

**-CITY OF DOVER BOARD OF ADJUSTMENT
AGENDA**

Wednesday, July 17, 2019 at 9:00 AM

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

ROLL CALL

APPROVAL OF AGENDA

APPROVAL OF MINUTES of May 15, 2019 Meeting

COMMUNICATIONS & REPORTS

1. Reminder: The next Board of Adjustment regular meeting is scheduled for August 21, 2019 at 9:00am in the City Council Chambers.

NEW BUSINESS

Applicant #V-19-06

623 Fulton Street. Harrington Commercial LLC c/o Michael H. Harrington, Sr. has requested a variance from the requirements of Article 6 §3.6 of the *Zoning Ordinance* related to surfacing of parking areas and access drives, in order to extend a previously approved 2015 variance from the same requirements. Reapproval of the variance would allow the continued use of the existing gravel parking lot on the property past the year 2020. Subject property is zoned IPM (Industrial Park Manufacturing Zone). The Tax Parcel is ED-05-076.08-01-13.00-000. The owner of record is Harrington Commercial LLC. *The previous variance, V-15-06, was approved by the Board of Adjustment on March 18, 2015, with the condition that the approved variance would expire after five years.*

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
May 15, 2019

A Regular Meeting of the City of Dover Board of Adjustment was held on Wednesday, May 15, 2019 at 9:00 A.M. with Vice Chairman Ericson presiding. Members present were Vice Chairman Ericson, Mr. Keller, Mr. Hufnal, and Mr. Senato. Chairman KC Sheth was absent.

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

APPROVAL OF AGENDA

Mr. Senato moved to approve the agenda as submitted. The motion was seconded by Mr. Hufnal and unanimously carried 4-0. Chairman KC Sheth was absent.

APPROVAL OF THE REGULAR BOARD OF ADJUSTMENT MEETING MINUTES OF APRIL 17, 2019

Mr. Keller moved to approve the meeting minutes of April 17, 2019 with the necessary correction. The motion was seconded by Mr. Hufnal and unanimously carried 4-0. Chairman KC Sheth was absent.

OPENING REMARKS CONCERNING APPLICATIONS

Mr. Dave Hugg, Planning Director stated that the meeting today will be conducted in accordance with the Agenda. There is one (1) application 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.

COMMUNICATIONS & REPORTS

The next Board of Adjustment regular meeting is scheduled for June 19, 2019 at 9:00am in the City Council Chambers.

NEW BUSINESS

Applicant #V-19-05

15 South New Street. Sandra Appling has requested a variance from the requirements of the *Zoning Ordinance*, Article 3 §2.1 pertaining to permitted dwelling unit types in the RG-1 (General Residence) Zone, and the *Zoning Ordinance*, Article 7 §1.13 related to nonconforming buildings and uses, in order to reestablish the use of the structure on the property as a two-family dwelling unit. The structure's previous legal nonconforming status lapsed after the two-family

dwelling remained vacant for over a year. Subject property is zoned RG-1 (General Residence Zone). Tax Parcel: ED-05-077.05-03-13.00-000. The owner of record is Welcome Home Properties 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 May 5, 2019. The public was notified in accordance with regulations.

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

Mr. Swierczek gave a summary presentation of the Variance Application Request regarding permitted

dwelling unit types in the RG-1 (General Residence) Zone, and the *Zoning Ordinance*, Article 7 §1.13 related to nonconforming buildings and uses, in order to reestablish the use of the structure on the property as a two-family dwelling unit. The structure's previous legal nonconforming status lapsed after the two-family dwelling remained vacant for over a year.

Representative: Mrs. Sandra E. Appling, Owner.

Mrs. Appling was sworn in by Mr. Rodriguez.

