the cross easements acquisitions from the Capital School District. In accordance with the Engineering Plan, there would have been something required of Leander Lakes LLC. He questioned if there was knowledge of whether they had been obtained. He asked Ms. Warren if she was familiar with what was necessary for the property access to the public street Dover High Drive. Ms. Warren replied that they had an easement that was approved, and it should be on file/record.

Mr. Henderson was sworn in by Mr. Rodriguez.

Mr. Keller mentioned that he was holding up Exhibit F which was a larger plan sheet, if you note the entrance exit driveway that comes out on Dover High Drive technically crosses lands of other people. It crosses the Capital School District and Exhibit E is included in the packet as previously mentioned regarding the cross easements. However, a triangle portion of land would be necessary also from Leander Lakes LLC. That ownership lies on the southerly border line of the church property. A part of the paved way would cross the Leander Lakes property as well. He asked Mr. Henderson if he was familiar with any transactions between Leander Lakes LLC and the church ownership.

Mr. Henderson testified that what he could speak to is that the church purchased the easement. He believes where they want to locate the sign (frontage road) is part of their property. The original property (building) that the property was sitting on was demolished. He does not see Leander Lakes property in the area at all anywhere as to where the church wants to place the sign.

Mr. Keller asked if there was any clarification from Planning Staff. Mr. Diaz replied that he wanted to emphasis once again that this was all worked out as part of the Planning Commission review of the project. Planning Staff did review the project to ensure that all the properties had easements in place for both the Dover High property and the Leander Lakes property. If they did not have the easements in place, they would not have been able to build the building. They would not have received Final approval for their Plan until those issues were worked out.

Mr. Keller mentioned that this in a sense does not have bearing on his review for the purpose of the variance request namely for the sign. However, he would suggest that a follow up reaffirmation with the Planning Commission activity would assure that there is in fact an allowable crossing for the entrance exit onto Dover High Drive.

Chairman Sheth asked Mr. Henderson if he understood Mr. Keller's question. Mr. Henderson replied he did. Chairman Sheth asked Mr. Keller to explain.

Mr. Henderson mentioned where the church wants to locate the sign is considerably far back from where the Leander Lakes property is located. Where the church wants to locate the sign sits clearly on the property that was demolished and the yard that is right off Forrest Avenue. The entrance getting onto the church property matter was taken care of early on before the church

was built. They do not want to put the sign anywhere near that area. They want to put the sign up where the church is currently located just a few feet from the property lines where the original house was located is where the sign will be located. It has nothing to do with the Leander Lakes property and our property. The sign will be well on the property that the church has (where the building is currently).

Ms. Warren mentioned to Mr. Keller that she wanted to make sure she understood him correctly that he was concerned as to whether the church has permission to do something from Leander Lakes as far as the easement. Leander Lakes sits more than 200 feet away from the church property. The apartments are way in the back. As you can see, the sign that they are trying to construct is right on Forrest Avenue as mentioned by Mr. Henderson. She does not think the sign will interfere and she did not think that was what Mr. Keller was saying. She thinks that Mr. Keller wants to make sure that there is nothing irregular or hindering regarding the easement between Dover Christian Church and Leander Lakes that needs to be addressed. She asked if this was what she was hearing? Mr. Keller replied yes. As he stated it really does not have really bearing on his approval for denial or approval of the sign itself. However, it was the Exhibit of the Plan prepared by Becker Morgan Group, (the engineering firm) that was included in their packet. He took note of the location and layout of the church property, parking and its entrance off Dover High Drive. But he did not see any provision whereby there was an appropriate easement for the crossing portion of the driveway to the church crossing the Leander Lakes property, so he was bringing it up to see if they could have some clarification. It may very well be a matter simply of a follow through with the church or Becker Morgan as to whether the appropriate measures have been taken to cross lands of other people mainly Leander Lakes LLC. Ms. Warren replied right. They will definitely look into it. Mr. Keller stated that Ms. Warren was absolutely correct in her understanding of his position. Mrs. Warren replied okay, thank you.

Chairman Sheth opened the public hearing.

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

Mr. Hufnal moved to approve variance application V-18-12 based upon the applicant testimony and additionally the Staff Report that covered everything very well. He agreed that in the position where this property is located and the County across the street, and the signs that are already in place, this sign is going to have little effect or impact on the them by approving this sign. The motion was seconded by Mr. Keller. The motion unanimously carried 4-0.

Applicant #V-18-08

360 Nottingham Court. Claude and Gwen Pritchett have requested an area variance from the requirements of the *Zoning Ordinance*, Article 4 §4.41 pertaining to the minimum rear yard setback requirement in the R-8 (One Family Residence Zone). Specifically, the applicant proposes to reduce the required rear yard setback requirement of 30 ft. to 26.4 ft. The minimum setback requirement for the R-8 zone is 30 ft. Subject property is zoned R-8 (One Family Residence Zone). Tax Parcel is ED-05-085.12-04-26.00-000. The owners of record are Claude and Gwen Pritchett.

Exhibits for the Record: Staff Report, Zoning Exhibit, and statement and plans submitted by the applicant. Legal Notice was published in the Delaware State News on December 9, 2018. The public was notified in accordance with regulations.

Mrs. Harvey gave a summary presentation of the Variance Application Request.

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

Representative: Mr. Gregory Scott P.E., Scott Engineering Inc., Mrs. Gwen Pritchett, Owner

Mr. Scott was sworn in by Mr. Rodriguez.

Mr. Scott thanked Mrs. Harvey for a good presentation on the application. The applicant is seeking to build a 16x16 multi-purpose sunroom on the rear of the home simply to enhance the value of their property and to make it a practical useful addition to their home that they can use as part of their family needs as well as visiting family and guests, as well as their in-home business. They feel that the 16x16 size sunroom would be appropriate and does not infringe on any rear setbacks or cause any problems or visual aesthetics compromising the neighbors that live around them. The Pritchetts and the Builder are present today. Ms. Pritchett would like to speak today. She also has supporting letters from surrounding neighbors in favor of the variance application.

Chairman Sheth asked Mr. Scott if the applicant was looking for an Area Variance. Mr. Scott replied he was looking for a Variance to reduce it down to 25 feet.

Chairman Sheth mentioned that the application states that one bedroom was converted to office space. Mr. Scott replied that this addition will be a multi-purpose room that they will be able to use as part of their business as well as family use.

Chairman Sheth asked whether the 12x16 would satisfy the applicant. Mr. Scott replied no the 12x16 was looked at by the Architect. Based on what the applicant thought would be useful for their needs and the 12x16 would not work. They cannot expand it horizontally because of existing doors and windows that are currently there without making significant changes to the rear of the house. They need to go towards the rear of the house.

Chairman Sheth questioned the applicant regarding the multi-purpose room or converted a room into an office. Mr. Scott replied that it would be more than just an office. It would be space for them to utilize with family, grandkids, and to entertain guests. They had converted one bedroom into an office that they currently use. They only have one spare bedroom at the current time that is being utilized by their adult son.

Mrs. Pritchett was sworn in by Mr. Rodriguez.

Mrs. Pritchett testified that she had letters from some of the neighbors when this proposal came out and Mr. Lamb informed them of what would be forthcoming regarding the variance request.

Notifications were sent to various neighbors and three (3) or four (4) have given their responses in favor of the proposal. Another reason she and her husband wanted to build the extra room is because they are getting older and her husband is significantly older than she is. If in an event either of them became infirmed, they would rather not go to a nursing home. To have a hospital bed dragged upstairs would not be practical. They do not enough space downstairs to have another room (living area). There is a ½ bath downstairs and a full bath upstairs. We could conceivably put a shower or something downstairs in the future. In the event, either of them becomes infirmed they really have no place to put anyone. They do have a business; they are the owners and operator of D&J Transportation LLC that provides public carrier services to the Dover, Baltimore, and Philadelphia areas. They have a contract with the Capitol School District. They have six (6) employees. If they need to have a meeting at their home, they have already somewhat modified the inside of the home. Mr. Lamb knocked out a wall and they kind of made their living room a little bigger, but it's a family room. In order to have something more businesslike, they would need the extra space. Again, it depends on what the extra space could be used for. It could be used for the business in the future, hospital room, play area for the grandchildren, as well as extra space to breathe. She hoped that she answered all the questions. She asked the Board if they had any questions.

Mr. Hufnal asked the applicant whether the 12x16 room would be sufficient. This would be allowed under the current Code. Mrs. Pritchett replied no, the existing family room is about 16x16 and it is already a challenge to fit the existing furniture in the room. If it was a 12x16 that would limit them, and they would not be able to build because she would not be getting the space that she needs to make it useful and practical. Practical is the bottom line. Practical is what she was taught as a child if it is not practical then don't do it. They would really appreciate it if the variance was approved. They have been in their home for almost 30 years, paid their taxes, and done everything the right way, now they have a little money and would like to make things a little better. They would like to improve the value of their home because they are not going to last forever. When we sell the property, whenever that happens, their children will be able to reap the benefits. They are trying to pay it forward.

Mr. Keller questioned if the applicant could advise him of previous owners J.E. Winko and Ilene J. Winko. Mrs. Pritchett replied they were her parents. When she and her husband initially got the house, they were not in a financial position to get a loan. Her mother had received her inheritance that her father had put in a trust and their names were put on the deed in addition to their names.

Mr. Keller questioned if they were currently listed as co-owners. Mrs. Pritchett replied they are both deceased. The trust has been dissolved. Her mother died 5 years ago and her father shortly thereafter. Before her father died in January of 2015, he knew his time was limited and he made sure everything was closed out on his end. When her sister took over as the Executress and closed out the Estate, it would be done properly. Both she and her sisters have received part of their inheritance based on this. Her parents are no longer with them and the house is in her name and she believes she has paperwork at home stating this information. The mortgage loan has been paid off. There was a second loan on the house, and she thinks that has also been paid off, so the house belongs to them.