Mrs. Appling testified that she agreed with Mr. Swierczek's presentation and is giving her response. Their purpose is to purchase property that they can renovate and be able to give those that need affordable housing that cannot purchase a home having a mortgage, etc. This has been our purpose and goal. We did go into this thinking based on what was advertised and what they saw when they toured the property that it was a two-dwelling unit. She was not aware of the Ordinance and that the property had lost its nonconforming use. She asked the Board to excuse her emotions and being nervous; she has a son that is currently in the hospital and she just wanted to get back there. She asked if they could continue the project that they have already started. They have invested money in renovating the property under the circumstances of thinking that it was two dwelling units. Their goal is to revitalize the area as well and make the house to look as nice as it possibly can. We have already started the work on the outside to include power washing, landscaping, siding, doors, etc. She asked the Board to grant the variance so that they could precede with the purpose of what she has stated above and, in her response, and goal. They also have a property on 11 N. New Street that they purchased a year ago and it is working out very well with their tenant. They have given a veteran a place to live and there are no problems. We are hoping if we can get this done and continue our investments. We are hoping that with some of the other houses in the City of Dover that may not have to be torn down that they perhaps could also work to revitalize them as well.

Mr. Keller asked if there were any construction permits somewhat in limbo right now taking place regarding the rehabbing of the house currently. Mr. Swierczek replied he did not think so; the main thing in limbo right now is the applicant has filed for the Rental Dwelling Permit that cannot be authorized at the current time until the use of the building is established. Correct me if I am wrong, but a lot of the work that the applicant has done is largely cosmetic so far. Anything in terms of

doing exterior work might need the permit. So far, the applicant has only done interior work. Mrs. Appling replied that they just started on apartment two which needed cosmetic work. There is apartment one and they have not done anything to it yet because it is going to require them to get an architect to do some of the work inside and that is where the permit will be needed. We would like to start on apartment one after the other unit is finished and rented and we have funds. So, apartment two is basically cosmetic and we will need a fencing permit. She is not sure if she needs anything else or permits for the exterior, but at the current time it is being powerwashed. The front door was also repaired and replaced.

Mr. Keller asked if the variance was approved whether it would require a reapplication for the construction permit that was held in advance. Mr. Swierczek replied that it generally would not require a resubmission of any if there were any permits that were being held pending the Board's decision. The Office could then approve the permit that was already submitted. At the current time he did not believe there were any permits waiting for the Board's decision.

Mr. Keller commented that any improvement in that dwelling would certainly benefit the neighborhood. He stated that he is very familiar with the neighborhood. Last month the Board approved a variance for a new office building for NCALL Research. What he has seen from the photo evidence submitted by Mrs. Appling it certainly appears to be moving towards a great improvement towards that structure. He did not think that it would be a radical departure from the general purpose and intent of the current City Ordinance. He did not feel that it would be injurious to that neighborhood for the use that it had been in and approved for over 20 years approximately.

Colonel Ericson was concerned if a precedent was being set because they have had other cases like this. He stated that the history is correct because it was a single family then it was changed into two family units. The entire area deteriorated quickly. In the first case, it was mentioned they did not like it going from two to one because it would be less income for these units. He asked the owner how much he paid for the unit and it was considerably less than what Mrs. Appling paid for her unit which surprises him. The other thing is that there was a complaint by a resident that the tenants were selling drugs and there was prostitution which made the entire area dangerous. City Council and the Planning Commission considered all this and decided that they did not want two family units in the area because it led to the property values in the community to decrease and there were concerns regarding safety issues. He asked Mrs. Appling to explain why the variance was needed and asked if she paid \$31,000 for the property and what were the monthly payments. Mrs. Appling replied that she paid \$31,000 in full for the property. They do not have a mortgage. Colonel Ericson asked what the owner would be charging for the unit. Mrs. Appling replied that the first unit is a two bedroom and they were looking at somewhere between \$700-\$800. She stated that they have a process for applications with their rental business that everyone must apply through (applyconnect.com) and be able to pay the fee that goes to the company and not directly to her. It also goes through a credit check and background check. There is a lease that includes a yearly inspection.

Colonel Ericson asked if only one unit was rented there would still be a positive cash flow because there is no mortgage; is that correct? Mrs. Appling replied once what they have invested gets paid, then yes, they would have a positive cash flow.

Colonel Ericson mentioned that one of the requirements is whether this property would be injurious to the neighborhood. In the past, it seems as if there was a problem (danger) in the neighborhood when there were two units. The question is should we go back and do the same thing again because if you get this approval many others would want the same thing.

Mrs. Appling asked Colonel Ericson if he was asking the question to see if they are doing it for a profit reason. As previously stated, these units are for people who cannot afford maybe a mortgage but need housing. It is not about actually making money although she wants money to come in to pay for the investment so that perhaps they can invest in other properties and be able to give people housing.

Mr. Hufnal mentioned that he did not foresee this as setting a precedent. This property was already established for ten-years. Colonel Ericson mentioned that all the buildings have the same background. Mr. Hufnal replied that is correct and there are already several multi-family dwellings in the neighborhood plus an apartment building. He thinks that it is just reestablishing what was lost for roughly 30-days. There was one month were the nonconforming use had expired. It is reinstating what was there for the previous 10-years.

Colonel Ericson stated that things have changed over 10-years because of the condition of the area. He stated that the buildings are very small.

Mr. Senato mentioned that it seems that there is a very tight investigative program for new tenants coming in with what has been explained. Mrs. Appling replied that she did not bring any of that with her, but she uses a company that some of the Realtors in town have used, applyconnect.com. If this tenant is interested, they will have to pay a fee in the amount of \$28.50 to this company. She does not see anything until their credit report and background check comes back to them. If they decided that they want to share that information with her and continue their application, then they send it through email. She will then accept the application for a review process as to whether the application is approved based on the information received. That is the first process and the next process is if they are approved, then they will need to complete a rental application and abide by the agreement.

Mr. Senato mentioned that he knew if he was not mistaken that the City has rules and regulations whereas an owner can within a certain period inspect the unit during the year. This would be one way the tenant could keep control of what is going on. The City of Dover is very hard on building that area up. Any neighborhood in the City, as well as the one he lives in, will have drugs in the area. One thing that comes to mind regardless whether it is a single family or duplex, you would still want to do the renovations and have decent tenants in the unit. He stated that the rental is low compared to \$1300-\$1500 in the rest of the City. He knows for a fact that there are a lot of people who are working full time that live in their automobiles because they cannot afford the rent that is being charged in a lot of the areas in the City. This property would help eliminate a couple of these issues of a person (that was living in their vehicle) with good credit; they could now possibly afford one of these units or another housing unit in the \$700-\$800 price range. He thinks that this is something that is needed to build up the area. There is not an area in the City that does not have some kind of problem. He did not agree with his colleague in reference to some of the comments that were made because the City would once enhance that area and the rest of the City. Again, it

is a good thing that is being done, we just need to make sure that it is within the code and things are running smoothly. There are already duplexes and apartments in the area.

Mrs. Appling mentioned that she does try to follow any of the City Ordinances. She completes the rental application form that lists the tenant name, address, and signature at the time of the lease. Once the form is completed it is turned in to the City so that they are aware of the person living in the building. She is willing to follow any necessary ordinances.

Mr. Senato mentioned that it seems as if Mrs. Appling was doing everything possible to make sure the properties are safe for the tenants and area. He commended her for doing that.

Mrs. Appling mentioned that she believes that their properties and whatever they have reflect who they are. She cleans the street and introduces herself to surrounding neighbors. Since working on the unit, she noticed that the house next door was raided and was aware of activities going on by working on her own property. She tries to make herself visible so that neighbors are aware that she owns the property. She plans to continue this if granted the variance.

Mr. Keller with regards to the comments about the rental application process, he is very familiar that in order to rent if allowed a property within the City a person is obligated to have City approval to rent the property. There is also a Safe Communities Act Addendum that is supposed to be executed by all tenants which cites various civil or criminal violations which can bring about an immediate eviction of the tenant by the City let alone the fee holder or landlord. He mentioned that under the Use Variance provisions "that the aforesaid circumstances or conditions are such that the strict application of the provisions of this ordinance would deprive the applicant of all reasonable use of such land or building and the granting of the variance is necessary for the reasonable use of the land or building, and that the variance as granted by the board is the minimum variance that will accomplish this purpose; and", if this was not approved, certainly a reasonable use of the property would be perhaps purchased, fixed up and resale. He did not feel that the applicant met the second provision of the Use Variance determinants that the Board must consider. With the condition of the property before the applicant purchase was certainly not something that the applicant played into. The applicant purchased the property and is now rehabbing it. Thirdly, as he reiterated what appears to him by the submission of the applicant's and the City that it was somewhat of an oversight of allowing the nonconforming use to lapse during the course of the applicant rehabbing the property. Again, he did not feel that it would be necessarily injurious to the neighborhood. He took into account comments of previous applications as cited by the Chairman.