Mr. Hufnal asked in Staff testimony it was mentioned that the two requests for additions in 2007 and 2009 for properties located at 347 and 365 Mayberry Lane were done without a variance request. Mrs. Harvey replied yes, they were done without a variance request.

Chairman Sheth mentioned that roughly 20 years ago there was a case in the Mayfair area where they built a bedroom without variance approval and the Board asked for the bedroom to be demolished because it was not approved. There have been a number of cases in Mayfair that were never approved and in this case the home is used as a business office with six (6) employees and he is not sure of the City's requirement regarding that. Now a can of worms have been opened because the Board has found out that there are some people who may have built something without approval. There has been different issue in the past regarding additions without the correct approval. Sometimes the City finds out when someone is applying for a loan or title search to get the addition. A case to case establishes a precedent but then you might or might not have in the future.

Mr. Hugg reminded the Board that the issue before them is a variance for this particular construction. While all of the other discussion may be interesting and add to your understanding of the project, the request is for a variance to allow a 16x16 addition to the rear of the house and it does have the endorsement of the Planning Staff. He asked the applicant if she would submit the letters that she received for the record as he thinks this would be helpful to support the application. He thinks that any other matters that may relate to this property or other properties are informational only.

Mr. Hufnal stated that in this request for a 3.8 feet variance is excessive and to approve that the Board could really set a precedent in the future of cases before them. He did not think that they have every granted a variance with that magnitude at this point. He would personally be against granting the variance based on what others have done in that neighborhood. Other neighborhoods in the City could come in with that type of request and they would almost be obligated to approve. Again, he stated that 3.8 feet is quite excessive. If there was anything less than that he would be more inclined to approve it such as the reduction in the size of a house to a 14x16 square foot would only be 1.8 feet verses 3.6 feet. He is not inclined to approve that even though Staff has made the recommendation. It puts the Board in a various precarious situation in the future when the Board comes before these types of situations.

Chairman Sheth suggested to Mr. Scott if the applicant would reconsider to see if an adjustment can be made between Mr. Hufnal's comments and other neighbors who added an addition without a variance. Going forward the Board will ask Staff to follow up with anyone who builds without approval. There are also other requirements when someone operates a business out of their home.

Mr. Scott stated that the home business that the applicant is operating was approved and is licensed by the City of Dover and is a legal business. It is not like they have six employees working out of their home illegally.

Chairman Sheth replied that he was not asking if the business was illegal. He was stating that there are requirements. He just wants to make sure the criteria is being followed and at this time

the Board is not comfortable approving this variance.

Mr. Scott mentioned that they cannot control who violates the criteria or builds without a Permit, his applicant is coming through and trying to go through the right process to get a Permit for the addition. Every application that comes through is based on specific criteria for that location. In this particular case, it is on a corner lot and they have two street frontages to contend with which has very much limited them to the direction they can build. They are trying to do something that is beneficial and useful to them. Whether a 12x14 or 12x16 would work he could not answer that question. Mrs. Pritchett responded by shaking her head that this would not be a viable space for them.

Chairman Sheth stated that the Board was making a suggestion, not telling anyone what to do.

Mr. Keller stated that he thinks in this area of Mayfair one of the Exhibits projects a shadow effect of houses in the subdivision and a lot of them do look pretty close to lot lines. It appears as though Mayfair is a somewhat old subdivision in which case many of the lots were more narrow than perhaps more recent or other subdivisions. He stated that he had not been made aware of any improvements although there were several comments made within the packet of information that a number of additions have been put on places within Mayfair. He would run with the presumption that this was done with the established Code requirements or building setbacks lines on the record plan.

Mr. Keller asked Mr. Scott if he was familiar with the record plan of Mayfair. Mr. Scott replied yes.

Mr. Keller mentioned that absent the knowledge of having any of those improvements resulted from an inquiry of the Board of Adjustment for variances, he would presume they were done in accordance with Code or they are violations that were gone overseen. In reviewing this entire packet, it puzzled him somewhat with the size of the room being 16x16.

Mr. Keller asked for clarification that the applicant already had a 16x16 family room. Mrs. Pritchett replied yes.

Mr. Keller asked that the applicant would have a complete new open accessible 16x16 room. Mrs. Pritchett replied yes.

Mr. Keller mentioned that it is not the Board's position with respect to Mr. Hufnal comments to work back and forth in this kind of hearing to resolve your problem. He did not mean it to sound harsh, but it is not the Board's position. The general principal is the Board should not liberally grant variances because this process is established by certain criteria to review your specific application as well as any other. Most of the cited reasoning with the presentation seems to be general personal matters.

Mrs. Pritchett testified that her concerns was the age difference between she and her husband, and what if he had to go into a nursing home, she would not be able to afford the cost. If she can modify her home, she would have a place to accommodate him. She is trying to be practical

because she would not want to put her husband in a nursing home. With the existing rooms, they would not have a place to put a hospital bed.

Mr. Rodriguez commented that in accordance with the Chairman's comments and Mr. Hufnal's comments, Mayfair was plotted in accordance with the Zoning Code and this Board has never granted a variance for any development that has been plotted in accordance with the Zoning Code. We have turned down any number in the past. The problem is really that it is plotted in accordance with the Zoning Code and the Board used to have numerable applications for garages and things of that nature. It was the Board's thought that it should be kept in accordance with the Zoning Code and no variances should be granted. Mr. Chairman referred to one that was built in violation of the setbacks and the Board decided against it and they had to demolish the building.

Mr. Rodriguez stated that he was not speaking against the applicant. He was sure the applicant needs what they are asking for and all of that. It opens a precedent for all developments to ask for the same thing for property owners to do.

Mrs. Pritchett mentioned that the neighborhood is 40 years old. She has been here in the City for 40 years and things change, maybe it is time to revisit the whole thing since the Board is not going to approve the variance application. All they are trying to do is increase the value of the property and provide for their family needs.

Chairman Sheth suggested that the applicant could express her concerns and case regarding the Ordinance to City Council. The Board cannot change the Ordinance. He suggested to the applicant to think about reconsidering the size because she did a good job presenting the case.

Mr. Hugg mentioned that there is obviously a concern about the direction of this particular request. What he would remind the applicant that should the Board fail to approve the request today they are prohibited from coming back before the Board of Adjustment for at least a year. The applicant does have the opportunity, if they choose to do so, to ask the Board to table or postpone the consideration today while they look at whether or not there is some other 14x16 or 14x18 or options that might make sense rather than get a definitive answer today that may preclude you proceeding. He wanted the applicant to understand that the Board has the authority to say take a breather or look at it to see if there is an alternative. Maybe there is other information that maybe the applicant could derive and that would reserve at least the applicant's right to come back in another month or whenever the applicant is prepared to do so.

Mr. Keller commented that even in the eventuality of a denial today there would not be anything to preclude the applicant showing up a week from now with a request for a Building Permit if they did something within the regulation like a 12x16 or a 12x20. Mr. Hugg replied this is correct.

Mr. Keller commented that it does not delay the application for construction.

Mr. Hugg mentioned if the applicant came back and stated that they could accommodate a 12x16 it would not require a variance that would allow them to precede directly to getting a Building Permit. He suggested to the Board and the applicant that they take a little time to look at other

options that might be available including not asking for a variance.

Mr. Keller stated that in his estimation and the review of the packet and the intent of the applicant to utilize this space for various personal reasons, if the variance was to become a denial that such a denial could create an Exceptional Practical Difficulty. As the guidelines point out, an Exceptional Practical Difficulty would not be created in his estimation because the owner could still make normal improvements which are permitted in accordance with the provisions of the Code and Subdivision Regulations. It is a matter of sometimes we ask for what we might ultimately want to have but we have to give consideration to alternatives to that if there is a shadow perhaps cast on whether or not the ultimate could come about. In his estimation, there is some reliable basis for a denial of this application as currently pending.

Chairman Sheth agreed with Mr. Keller comments and also referred to Mr. Rodriguez statements.

Mr. Scott stated that they would come back before the Board once there was a clear decision by the applicant on other options and reasonable compromise.

Mr. Hufnal stated that it is difficult to approve a 3.6-foot variance when there could be other options available to reduce that variance to something the Board could accept. As you have seen today, the Board did approve two variances, but they were only inches. He suggested to the applicant to consider and keep in mind that 3.8 feet is an excessive amount.

Chairman Sheth opened the public hearing.

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

Chairman Sheth questioned if there was any additional correspondence for the record. There were four letters from neighbors.

Mr. Rodriguez stated that the Board has never granted a variance for the divisions that have been plotted in accordance with the *Zoning Ordinance*. Mr. Hufnal brought up one point and on two occasions for deminimis violations; one was a garage which was inches over the line. To fortify what Mr. Keller stated regarding the reason that the applicant cannot prove Exceptional Practical Difficulties because it has been plotted in accordance with the Zoning Code and you really cannot come in and prove that.

Chairman Sheth also mentioned a property on Walker Road that was owned by Mike Harrington that had an issue and had to wait a year. He reiterated previous comments.

Mr. Keller commented that when considering difficulty and Exceptional Practical Difficulty the difficulty must be inherited in the land not personal to the owner. This is another thing which plays a very large part of a review in consideration for the examination of whether or not an Exceptional Practical Difficulty exists. He repeated that a large part of what he heard from the applicants is the need or desire for the addition are more largely personal matters with aging, hospitalization and play rooms as opposed to something inheritant in the property. The previous

applications this morning was a foundation that was built to the setback point exactly and subsequently when the siding was put on and extended by an 1 ½; that was approved. When you are looking are raw land as we are in this case, he feels rather strongly that the first consideration ought to be what can I do to build within the existing setbacks in accordance with the existing regulations. He has not found that to necessarily be the case this morning.