Mrs. Appling mentioned that she did apply for the Rental Dwelling Permit and had the property inspected. It was during that time that Code Enforcement Officer Ron Coburn informed her that there was an issue. She has not paid the fee for the permit because she was under the impression that she had to wait until after the Board of Adjustment decision.

Mr. Senato mentioned as a point of information for him, previously it was mentioned that the units on the property had elapsed. He asked if it lapsed prior to the current owner selling the property and the new owner purchasing the property or after the property was already purchased. Mr. Swierczek replied that the Rental Dwelling Permit that previously permitted two units within the

building had expired in January 2018. It had not been renewed under the previous owner in January 2018. The applicant purchased the property in December of 2018; so, it would still have been within that one-year time frame to reestablish the two units because it would only have been 11 months when it was purchased. When the renovation started it did not require a permit with the City, so it did not register on our radar that someone had purchased the property and was trying to reestablish a two-unit dwelling. They came to the City roughly one month after the expiration of the year timeframe in February 2019.

Mrs. Appling mentioned that her husband turned in an application around December 28, 2018 and has a copy of it. When she did not hear back from the City regarding the application that was submitted, she contacted the City because she knew she needed an inspection.

Mr. Swierczek mentioned that none of the permits had triggered any sort of recognition on the part of the City that the two dwelling units were trying to be reestablished within the one-year time frame. The Rental Dwelling Permit application was not processed by the January 31, 2019 deadline which would have been the one-year expiration of allowing them to continue the nonconforming use. The property had already been set up as a two dwelling unit and had that use for at least 20 years. They were not aware that technically the zoning of the property did not allow it.

Vice Chairman Ericson mentioned that one of the applicant's responses was if this was not approved there would be a financial hardship based on the business purpose and budget. If there is no mortgage and the cost of the unit to rent would range from \$700-\$800 it seems that you would be making a decent profit. So, it would not be a financial hardship, it would be how much of a gain would be received from the property. Mrs. Appling replied that the funds that were used to purchase and renovate the property to include the amount that was borrowed and is all they had. With whatever rent that comes in it's going to be invested back into the property by paying the bills, renovation, and recouping what was already invested.

Mr. Hufnal asked if the investment was the purchase and renovation, a combination of both. Mrs. Appling replied yes. Because we are running into more than what was really anticipated and the cost is more, but they are trying to work that out. She has plans of how she wants the property done. She also has a property on 11 N. New Street next to NCALL new building. They also invested into that property and make it suitable for revitalization of the community. She wants the 11 N. New Street property to look nice and be compared to the new homes that Habitat for Humanity is building.

Mr. Senato mentioned if there were no other duplexes or apartments in the area he might have a second thought, but he thinks that there is a time in the past and a time in the future and comments from the City that they would like to build the area up and this is one way of doing it. He looks at this as a request for zoning change because of the technicalities and to improve the City in any area.

Mrs. Appling mentioned that she purchased the property on 11 N. New Street when she realized that Habitat for Humanity was building homes to revitalize the area. We thought that we could take advantage of this opportunity and do that as well and purchase a home that did not need to be

demolished, but renovate it and make it affordable to rent for someone who needed it. The same idea was for this property as well. That two families would have a home.

Mr. Hufnal asked if that was the intention at the beginning when the property was purchased that it was obviously a two-unit building and the applicant was remodeling as the same. Mrs. Appling replied yes. The building has two kitchens, two bathrooms, and two electric meters.

Vice Chairman Ericson asked if there was any way the City could have intervened to tell the potential buyer that there were restrictions on the property and the Code. Mr. Hugg replied that he did not know if they normally advise property owners or property buyers of these kind of issues. The properties that are vacant get an annual renewal notice for rental licenses. It falls in the category of the owner and buyer due diligence.