Chairman Sheth agreed. He stated that a 30 feet distance is a lot and it would be better if the distance could be decreased to perhaps 25 feet. He mentioned a meeting years ago that was held in Lewes and it was strongly recommended that ordinance is passed with all understanding and variances should not be granted unless otherwise absolutely proven by space variance, area variance or financial hardship.

Chairman Sheth suggested to the Planners if they had any questions to please call Mr. Rodriguez and ask for help if there is an issue with an application like this.

Mr. Keller in lieu of the applicant owners Claude and Gwen Pritchett and in light of the presentation this morning, testimony, review and discussion he moved to table application V-18-08 until the next initial meeting in 2019. The motion was seconded by Mr. Hufnal. The motion unanimously carried 4-0. Mr. Senato was absent.

The meeting was adjourned by Mr. Hufnal and seconded by Mr. Keller at 10:55 A.M.

Sincerely,

Maretta Savage-Purnell Secretary



MEMORANDUM

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

Phone: (302) 736-7010 Fax (302) 736-4217

DATE: January 8, 2019

TO: Board of Adjustment Members

FROM: Tracey Harvey, Planner/CDBG Program Administrator

SUBJECT: Amendment of Board of Adjustment Application

V-18-08 Claude and Gwen Pritchett, 360 Nottingham Court, Dover, DE

Background for Requested Revision

At its December 19, 2018 meeting, Claude and Gwen Pritchett applied to the Board of Adjustment for an area variance to permit a reduction in the minimum rear yard setback requirement in the R-8 (One Family Residence Zone) from 30 feet to 26.4 feet. The applicant was proposing to construct a 16 foot by 16 foot addition to the rear of an existing single family home.

At its December 19, 2018 meeting, the applicant moved to table the request for the variance and was unanimously granted by the Board provided that it would be taken off the table and considered by the Board at its next scheduled meeting.

On January 7, 2019, the Applicant submitted a revision to their December 19th application submission. The amended request is for the reduced size of the addition to 16 feet by 14.4 feet from 16 feet by 16 feet that would require a variance of 2 inches or 28 feet from the rear yard setback.

Staff Comments and Recommendation

Staff recommends approval of the revised area variance request to reduce the 30 foot minimum rear yard setback to 28 feet in order to allow for the construction of a 16 foot by 14.4 foot addition to the rear of the property for the following reasons:

• The decrease in minimum setback requirements continues to be not significant enough to pose any detrimental affect on the neighboring properties. The property is located on a corner lot which would not allow for improvements to be made from any other side of the property based on the requirements of the *Zoning Ordinance*. The depth of the property would not accommodate a practical size of the space if only allowed to construct a 12 foot by 16 foot addition which would meet the setback requirements without a variance.

BOA Memo for Claude and Gwen Pritchett, 360 Nottingham Court 1-23-18 Meeting Page 2 of 2

• The property is located in an area where there have been numerous improvements to the existing housing stock and the applicant has previously submitted letters of no objection to the area variance from surrounding neighbors.

The Board of Adjustment should consider this amended information in its review of the original application for V-18-08 Claude and Gwen Pritchett, 360 Nottingham Court.

Attachments:

- 1. Existing Conditions and Addition Plan
- 2. Revised Response to Criteria
- 3. Staff Board of Adjustment Report 12-19-18

Board of Adjustment Application Claude and Gwen Pritchett

Response to Criteria

Background

The house located at 360 Nottingham Court was constructed in 1979 on Lot No. 31 of the Mayfair II subdivision. Lot 31 is one of the shallower lots in the subdivision at 102.5' deep and is 8,256 s.f. (0.189 ac.). Claude and Gwen Pritchett purchased the home in August 1991 and have lived there since. The house is a 2-story home (see attached photographs) and the living space of the home is approximately 1,884 s.f. The house originally had 3 bedrooms; however, one of the bedrooms was converted to an office for an in-home business after one of their children moved out and when they started a transportation business known as D&J Transportation, LLC. The business is permitted and licensed by the City of Dover. They still have one child living at home.

The Pritchetts need additional space in their house to accommodate friends and family when they come to visit as they presently have no spare bedroom. They desire to add a 16' wide x 14.4' deep multipurpose sunroom onto the rear of their house that they could entertain guests and use as an office and meeting room for their current business. The room would also serve as a playroom for their grandchildren and a place to store books. The Pritchetts are in their senior years and also have the need for family to come help them from time to time and need a place for them to stay when they come. The multi-purpose sunroom would also free up the 3rd bedroom and allow them to accommodate their guests. They are happy with their home and have no desire to move and are also not in a financial position to do so. The business is a small business that provides transportation services for public carriers and school districts. The business is not in a financial position to be able to lease office space at an offsite location.

Based upon the current configuration of the rear of the house, the location of windows and doors, and the required setback of 30' from the rear property line, the maximum size that they could construct the multipurpose sunroom would be approximately 12' x 16'. While the width would be adequate they have determined, based upon their need and proposed uses that the depth would not suffice for their needs and not provide for a very useable or practical space. They also cannot make the width any larger due the location of windows on the rear of the house (see attached architectural drawing).

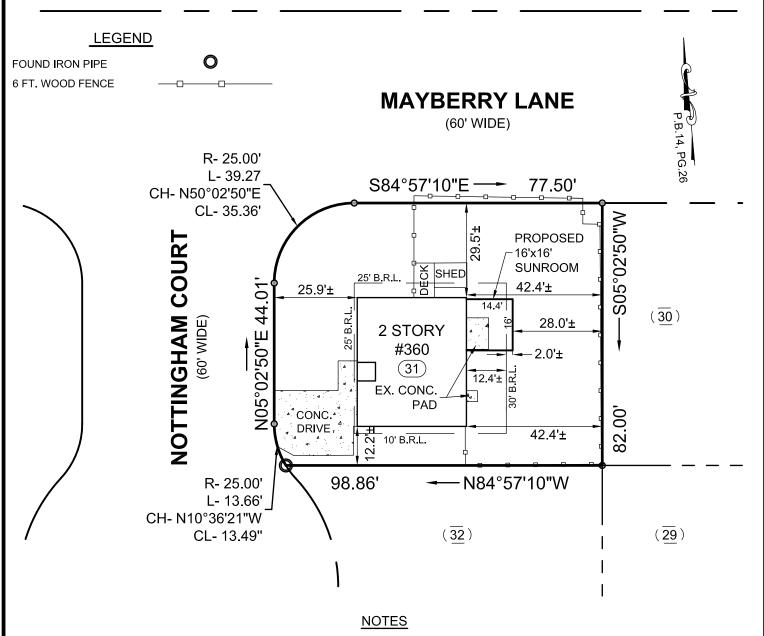
Area Variance Criteria

- 1. The property is located in an R8 zone, which is a one-family residence zone. The proposed multi-purpose sunroom is a use that is permitted and desirable in this zone.
- 2. The properties in the immediate vicinity of this property are all zoned R8 and have one-family residences located on them. Many of the houses have had additions added onto them over the years. The property directly to the rear of the applicant's property had a screened-in porch added onto the rear of the house.
- 3. Removing or reducing the restriction upon the applicant's property would not affect neighboring properties or their uses. The proposed use is conducive to the existing uses in the neighborhood and the zone in which it is located. It would be in harmony with the neighborhood and other additions added onto other houses. As stated, the house to the

Board of Adjustment Response to Criteria Page 2

rear of the applicant's property has a screened in porch added onto the rear of the house and is relatively close to the rear property line. However, there are trees and a 6' high wooden stockade fence along the rear property line that separate the two properties and provide for a buffer and screening. There is also a 6' high wooden stockade fence to the right or south side of the property that would screen the addition from the adjoining property on that side. The left or north side of the property is located along a street, which also has a 6' high wooden stockade fence. The granting of the variance will be in harmony with the general purpose and intent of the zoning regulation and ordinances and will not represent a radical departure therefrom and will not be injurious to the neighborhood or the adjacent properties. The construction of the addition will not change the character of the neighborhood and will not be detrimental to the public welfare.

4. If the restriction is not removed or reduced the restriction would create an unnecessary hardship or exceptional practical difficulty for the applicant/owner in their effort to make normal improvements to the house. The proposed addition is a permitted use under the provisions of the property; however, the house is constructed relatively close to all setbacks with the exception of the rear yard setback. This property is unique in that it has street frontages on two sides thereby restricting the available buildable space on the lot as compared to lots with only one street frontage. The two street setbacks significantly impact the ability to add onto the house and there is inadequate remaining space between the house and the Mayberry Lane required setback to construct an addition. To do so would require an even greater variance in the setback in order to construct the addition on that side. Also, there is little to no practical space remaining on the right or southerly side of the house. The double street frontage is peculiar to this particular lot and none of these conditions resulted from the act of the applicant or any predecessor in title. The house is presently approximately 1,884 s.f., which is not a large house. The applicant needs additional space in order to house family and visiting guests as well as operate their existing in-home business, which has been approved and licensed by the City of Dover. The proposed addition is a reasonable use of the property. The strict application of the rear yard setback would not allow them to construct an addition of a useful or practical size. The variance requested would allow them to construct a useful addition and is the minimum variance that will allow them to do so. They cannot expand the width of the proposed sunroom due to the location of existing windows in the rear of the house and, even if they could, the existing available depth of 12' would not provide for a useful or practical multipurpose room. The granting of the variance is necessary to allow for the reasonable use of the property and to allow for the construction of a practical and useful size multi-purpose sunroom as determined by the architect. The addition of the sunroom would also not exceed the allowable permitted impervious lot coverage of 35 percent.



- 1. TAX MAP PARCEL NO. ED-05-085.12-04-26.00-000
- ZONING: R-8
- SET BACKS: FRONT YARD: 25'; MIN. SIDE YARD: 10', AGG. 20'; REAR YARD: 30'
- EXISTING COVERAGE (NOT INCLUDING SHED OR DECK): 24.4%
- PERMITTED COVERAGE: 35%
- DEED REFERENCE D-258-124, P.B.14, PG.26 LOT CREATED 1978
- LOT AREA = 8,255.6± SQ.FT. (0.189± ACRES)
- DATE OF FIELD SURVEY- 10/5/18 8.
- PROPERTY MAY BE SUBJECT TO RESTRICTIONS AND EASEMENTS DESCRIBED IN DEED RESTRICTIONS OR AS FOUND IN SUBSEQUENT TITLE SEARCH.
- 10. THIS PLAN SHALL NOT BE REPRODUCED, TRANSMITTED OR COPIED WITHOUT THE WRITTEN PERMISSION OF THE ENGINEER RESPONSIBLE FOR ITS CONTENTS.
- 11. BUILDING STRUCTURE LOCATING DIMENSIONS SHOWN ARE FOR THE PURPOSE OF CHECKING COMPLIANCE WITH ZONING & DEED RESTRICTIONS ONLY, NO LIABILITY WILL BE ACCEPTED IF THESE DISTANCES ARE USED FOR ANY OTHER PURPOSE
- 12. NO TITLE EXAMINATION FURNISHED TO OR PERFORMED BY THE PREPARERS HEREOF.

EXISTING CONDITIONS PLAN

PROPOSED ADDITION

FOR

MAYFAIR II. LOT NO. 31 360 NOTTINGHAM COURT DOVER, DE **FOR**

DATE

CLAUDE & GWEN PRITCHETT AND J.E. & ALINE J. WANKOW TRUSTEE

SITUATE IN: CITY OF DOVER, EAST DOVER HUNDRED, KENT COUNTY, STATE OF DELAWARE

I HEREBY DECLARE THAT THIS SURVEY PLAN ACCURATELY SHOWS THE BOUNDARY OF THIS PARCEL AS DETERMINED BY EVIDENCE FOUND IN THE FIELD AND WITH DEEDS OF RECORD, THAT IT ACCURATELY DEPICTS ALL IMPROVEMENTS AS LOCATED ON THE PREMISES DESCRIBED, AND THAT ALL IMPROVEMENTS ARE ENTIRELY LOCATED WITHIN LOT LINES, AND THAT THERE ARE NO ENCROACHMENTS UPON THE PREMISES DESCRIBED BY THE IMPROVEMENTS OF ANY ADJOINING PREMISES UNLESS OTHERWISE SHOWN AND/OR CALLED OUT

GREGORY R. SCOTT. P.E.

CLASS 'B' SURVEY SCOTT ENGINEERING, INC. Consulting Engineers · Surveyors · Land Planners 22 Old Rudnick Lane, Suite 2 Dover, DE 19901 302-736-3058 DRAWING NO. M-4741 SCALE: 1"=30"

SEL

FLD. BK. NO

MS-57

DRAWN BY.



City of Dover

Board of Adjustment

January 23, 2019

V-18-11 Revised

Location: 127, 129, 133, and 135 Roosevelt Avenue

Applicant: Miller Investments, LLC

Owner: David Miller

Tax Parcels: ED-05-077.18-02-71.00-000, ED-05-077.18-02-72.00-

000, and ED-05-077.18-02-73.00-000

Application Date: October 12, 2018

Present Zoning: RG-2 (General Residence Zone)

Present Use: Two (2) one-family dwellings and two (2) multi-family

apartment buildings, total 10 dwelling units across all

four buildings

Proposed Use: One multi-family apartment building with 18 dwelling

units

Reviewed By: Eddie Diaz

Variance Type: Area Variance

Variances Requested: 1) To exceed the RG-2 zone's maximum lot coverage of

60% and allow lot coverage of 65.4%

2) To allow accessory buildings to take up 38% of the side and rear yards, exceeding the typical limit of 30% 3) To allow parking within 15 feet of a wall belonging to

a multi-family dwelling

V-18-11 Revised Lands of Miller Investments LLC at 127, 129, 133, and 135 Roosevelt Avenue Board of Adjustment Report for January 23, 2019 Page 2 of 12

Previous Applications

On July 24, 2018, the applicant for this project submitted to the Planning Office an application for rezoning of 127, 129, 133, and 135 Roosevelt Avenue (Application #Z-18-01). The rezoning application proposed changing the zoning of these properties from the then-designation of R-8 (One-Family Residence Zone) to a new designation of RG-2 (General Residence Zone). The Planning Commission held a Public Hearing for the rezoning application on September 17, 2018 and recommended the rezoning to City Council for approval. City Council held a Public Hearing and Final Reading of the application on October 8, 2018 and approved the rezoning as Ordinance #2018-08.

This current variance application V-18-11 was previously submitted for the December 19, 2018 meeting of the Board of Adjustment. The applicants requested that consideration of the application be postponed to the January 2019 meeting. The applicants used this one month of delay to redesign the project so that lesser variances were needed. Previously, the applicants requested a maximum lot coverage of 76.7%. The current version of this application requests 65.4% lot coverage. They also requested that 56.1% of the side and rear yards be covered by accessory structures. The current version of this application requests 38%. No change was made to the request for parking near the wall of the building. These changes were made in part by reducing the overall number of proposed units on the property from 21 to 18.

For comparison purposes, the previous version of the project site plan is given in <u>Exhibit D</u>. The current version of the site plan is given in <u>Exhibit C</u>.

Project Description

The three (3) parcels addressed as 127, 129, 133, and 135 Roosevelt Avenue currently contain a mix of one-family and multi-family residences, all operated as rental units. The applicant proposes to increase the number of dwelling units on site from ten (10) units to 18 units by demolishing the four (4) existing structures, consolidating the three parcels into one, and building one new three-story apartment building.

The new apartment building would be accompanied by 41 on-site parking spaces to meet the minimum parking requirements of the *Zoning Ordinance*. Four (4) accessory buildings are also proposed, which are intended to turn 31 of the parking spaces into covered parking. The remaining ten (10) parking spaces would be located in an alcove on the first floor of the apartment building, thus ensuring they are also covered, by the second floor.

A site plan showing the applicant's proposed project is in <u>Exhibit C</u>.

In order to build the apartment building, required parking, and accessory buildings in the format proposed by the applicant, the project would need three variances as follows:

1) <u>Lot coverage:</u> The project is in the RG-2 (General Residence) Zone, which for multifamily dwellings sets a maximum lot coverage of 60%. The project as proposed would have a lot coverage of 65.4%.

V-18-11 Revised Lands of Miller Investments LLC at 127, 129, 133, and 135 Roosevelt Avenue Board of Adjustment Report for January 23, 2019 Page 3 of 12

- 2) <u>Accessory structures:</u> The *Zoning Ordinance* sets a maximum area for accessory structures in all residential zones, equal to 30% of the area given to the property's required rear and side yards. In this case, the covered parking would total 38% of the required rear and side yards of the consolidated lot.
- 3) Parking near a wall: The Zoning Ordinance restricts parking near the walls of multifamily dwellings. Specifically, cars cannot be parked within 15 feet of any wall belonging to such a dwelling. This rule would ordinarily prevent putting parking in an alcove of the first floor of the building in the way the applicant proposes.

Should these variances be granted, the project will be able to proceed through the Planning Commission's Site Development Plan application and review process. The project will need to be reviewed and approved by the Planning Commission before it can apply for a Building Permit and be constructed, and it will also need a Parcel Consolidation Plan to combine the three lots into one parcel.

Adjacent Land Uses

A Zoning Map showing the zoning of the three parcels and the neighboring properties can be found in Exhibit A. The property is located on the north side of Roosevelt Avenue, east of South DuPont Highway. This section of Roosevelt Avenue exits only onto South DuPont Highway and does not have any other road connections.

The project's neighbors along Roosevelt Avenue include seven (7) one-family dwellings on individual lots, zoned R-8 (One-Family Residence Zone). In addition, immediately to the west of the property is a building zoned C-1 (Neighborhood Commercial Zone) which appears to be a combined residential and commercial building. Immediately to the east of the subject property is the Riverside Mobile Home Park, split-zoned between R-8 and the MH (Manufactured Housing) Zone. The R-8 section contains eight (8) homes while the MH section contains an estimated 32 additional homes. At the east end of Roosevelt Avenue is the entrance to the Riverchase Apartments, which consists of 80 apartment units split between six (6) multi-family apartment buildings. The Riverchase Apartments like the subject property are zoned RG-2.

Several nonresidential uses are among the project's neighbors on Roosevelt Avenue as well. Across the street from the project is the Kent County Theater Guild, zoned R-8. West of the project site on the north side of Roosevelt Avenue is a grass lot belonging to a martial arts studio, whose main building is on South DuPont Highway. West of the grass lot is a car wash at the corner of Roosevelt Avenue and South DuPont Highway. A multi-tenant building containing a liquor store and salon completes the block of South DuPont Highway between Roosevelt Avenue and Evergreen Drive, the next street to the north. These three properties are zoned C-4 (Highway Commercial Zone). On the south side of Roosevelt Avenue are a daycare center, zoned R-8, and an auto dealership at the corner with South DuPont Highway, zoned C-4.