Mr. Keller asked prior to the sale of this property had the original owner retained ownership that the two dwelling units was approved by the City. Hypothetically, the lack of finding new tenants and let's say the two old tenants moved out and the rental market was such that they did not get two new tenants within the one-year period, is he correct in assuming the City assessment is what triggers the expiration of the nonconforming use? Mr. Swierczek replied that once the use had been established that there were two tenant spaces within the building and the property was registered as such; that recognition and documentation that the owner of the building presents with the City that establishes it. The City would not actually keep track of how many tenants are actually renting the space necessarily. Let's say there was one of the two dwelling units that was vacated for over a year, then the City would not then come in to enforce that ordinance. It would be allowed to continue because it had been registered as such.

Mr. Keller asked what triggered the loss of the nonconforming use status was it because of the lack of a current tenant even with the exchange of the ownership? Mr. Hugg replied that any conditions associated with the property use variance and nonconforming use stay with the property. The change of ownership would not have automatically triggered the loss or retention of that property. In this case, what appears to have happened is the property went into a state of vacancy and was registered as a vacant building. It was vacant for a more than a year and that triggered the consideration of when the applicant came in and wanted to rent the two units. The fact that it had been vacant for more than a year triggered the nonconforming status. It is his understanding that had the action not occurred the nonconforming would have gone on indefinitely. Mr. Rodriguez concurred.

Mr. Keller asked if during the one-year period plus or minus to his knowledge was the property actively advertised for sale even though the structure was vacant. In his estimation, this would not be an uncommon occurrence if someone was marketing a property that they may or may not be living in that it would be "vacant".

Mr. Hugg mentioned that he did not see in the record, but he did see an exemption provision in the vacant building ordinance that if a property is listed for rent or sale you are exempt from the fee, but you are not exempt from the registration. It may be one of the quirks in the regulations. He thinks the extended vacancy would have triggered the same problem whether it was listed or not listed.

Mr. Keller asked Mr. Hugg if he would somewhat agree that it changes the definition of a “vacant” property. One thinks that a “vacant” property has been abandoned and is not being kept up, etc. as opposed to simply if I market my house and move out of state, my house is technically (there is no one living in it) therefore; it is vacant, but it is not the street definition of a vacant property. Mr. Hugg replied had it been actively listed for rent or sale then it would probably have resulted in some additional consideration that it is not in a sense “vacant” as an abandonment. Unfortunately, these are issues that we run into from time to time when you are trying to enforce the Vacant Building Ordinance in that the property is legally vacant, but if it is registered, it has a different status. Mr. Keller stated he understood and thanked Mr. Hugg.

Vice Chairman Ericson opened the public hearing.

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

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

Mr. Senato moved to approve variance application V-19-05 to allow for the reestablishment of a nonconforming use after one year. He did not believe that with the other units in the area of similar size and larger and with the enhancement of the house into a much better-looking piece of property in the area he recommends approval of the variance. Mr. Hufnal added in addition that based on the testimony by the Planner Mr. Swierczek who gave an excellent synopsis of what transpired as testimony for the variance; Mr. Hufnal is in favor of approving the variance. This was his statement in support of the motion. The motion was seconded by Mr. Hufnal. Mr. Senato accepted the additional comments from Mr. Hufnal. The motion unanimously carried 4-0.

The meeting was adjourned by Vice Chairman Ericson and seconded by Mr. Hufnal at 9:54 A.M.

Sincerely,

Maretta Savage-Purnell
Secretary



City of Dover

Board of Adjustment

July 17, 2019

V-19-06

Location: 623 Fulton Street

Applicant/Owner: Harrington Commercial LLC
% Michael H. Harrington, Sr.

Tax Parcel: ED-05-076.08-01-13.00-000

Application Date: June 13, 2019

Present Zoning: IPM (Industrial Park Manufacturing Zone)

Present Use: Parking for adjacent parcels on a gravel parking lot permitted until March 31, 2020

Proposed Use: Parking for adjacent parcels on a gravel parking lot

Reviewed By: Eddie Diaz, Planner II

Variance Type: Area Variance

Variances Requested: Allow continued gravel surfacing of the existing parking lot and access drive.