Finally, the project does have some neighbors which are not on Roosevelt Avenue. These are the one-family residences located in the Morris Estates II subdivision immediately

V-18-11 Revised Lands of Miller Investments LLC at 127, 129, 133, and 135 Roosevelt Avenue Board of Adjustment Report for January 23, 2019 Page 4 of 12

adjacent to the north, zoned R-8. These residences front on Evergreen Drive and Evergreen Circle, and three of them also back onto the project site.

Code Citations

RG-2 (General Residence Zone) and Lot & Bulk Standards

Zoning Ordinance Article 3 §2 outlines the permitted uses in the RG-2 Zone. These permitted uses include what are called "garden apartments;" Garden Apartments are defined in Article 12 of the Zoning Ordinance as follows:

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

"Multiple dwellings" and "multi-family dwelling" are further defined as follows:

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

Dwelling, multiple: A building, or portion thereof, containing more than two dwelling units.

The applicant's project is considered a Garden Apartment because the common lot area is the sum of the required lot areas of all dwelling units within the building; see the "Lot area/Dwelling Unit" line in Table 1 below.

Zoning Ordinance Article 4 §4.3 gives the bulk standards for buildings in the RG-2 Zone. These include separate standards for "one-family detached dwellings," "one-family multiple semi-detached and other two-family dwellings," and "multiple dwellings," the last category of which garden apartments fall under. The standards for multiple dwellings, compared with the project proposal, are listed below:

Table 1: Zoning Requirements and Requested Bulk Standards
V-18-11 Lands of Miller Investments LLC at 127, 129, 133, and 135 Roosevelt Ave

	RG-2 (General Residence Zone)	Applicant's Project (As Revised)
Standard:	Minimum required for multiple dwellings:	Proposed:
Lot area/Dwelling Unit (sq. ft.)	1,700	2,004
Lot width (ft.)	100	235
Lot depth (ft.)	125	153
Front yard (ft.)	30	30
Side yard (ft.)	25	58.5
Total both side yards (ft.)	50	117
Rear yard (ft.)	30	61.5
Off-street parking spaces	2/Dwelling Unit*	2.25/Dwelling Unit

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Standard:	Maximum Permitted for multiple dwellings:	Proposed:
Building height		
Stories	3	3
Feet	40	<40
Floor area ratio	none prescribed	0.54
Lot Coverage	60%	65.4%
Number of dwelling units in group of attached dwellings or in multiple dwellings	none prescribed	18

^{*}Superseded by *Zoning Ordinance* Article 6 §3, which prescribes 2.25 spaces/Dwelling Unit for all apartment uses

Based on the bulk standards for multiple dwellings in the RG-2 Zone, the first variance requested is for 65.4% lot coverage, exceeding the maximum 60%.

Accessory Buildings

Zoning Ordinance Article 5 §1.1 describes regulations for accessory buildings in residential zones. Article 5 §1.1 reads in part as follows:

- 1.1 Accessory buildings. An accessory building may be located in any required side or rear yard provided:
 - 1.11 Such buildings shall not exceed 15 feet in height.
 - 1.12 Such buildings shall be set back five feet from any lot line and shall not be located less than ten feet from an adjoining principal structure.
 - 1.13 All such buildings in the aggregate shall not occupy more than 30 percent of the area of the required rear and side yard.

Note that the term "required rear and side yard" refers to the area between the property line and the setback line in these yards, as opposed to the area between the property line and the principal building. For instance, for this project the "required" rear yard is 30 feet deep by code, but the actual rear yard is 61.5 feet.

According to Planning Staff measurements, the six (6) accessory buildings proposed by the applicant have a combined total area of about 5,396 SF. Of this building area, about 944 SF is close enough to the main building to be outside the required rear yard, leaving 4,452 SF subject to the 30% limit. The total area of the required rear and side yards for the property meanwhile comes to about 11,700 SF. Together these figures indicate (4,452 SF divided by 11,700 SF) that the accessory buildings will take up 38% of the required rear and side yards. Because more than 30% is proposed, this is the second variance requested.

Parkina Near the Wall of a Multi-Family Dwelling

Zoning Ordinance Article 6 §5.3 provides the following regulations:

V-18-11 Revised Lands of Miller Investments LLC at 127, 129, 133, and 135 Roosevelt Avenue Board of Adjustment Report for January 23, 2019 Page 6 of 12

5.3 Supplementary parking regulations for multiple dwellings. No parking space shall be located in any front yard or within three feet of any lot line in side or rear yards. The parking of motor vehicles within 15 feet of any wall or portion thereof, is prohibited. Except for electric vehicle charging stations, no automobile service shall be permitted to be extended to users of the lot, including sales, repair or fueling, and no gasoline, oil, grease, or related supplies shall be stored or sold in any such lot or in any garage on such lot.

The general purpose of these regulations is to reduce the impact of vehicles on site to the people living in the dwelling units. They do not prohibit parking vehicles under the second floor of the building. However, the site plan currently shows that the north wall of the first floor of the building would be right up against a 10-space parking area. In order to meet the zoning code, this wall would have to be moved 15 feet to the south, away from the parking spaces. The applicant does not want to do this because it would shrink the first floor of the building. This the basis of the third variance request.

As previously stated, all three variances would be required for the applicant to build their new apartment building the way their plan describes. If any of the variances are not granted, substantial changes to the basic site layout will be required before the project can be reviewed by the City's Planning Commission. It should be also noted that if the second and third variances are granted, the project will not be exempt from any Building Code or Fire Code provisions related to the building construction and parking design proposed. These codes may also require changes to the design and should be addressed as early as possible in the design process.

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

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As a part of the application, the applicant was asked to state how the requested variance relates to the above four criteria. The applicant's responses are provided below, along with a staff assessment of the application in accordance with the required criteria Both the applicant and staff responses have been revised for the January 23, 2019 meeting.

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

Applicant Response:

"The three parcels with four buildings under consideration for variance by the Board of Adjustments were recently unanimously approved for rezoning to RG2 by the Dover Planning Commission and Dover City Council. RG2 permits Multi-family apartment housing. Two of the buildings had previously been converted to apartment buildings."

Staff Response:

The RG-2 Zone in the City of Dover permits certain agricultural uses; one family detached dwellings on 6,000 square foot lots; public buildings; and garden apartments, as well as a variety of conditional uses. Other types of multiple dwellings other than garden apartments are permitted conditionally in RG-2. The RG-2 Zone is more appropriate for the two multi-family dwellings currently on site than the previous R-8 Zoning. The RG-2 zoning also makes possible the applicant's proposed project.

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

Applicant Response:

"The property lies in an area with an "eclectic" mix of uses. Multi-family housing is across the street to the east at the end of Roosevelt Avenue, west of the property is C-1 and C-4 zoning including a car wash and multi-tenant building, to the east is a manufactured housing community and to the south of Roosevelt Avenue is additional C-4 with Automobile dealerships. The area contains quite a mix of uses with an apparent shift from historic single family residences toward multi-family and commercial. The proposed redevelopment will follow this trend in making use of the two dilapidated residences as well as two other dilapidated buildings previously converted to Multi-family apartment buildings."

Staff Response:

Staff generally concurs with the applicant's description of the surrounding area. The referenced multi-tenant building may be the building zoned C-1 or the salon and liquor store building. There is only one automobile dealership in the immediate area, though its size and the variety of cars it sells makes it appear to be multiple dealerships. The applicant's description of a shift from single-family uses toward multi-family and commercial uses in the area appears to be true. The applicant's description of the existing structures on site as "dilapidated" is more debatable; they appear to be in fair condition from the outside; however, the applicant has stated they are in disrepair on the inside.

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

Applicant Response:

"The applicant seeks to redevelop the properties as a single garden style apartment." The proposed structure contains 18 units. The parking required by the City is 2 1/4 spaces per unit, which parking drives the variance requests. The request for a variance in the lot coverage allows for adequate parking for the 18 units. The request for a variance in the percent of accessory buildings is for the purpose of permitting an upgraded amenity of covered parking. The final variance permits parking under a portion of the structure. The project is not going to have an impact on surrounding properties. Roosevelt Avenue presently consists of: 14 single owner occupant residences, 13 investor owned residences ranging from 1-4 families, 45 single wide mobile home units, 80 apartment units, a car wash, a multi brand car dealership and a 100 person Community Theater. This re-development is consistent with the higher density properties located in close proximity to our proposed apartment building. For these reasons none of the requested variances, if granted. would have any negative impact on surrounding properties and in fact, allows for construction of a higher quality project with amenities. It should be noted that parking under a structure is not unusual in the City, as examples can be found at the Schwartz Center for the Arts, Wesley College dorms as well as the office building housing the Attorney General and at the Courthouse.

Permitting the redevelopment of this dilapidated section of Roosevelt Avenue would in fact, represent a benefit to the neighboring properties."

Staff Response:

The applicant states in the above response that there will be no negative impacts on surrounding properties, and by way of support offers that the project is consistent with the density of the other residential properties on the street. For comparison, the other RG-2 zoned property on the street has a density of 10.8 units per acre; the manufactured home park has a density of 8.3 units per acre; and the ten units currently on the project site have a density of 12.2 units per acre. The applicant's proposed project, with 18 dwelling units, would have a density of 21.9 units per acre. The proposed project does, therefore, have a significantly higher density than the surrounding neighborhood. However, because the Planning Commission approved a zoning district that allows new multi-family uses on this site, some increase in density is to be expected. In addition, the project mitigates the effects of its density by packing its units into a relatively compact building; this allows the site to have some open space in the front and rear yards. Planning Staff believes enough open space is provided in the revised plan to achieve consistency with the character of the surrounding neighborhood. The amount of impervious surface requested is therefore unlikely to negatively impact neighbors.

As for the covered parking, while the proposed accessory buildings are very large compared to the typical sheds and garages seen in residential zones, they do meet the minimum 5-foot setback for accessory buildings. The covered parking on the

north side of the site in particular has been redesigned so it does not crowd the adjacent northern property lines. Planning Staff does still have some concerns about the covered parking on the east and west sides of the site, but these concerns could be mitigated by screening the covered parking in various ways, such as through fencing and landscaping. Planning Staff could work with the applicant during the Site Development Plan process to implement these measures.

Planning Staff does not see likely negative impacts to neighbors from parking against the wall of the apartment building underneath the second floor. In such a location, the parking spaces are well set back from neighboring properties and are not visible from most angles. There may have been some negative impacts if the parking spaces were both next to a wall and out in the open, which is the scenario envisioned by the *Zoning Ordinance*. However, such a parking configuration is not proposed for this project.

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

Applicant Response:

"The proposed redevelopment of those run down properties represent a significant improvement to an area of the City that badly needs such redevelopment.

The most significant requested variance, lot coverage ratio, permits the construction of a building containing 18 units. Absent a granting of this variance, the project is not economically viable and may be abandoned. The variance request more for accessory structure area is driven by the City's interpretation that covered parking is considered the same as a garage or storage shed and thus the limitations. The granting of this variance permits an attractive amenity to the project allowing it to be more marketable with higher probability of being commercially competitive and successful.

In, <u>Kwik-Check Realty v. New Castle</u>, several instructive points were made by the Court. The Court noted when considering an "area" variance cases (such as applicable here), the proper test in Delaware is the less burdensome one of the exceptional practical difficulty (as opposed to the higher standard of unnecessary hardship). The Court allowed that exceptional practical difficulty may be met, under appropriate weighing of the other impacts, in a desire to upgrade a business, remain competitive and increase responses herein to profits. The balanced approach adopted by the Court is reflected in question 3 and this question 4 which poses a balance between any negative impact on neighboring properties against either the benefit and potential negative impact of granting or not granting the variances.

It is respectfully submitted that the redevelopment of these properties, which granting of these variances permits, result in both a higher likelihood of a successful

V-18-11 Revised Lands of Miller Investments LLC at 127, 129, 133, and 135 Roosevelt Avenue Board of Adjustment Report for January 23, 2019 Page 10 of 12

project as well as a significant improvement (rather than detriment) to the neighboring properties and the surrounding area."

Staff Response:

The applicant claims an exceptional practical difficulty that is economic in nature, saying that the project likely cannot be built without at least the lot coverage variance. Staff concurs that the inability to improve a property, or stay competitive as a result of area limitations, may be a legitimate exceptional practical difficulty that would justify granting a variance. The most important part of the applicant's argument above is the cited balancing test, where the negative impact to the applicant if the variances are not granted must be weighed against the negative impact to the neighbors if the variances are granted. In this case, Planning Staff believes the potential negative impacts on neighbors have either been mitigated through the project's redesign or can be mitigated through further refinement. Because of this the difficulty claimed by the applicant should be given more deference. Reducing the lot coverage further would mean the applicant has to build fewer units. This may make the project non-viable.

Similarly, while the covered parking may seem like a perk to the tenants that can be dispensed with, it may make enough of a difference on the price of individual units that it is in fact critical to the project's viability. Reducing the amount of covered parking so no variance is required may then make the project non-viable.

The exceptional practical difficulty associated with the parking beneath the building is more concrete. If this variance is not granted, the parking under the building will have to be relocated or removed. This would mean either increasing the magnitude of the other two requested variances or reducing the number of dwelling units without the benefit of an accompanying impervious surface reduction.

Variance Recommendations

Staff tentatively recommends approval of the first variance for lot coverage, for reasons as follows:

- This variance request is driven by parking, which in turn is driven by the proposed density (unit count) of the development. The applicant has reduced the project density since their original submission. Planning Staff believes the new density and the new lot coverage are more in line with the character of the surrounding neighborhood, and therefore unlikely to negatively affect neighboring properties.
- Reducing the project density further by building fewer units may make the project non-viable. It is not known how many units the applicant needs for the project to be viable.
- The requested variance does appear to pass the exceptional practical difficulty standard's balancing test; i.e. it appears the potential harm to the applicant outweighs the potential harm to neighboring property owners.

Staff tentatively recommends approval of the second variance for accessory building coverage, for reasons as follows:

- The applicant has reduced the size of the accessory structures since their original submission; and they have also moved some of the accessory structures farther away from neighboring property lines. This partially mitigates the negative effect on neighbors expected from having such large buildings so close to the property lines. The negative effects can be further mitigated through features such as fences or landscape screening.
- Reducing the accessory building coverage further by building less covered parking may make the project non-viable. It is not known how much covered parking the applicant needs for the project to be viable.
- The requested variance does appear to pass the exceptional practical difficulty standard's balancing test.

Staff recommends approval of the third variance for allowing parking within 15 feet of a wall. Staff further recommends this variance be limited to any parking located underneath or partially underneath the building. The recommendation is given for the following reasons:

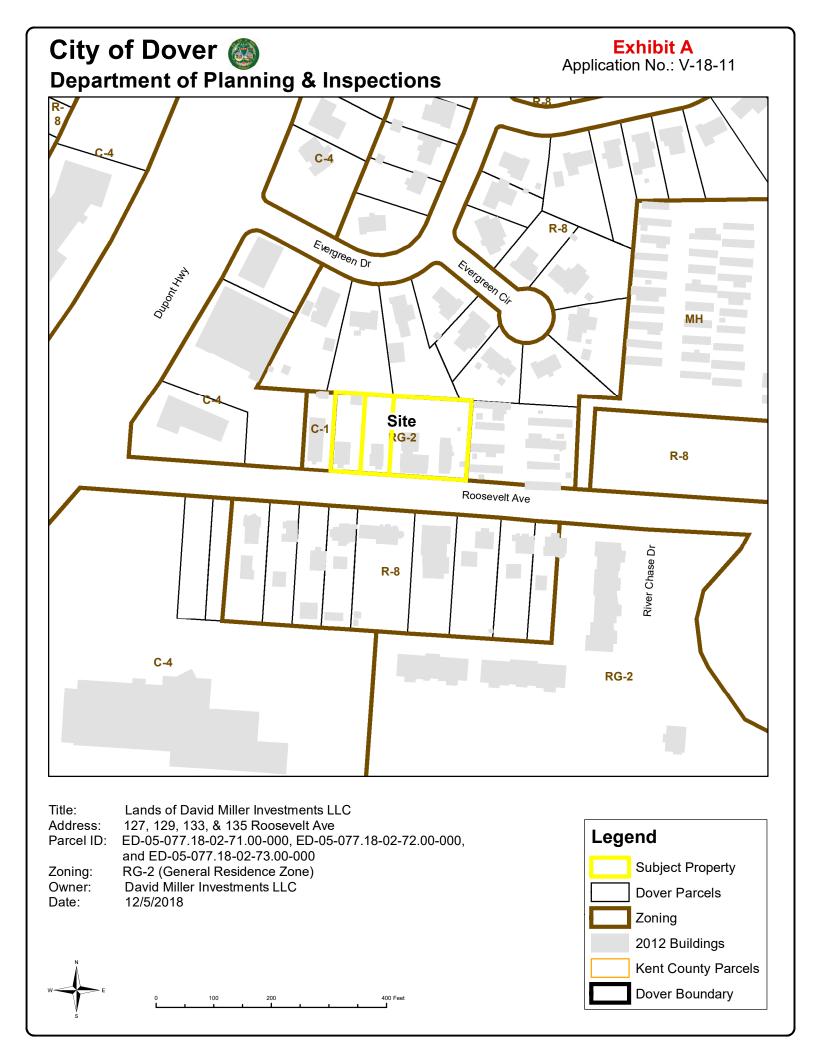
- No negative effects on neighboring properties would be expected from granting this variance.
- If this variance is not granted, the parking under the building will have to be relocated or removed. This would mean either increasing the magnitude of the other two requested variances or reducing the number of dwelling units without the benefit of an accompanying impervious surface reduction. The requested variance, therefore, passes the exceptional practical difficulty standard's balancing test.
- Limiting the variance to parking spaces under the building will give the applicant the flexibility they need to design this parking area as they see fit (subject to Building and Fire Code requirements), while keeping parking away from the exterior walls of dwelling units as is the purpose of the ordinance.

Advisory Comments to the Applicant

- If granted, variances become null and void if work has not commenced within one (1) year of the date the variance was granted. At present there is no provision for extension.
- Improvements to the property are subject to Site Development Plan application and approval processes and appropriate permits from the City of Dover Department of Planning & Inspections and other agencies.
- Granting of a variance does not waive the applicant's requirement to adhere to all City Building and Fire codes when designing and constructing the project.

GUIDE TO ATTACHMENTS

Exhibit	Description/Author	# Pages
A	Zoning Exhibit Map (Staff)	1
В	Applicant responses to variance criteria	3
С	Current Site Plan dated 1/2/2019 (Applicant)	1 (24" x 32")
D	Previous Site Plan dated 10/12/2018 (Applicant)	1 (11" x 17")





THE MALMBERG FIRM LLC Attorney at Law

30 The Green Dover, DE 19901

Tel: (302) 672-5600 Fax: (302) 672-5609

Constantine F. Malmberg, III, Esquire <u>cmalmberg@themalmbergfirm.com</u>

January 3, 2019

Mrs. Dawn Melson-Williams, AICP Principal Planner City of Dover, Delaware

RE: Roosevelt Avenue Apartments

Dear Mrs. Melson-Williams:

Below is a revised letter to my previous one from November 29, 2018. The revisions are a result of my client reducing the proposed number of units to 18 from 21 originally proposed after consultation with the members of the City Planning Department. The lower number of units allows us to reduce the maximum lot coverage variance request from 75.1% to 65.4% (60% permitted) and an accessory building area variance reduction from 56.1% to 38% (30% permitted). Hopefully with these revisions the City Planning staff will be more supportive of this redevelopment effort:

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

The three parcels with four buildings under consideration for variance by the Board of Adjustments were recently unanimously approved for rezoning to RG2 by the Dover Planning Commission and Dover City Council. RG2 permits Multi-family apartment housing. Two of the buildings had previously been converted to apartment buildings.