Project Description

The applicant is requesting a variance from the *Zoning Ordinance*, Article 6 §3.6, pertaining to the required surfacing of parking areas and access drives. This section states that all permanent parking areas and access drives shall be provided with paved asphalt, concrete, or other hard, paved, dust-free surface. The parking lot located at 623 Fulton Street was paved with gravel without a permit, and it does not meet the parking area surfacing requirement. The parking lot is used by a variety of surrounding businesses. Granting a variance will allow continued use of the existing gravel parking lot, subject to Planning Commission review and approval.

This is the second time this specific variance has been requested for this property. On March 18, 2015, the Board of Adjustment heard Application V-15-06, which also requested a variance from *Zoning Ordinance* Article 6 §3.6 for 623 Fulton Street. At the time, the gravel parking lot had

been recently installed without a permit from the City. A Code Enforcement case was opened, Case #14-4464, and the property owner came to the Board requesting relief. The Board noted in their decision that the applicant had plans for future development of the property, and so wanted to avoid the wasted expense that would come from bringing the parking lot up to City code standards only to have it soon replaced by new construction. The Board therefore granted the variance for a period of five (5) years, after which the parking lot would have to come into compliance with the *Zoning Ordinance* if it had not already been replaced. The Code Enforcement case remains open pending the parking lot achieving compliance. The granted variance expires on March 31, 2020.

Although the variance was granted, the property owner was still required to gain approval of their parking lot from the Planning Commission, because the amount of impervious surface added exceeded 5,000 SF. The property owner therefore followed up on the variance application with Site Development Plan Application S-16-17, which was heard by the Commission on September 19, 2016. This application, however, did not depict the parking lot in its current state. Rather, it showed a parking lot improved to City code standards, with asphalt paving, striping, parking bumpers, landscaping, and lighting. Though the plan received conditional approval from the Commission, it has not received Final Approval. At the Commission's meeting on August 20, 2018, the applicant requested a one-year extension of approval, which was granted. Conditional approval for the parking lot therefore expires on September 30, 2019.

It appears the applicant is coming forward with this new variance request because of the upcoming expiration of the approvals previously granted. **Should the Board of Adjustment choose to grant the variance from *Zoning Ordinance* Article 6 §3.6 a second time, they may do so for another limited time period (for instance another period of five years) or indefinitely.** The applicant will have to follow up on a successful variance application with a new application to the Planning Commission, because the old plan shows proposed improvements rather than leaving the parking lot in its current state.

It is noted that in their new (current) variance application, the applicant further requested relief from "lighting, curbing, sidewalk, and stormwater requirements." Granting relief from these requirements would not be under the purview of the Board of Adjustment. A waiver from curbing requirements may be granted administratively by the Planning Office as part of Site Development Plan review. Similarly, a waiver from sidewalk requirements may be granted by the Planning Commission as part of the review. Industrial uses do not have a specific lighting requirement to meet under the *Zoning Ordinance*. Finally, the City may not grant waivers or variances from stormwater requirements for improvements over 5,000 SF, as the stormwater requirements in such cases are administered principally by the Kent Conservation District.

Adjacent Zoning and Land Use

A Zoning Map exhibit (Exhibit C) prepared by staff is attached to this report showing the property and surrounding zoning. The applicant has also provided Exhibit A showing the boundary of the property and surrounding properties, and Exhibit B showing photographs of the subject property and street views showing the surrounding context. The property is located on the north side of Fulton Street, east of Ridgely Street and west of the railroad tracks.

The subject parcel is zoned IPM (Industrial Park Manufacturing Zone). The adjacent properties have various commercial and industrial uses distributed among three (3) different zoning designations. The property to the east of the subject property, addressed as 601 Fulton Street, is zoned C-3 (Service Commercial Zone). A Conditional Use Site Plan (C-09-08) was approved by the Planning Commission at its meeting of November 16, 2009 to allow a medical transport company known as PrimeCare to occupy a portion of this existing building, which was zoned M (Manufacturing Zone) at the time. There are other properties zoned C-3 nearby.

The property to the west, addressed as 641 Fulton Street, is zoned IPM and is occupied by a residence. A large vacant property to the north is zoned IPM; further north is a large multitenant industrial building also zoned IPM. The south side of Fulton Street across from the subject property is zoned M (Manufacturing Zone) and contains a variety of commercial and industrial uses.

Code Citations

The parking requirements for the IPM zoning district are found in *Zoning Ordinance*, Article 4 §4.16. The requirement is one (1) parking space per 800 S.F. of floor area or one (1) per employee whichever is greater.

The parking requirements for the C-3 zoning district are found in *Zoning Ordinance*, Article 4 § 4.15. The requirement is one (1) parking space per 300 S.F. of floor area or one (1) per employee whichever is greater.

Many surrounding uses may be non-conforming as they relate to parking requirements since businesses and uses have changed over time without the requirement for site plan development.

The requirements for drainage and surfacing of parking areas are given in the *Zoning Ordinance*, Article 3, §3.6. The Code excerpt is as follows:

Article 6 Section 3.6 Drainage and Surfacing

- (a) All open permanent parking areas and access drives shall be properly drained and all such areas shall be provided with paved asphalt, concrete or other hard, paved, dust free surfaces.
- (b) All permanent parking areas shall be enclosed with upright concrete curbing at least six inches in height. The city planner may relax this requirement for a portion of a parking area when there is a demonstrated need to convey Stormwater to a proposed or approved Stormwater management area. Curbing shall not be required for loading areas, handicapped access and for parking spaces accessory to a one family or two-family residence (see also article 6, section 5.3).

The current text language pertaining to draining and surfacing in Article 6 §3.6(a) has been part of the *Zoning Ordinance* since its adoption by City Council on September 13, 1999. The responsibility for curbing waivers given in Article 6 §3.6(b) was changed from the Planning Commission to the City Planner on October 9, 2017, via Ordinance #2017-12.

Per *Zoning Ordinance* Article 6 §3.3, accessory parking for a principal use is permitted on the same lot, or another lot, provided that all required spaces are located within 150 feet walking distance of the lot containing the principal use. Such parking spaces shall conform to the regulations of the district in which they are accessory, and are subject to conditions through deed restriction that bind the owner to maintain the required number of spaces.

Exceptional Practical Difficulties Tests

Zoning Ordinance Article 9 §2 dictates the specific powers and duties of the Board of Adjustment with regard to granting variances. Specifically the Board must determine:

2.1 Variance – The board shall have the authority to authorize variances from provisions of the Zoning Ordinance that are not contrary to public interest where the board determines that a literal interpretation of the Zoning Ordinance would result in undue hardship or exceptional practical difficulties to the applicant. In granting variances, the board shall determine that the spirit of the Zoning Ordinance is observed and substantial justice is done.

2.11 Area Variance. A variance shall be considered an area variance if it relates to bulk standards, signage regulations, and other provisions of the Zoning Ordinance that address lot layout, buffers, and dimensions. In considering a request for an area variance, the board shall evaluate the following criteria and document them in their findings of fact:

- (a) the nature of the zone in which the property lies;
- (b) the character of the immediate vicinity and the contained uses therein;
- (c) whether, if the restriction upon the applicant's property were removed, such removal would seriously affect neighboring properties and uses; and
- (d) whether, if the restriction is not removed, the restriction would create unnecessary hardship or exceptional practical difficulty for the owner in his efforts to make normal improvements in the character of that use of the property that is a permitted use under the provisions of the Zoning Ordinance.

Review of Application

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

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

Applicant Response:

"The property is in the Industrial Park Manufacturing (IPM) zone to the west of the railroad tracks. This location is bordered on the north by unimproved lands of Fountainview, LLC, on the east by other lands of AVA Commercial, LLC, on the south by Fulton Street, and on the west by other lands of AVA Commercial, LLC zoned IPM containing a residential dwelling. AVA Commercial, LLC also owns most of the properties across the street on the south side of Fulton Street. AVA Commercial, LLC is an entity owned by the applicant, Mr. Michael Harrington, Sr.

Staff Response:

The subject property is located in an industrial zone. The parking area supports the adjacent industrial and commercial uses.