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

The property lies in an area with an "eclectic" mix of uses. Multi-family housing is across the street to the east at the end of Roosevelt Avenue, west of the property is C-1 and C-4 zoning including a car wash and multi-tenant building, to the east is a manufactured housing community and to the south of

Roosevelt Avenue is additional C-4 with Automobile dealerships. The area contains quite a mix of uses with an apparent shift from historic single family residences toward multi-family and commercial. The proposed redevelopment will follow this trend in making use of the two dilapidated residences as well as two other dilapidated buildings previously converted to Multi-family apartment buildings.

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

The applicant seeks to redevelop the properties as a single garden style apartment. The proposed structure contains 18 units. The parking required by the City is 2 1/4 spaces per unit, which parking drives the variance requests. The request for a variance in the lot coverage allows for adequate parking for the 18 units. The request for a variance in the percent of accessory buildings is for the purpose of permitting an upgraded amenity of covered parking. The final variance permits parking under a portion of the structure. The project is not going to have a negative impact on the surrounding properties. Roosevelt Avenue presently consists of: 14 single owner occupant residences, 13 investor owned residences ranging from 1-4 families, 45 single wide mobile home units, 80 apartment units, a car wash, a multi brand car dealership and a 100 person Community Theater. This re-development is consistent with the higher density properties located in close proximity to our proposed apartment building. For these reasons none of the requested variances, if granted, would have any negative impact on surrounding properties and in fact, allows for construction of a higher quality project with amenities. It should be noted that parking under a structure is not unusual in the City, as examples can be found at the Schwartz Center for the Arts, Wesley College dorms as well as the office building housing the Attorney General and at the Courthouse.

Permitting the redevelopment of this dilapidated section of Roosevelt Avenue would in fact, represent a benefit to the neighboring properties.

4. Whether, if the restriction is not removed, the restriction would create unnecessary hardships 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.

The proposed redevelopment represents a significant improvement to an area of the City that badly needs such redevelopment.

The most significant requested variance, lot coverage ratio, permits the construction of a building containing 18 units. Absent a granting of this variance, the project is not economically viable and may be abandoned. The variance request more for accessory structure area is driven by the City's interpretation that covered parking is considered the same as a garage or storage shed and thus the limitations. The granting of this variance permits an attractive amenity to the project allowing it to be more marketable with higher probability of being commercially competitive and successful.

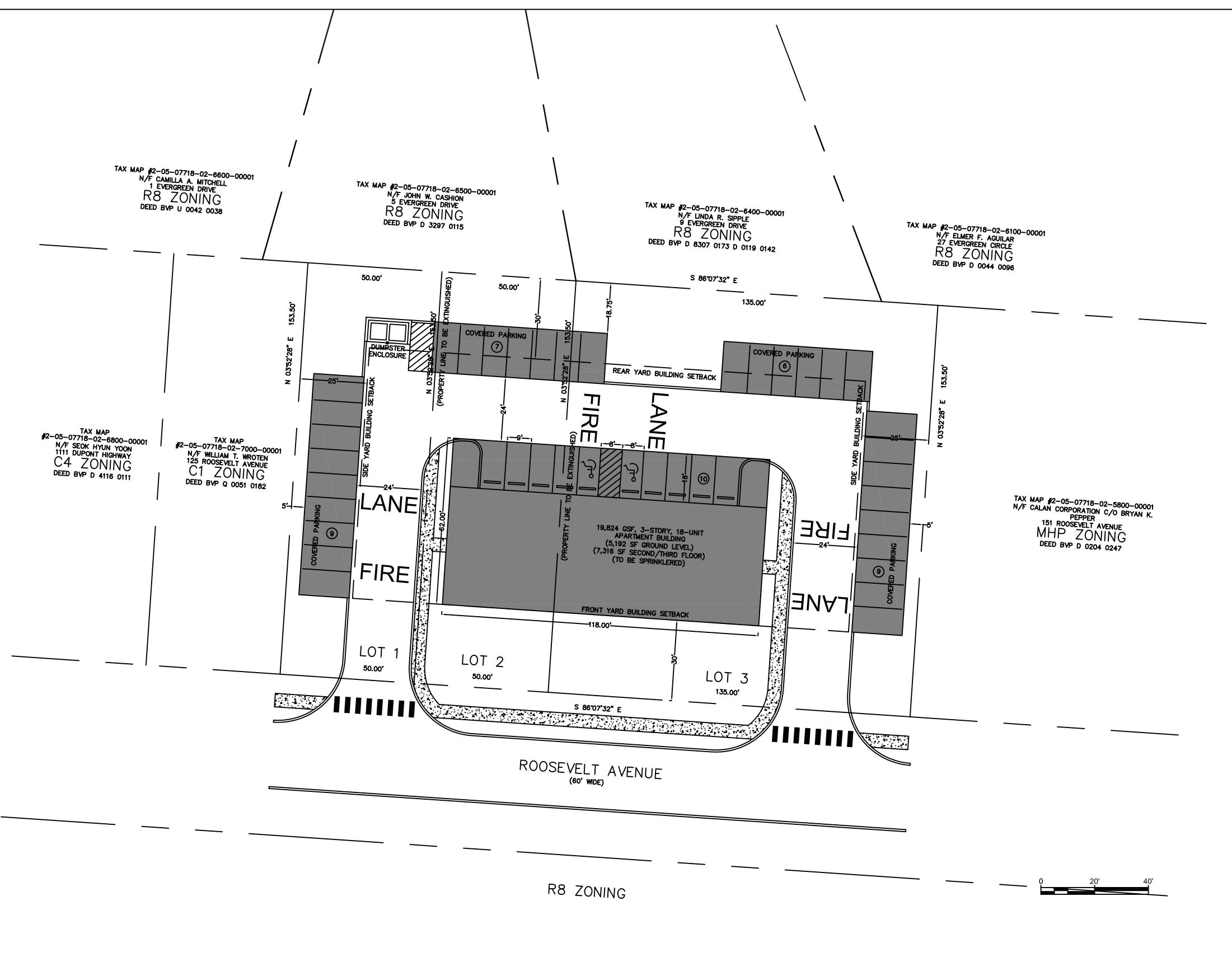
In, Kwik-Check Realty v. New Castle, several instructive points were made by the Court. The Court noted when considering an "area" variance cases (such as applicable here), the proper test in Delaware is the less burdensome one of the exceptional practical difficulty (as opposed to the higher standard of unnecessary hardship). The Court allowed that exceptional practical difficulty may be met, under appropriate weighing of the other impacts, in a desire to upgrade a business, remain competitive and increase responses herein to profits. The balanced approach adopted by the Court is reflected in question 3 and this question 4 which poses a balance between any negative impact on neighboring properties against either the benefit and potential negative impact of granting or not granting the variances.

It is respectfully submitted that the redevelopment of these properties, which granting of these variances permits, result in both a higher likelihood of a successful project as well as a significant improvement (rather than detriment) to the neighboring properties and the surrounding area.

Respectfully/Submitted,

Constantine F. Malmberg, III

Cc: Mr. Eddie Diaz, Planner I Douglas D. Barry, PE Miller Investments, LLC Beau Zebley





- 1. FROM THE MAXIMUM REQUIRED LOT COVERAGE OF 60% (PROPOSING 65.4%)
- FROM THE REQUIREMENT THAT THE TOTAL AREA OF ACCESSORY BUILDINGS MAY NOT EXCEED 30% OF THE AGGREGATE AREA OF THE SIDE AND REAR YARDS.
- FROM THE REQUIREMENT THAT OFF-STREET PARKING MAY NOT BE PROPOSED WITHIN 15 FEET OF A WALL. (PROPOSING 10 OFF-STREET PARKING SPACES ADJACENT TO BUILDING VIA COVERED PARKING UNDERNEATH 2ND AND 3RD FLOOR OF BUILDING





SCALE: 1'=400'

SITE DATA

TAX PARCEL NUMBERS 2-05-07718-02-7100-00001 (LOT 1) 2-05-07718-02-7200-00001 (LOT 2) 2-05-07718-02-7300-00001 (LOT 3) MILLER INVESTMENTS, LLC 1056 SOUTH STATE STREET OWNER NAME

OWNER ADDRESS DOVER, DELAWARE 19901 **EXISTING ZONING** EXISTING USE RESIDENTIAL

GARDEN APARTMENTS (PERMITTED USE) - 18 UNITS PROPOSED USE PROPERTY ACREAGE (CONSOLIDATED) 0.828 ACRES (36,073 SF)

ZONING REGULATIONS

PROPOSED 36,073 235.00 MINIMUM LOT AREA PER DWELLING UNIT (SF) MINIMUM LOT WIDTH (FT)
MINIMUM LOT DEPTH (FT) 153.50 MINIMUM FRONT YARD (FT) 30.00 MINIMUM SIDE YARD (FT) MINIMUM REAR YARD (FT) 61.50 MAXIMUM BUILDING HÈIGHT (FT) MAXIMUM BUILDING HEIGHT (# OF STORIES) MAXIMUM LOT COVERAGE (%) 65.4 VARIANCE REQUIRED

PARKING RATIONALE

REQUIRED OFF-STREET PARKING 2 SPACES PER DWELLING UNIT +

1 SPACE FOR EVERY 200 SF OF OFFICE + 0.25 SPACES PER DWELLING UNIT FOR VISITORS = (2*18) + (1*0/200) + (0.25*18)

PROPOSED OFF-STREET PARKING REQUIRED HANDICAP PARKING = 2 (1 MUST BE VAN ACCESSIBLE) = 2 (BOTH ARE VAN ACCESSIBLE) PROPOSED HANDICAP PARKING REQUIRED BICYCLE PARKING 1 PER 20 PROPOSED OFF-STREET PARKING SPACES

PROPOSED BICYCLE PARKING PROPOSED DUMPSTERS

EXISTING LAND USE SUMMARY

BUILDINGS (PRIMARY) **BUILDINGS (ACCESSORY)** 406 SF ADDITIONAL IMPERVIOUS SURFACE 7,455 SF OPEN SPACE TOTAL 23,393 SF 36,073 SF

PROPOSED LAND USE SUMMARY

BUILDINGS (PRIMARY) BUILDINGS (ACCESSORY) 5,344 SF ADDITIONAL IMPERVIOUS SURFACE 10,916 SF OPEN SPACE TOTAL 12,497 SF 36,073 SF

PROPOSED ACCESSORY STRUCTURE SUMMARY

TOTAL AREA OF SIDE AND REAR YARDS TOTAL ACCESSORY BUILDINGS IN SIDE AND REAR YARDS

4,459 SF (38.0%) VARIANCE REQUIRED

ACTIVE RECREATION CALCULATIONS

PER ARTICLE 5, SECTION 10.514 ("RESIDENTIAL DEVELOPMENTS OF TEN (10) OR FEWER ACRES WITH A DENSITY OVER SIX UNITS PER ACRE")

150 SF PER DWELLING UNIT OR 10,000 SF, WHICHEVER IS GREATER REQUIRED ACTIVE RECREATION SPACE = 3,150 SF (150 * 18) OR 10,000 SF = 10,000 SF

PROPOSED ACTIVE RECREATION SPACE FEE-IN-LIEU

SUPPLEMENTARY REGULATIONS (ARTICLES 5 & 6)

- ACCESSORY BUILDINGS MAY BE LOCATED IN ANY REQUIRED SIDE OR REAR YARD PROVIDED SUCH BUILDINGS SHALL NOT EXCEED 15 FEET IN HEIGHT, SUCH BUILDINGS SHALL BE SET BACK FIVE FEET FROM ANY LOT LINE AND SHALL NOT BE LOCATED LESS THAN TEN FEET FROM AN ADJOINING PRINCIPAL STRUCTURE, AND SUCH BUILDINGS IN THE AGGREGATE SHALL NOT OCCUPY MORE THAN 30 PERCENT OF THE AREA OF THE REQUIRED
- REAR AND SIDE YARD. <u>VARIANCE REQUIRED</u> NO ACCESSORY BUILDING SHALL PROJECT NEARER TO THE STREET ON WHICH THE PRINCIPAL BUILDING FRONTS THAN SUCH PRINCIPAL BUILDING.
- NO PARKING SPACE SHALL BE LOCATED IN ANY FRONT YARD OR WITHIN THREE FEET OF ANY LOT LINE IN SIDE
- OR REAR YARDS. THE PARKING OF MOTOR VEHICLES WITHIN 15 FEET OF ANY WALL OR PORTION THEREOF, IS
- PROHIBITED. <u>VARIANCE REQUIRED</u>

Christiana Executive Campus
121 Continental Drive, Suite 207
Newark, DE 19713-4310
T 302 655 4451
F 302 659 895

DWALK , 129 & 133/135 F ADRED, CITY OF

BOAR

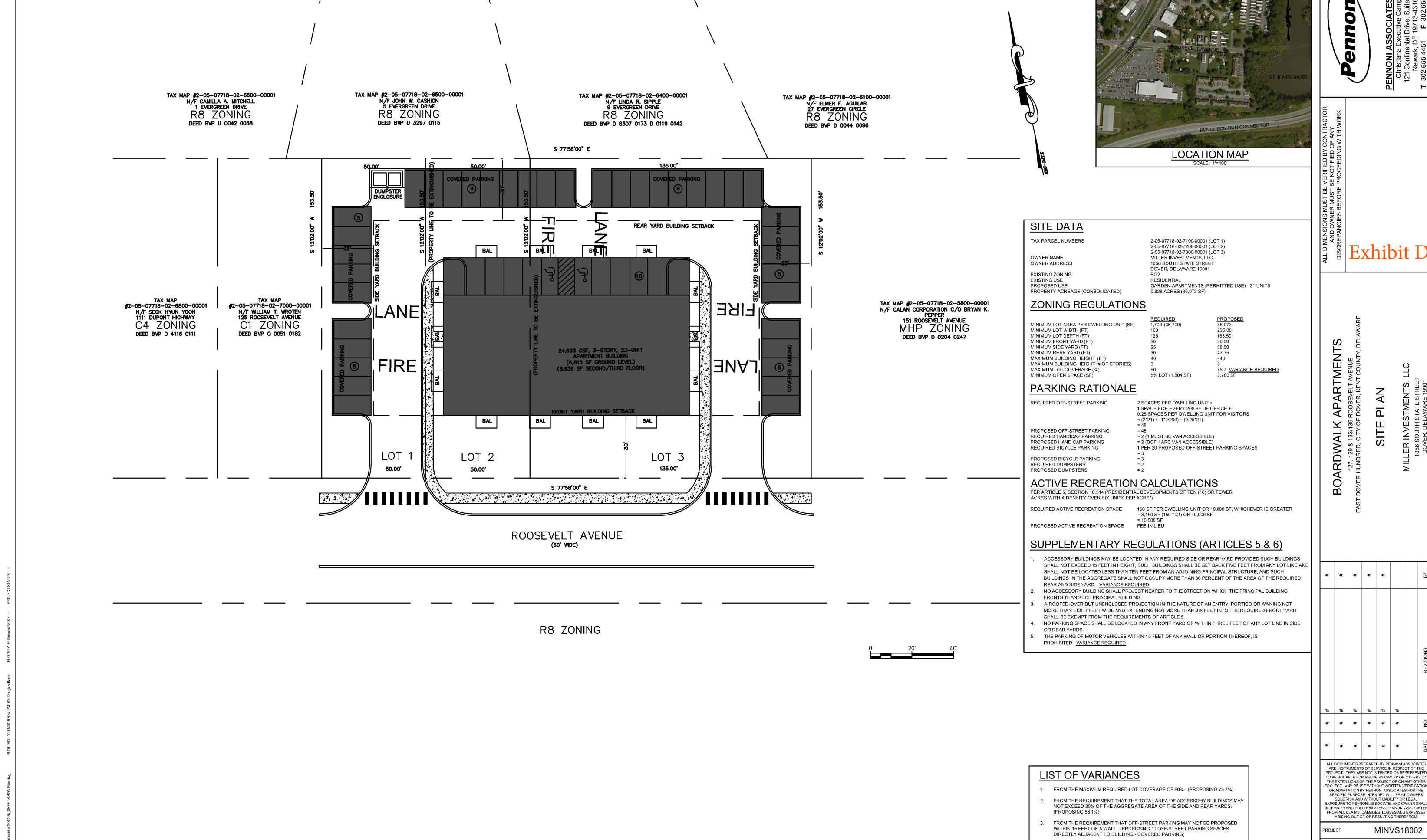
Exhibit C

APARTMENTS

PLAN SITE

ALL DOCUMENTS PREPARED BY PENNONI ASSOCIATES ARE INSTRUMENTS OF SERVICE IN RESPECT OF THE PROJECT. THEY ARE NOT INTENDED OR REPRESENTED TO BE SUITABLE FOR REUSE BY OWNER OR OTHERS ON THE EXTENSIONS OF THE PROJECT OR ON ANY OTHER PROJECT. ANY REUSE WITHOUT WRITTEN VERIFICATION OR ADAPTATION BY PENNONI ASSOCIATES FOR THE SPECIFIC PURPOSE INTENDED WILL BE AT OWNERS EXPOSURE TO PENNONI ASSOCIATE: AND OWNER SHALL INDEMNIFY AND HOLD HARMLESS PENNONI ASSOCIATES FROM ALL CLAIMS, DAMAGES, LOSSES AND EXPENSES ARISING OUT OF OR RESULTING THEREFROM.

MINVS18002 2019-01-02 DRAWING SCALE 1"=20' BRD DRAWN BY DDB APPROVED BY SHEET 1 OF 1



TO BE SUITABLE FOR REUSE BY OWNER OR OTHERS ON THE EXTENSIONS OF THE PROJECT OR ON ANY OTHER PROJECT. ANY REJSE WITHOUT WRITTEN VERIFICATION OR ADAPTATION BY PENNONI ASSOCIATES FOR THE SPECIFIC PURPOSE INTENDED WILL BE AT OWNERS SOLE RISK AND WITHOUT LIABILITY OR LEGAL EXPOSURE TO PENNONI ASSOCIATE; AND OWNER SHAL INDEMNIFY AND HOLD HARMLESS PENNONI ASSOCIATES FROM ALL CLAIMS, DAMAGES, LOSSES AND EXPENSES ARISING OUT OF OR RESULTING THEREFROM.

PROJECT	MINVS18002
DATE	2018-10-12
DRAWING SCALE	1"=20'
DRAWN BY	BRD
APPROVED BY	DDB

SHEET 1 OF 1