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

Applicant Response:

“Besides the adjacent dwelling, this portion of Fulton is industrial/commercial in nature. The property to the east is the home of a mechanics shop (601 Fulton Street). Most of the properties on the south side of Fulton Street are owned by Harrington Commercial, LLC. The stone parking lot is not out of character in industrial areas. This portion of Fulton Street dead ends at the railroad tracks and is not highly visible.”

Staff Response:

The parking area on the subject site supports the adjacent uses. Many adjacent uses also have on-site parking. It is noted that City records still show PrimeCare as the only business in this building.

Staff would dispute the applicant’s assertion that gravel stone parking lots are in character for the City’s industrial areas. All new industrial uses in the City providing their own parking are required to meet the City’s requirement for hard, paved parking lots. Gravel surfacing can sometimes be found for “vehicle storage” uses, typically meaning holding areas that store the vehicles used in business operations, such as construction equipment or trucks. Such vehicle storage areas are typically required to be fenced and are not used by employees or visitors parking their own vehicles. However, the parking lot at 623 Fulton Street is in fact used as employee parking and is not fenced, so it is considered parking rather than vehicle storage. As such without a variance it would be held to the paving standard achieved by other parking lots found in industrial zones.

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

Applicant Response:

“Please refer to Exhibit A. Harrington Commercial, LLC intends to redevelop the subject property, Parcel 14.00, and owns Parcel 12.00. This area is in a "transition" phase at this time because redevelopment plans are not yet finalized. Mr. Harrington is currently in the early planning stages to further develop the north side of Fulton Street. Details regarding the size and number of buildings and associated parking requirements are not finalized. However, there is an immediate need to accommodate parking for employees of the surrounding businesses. Crush and run gravel was placed as a less permanent surface as opposed to asphalt. Gede Insulation and the mechanics shop combined have a significant number of employees and the demand for off-street parking is high. Approximately 20-25 vehicles use the parking area daily. The remaining vehicles park on Fulton and Ridgely Streets. Prior to the creation of the parking area, the only parking spaces available were on both sides of Fulton and Ridgely Streets. This made it more difficult for vehicles to safely access Division Street.”

Staff Response:

The area consists principally of older industrial and commercial uses that likely do not comply with current requirements for parking. The allowance of a stone parking area would not adversely affect these uses. Fulton Street dead-ends at the railroad tracks, and the area is not an area with high visibility.

Staff greets the applicant's claim that the area is in a "transition" phase with some skepticism, because this claim was also made when the property first went to the Board of Adjustment in 2015. The applicant now owns parcel 12.00 (the residence at 641 Fulton Street) when previously they were negotiating to purchase it, but otherwise it appears little progress has been made on putting together a development plan. Staff would consider the parking lot to be a permanent improvement on the lot now that it has been in place for four and a half years.

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:

"There will be a parking and storm water component to the redevelopment of this area. This gravel parking solves an immediate parking need for the existing businesses to accommodate their employees. If the area variance is not granted, approximately 20 to 25 more cars will park along Fulton and Ridgely Streets. This will place an increased burden on all businesses in the area to accommodate employees and safely gain access to Division Street. In addition, it is a costly expense to satisfy the asphalt, curbing, sidewalk, lighting, and stormwater requirements for off-street parking. It is more logical to address these requirements when the development plan for the properties is submitted to the Planning Office for review and approval by the Planning Commission."

Staff Response:

Staff agrees that the applicant would face an exceptional practical difficulty if they were not permitted to park vehicles on the lot and the vehicles were forced to park on Fulton and Ridgely Streets instead. However, the applicant is not being prohibited from having an off-street parking lot. Rather, they are merely being asked to gain Planning Commission approval for it and bring it to the code standards expected of new development in the City. As for the cost of doing so, Staff would consider this a normal expense, one to be expected when developing a permanent improvement in the City to said code standards. It is not more logical to address the standards when the new development plan for the properties is submitted, because no such development plan yet exists.

Staff recognizes the applicant has the option to simply not pursue improvement and approval, in which case the City would require removal of the parking lot and the applicant would encounter the hardship they describe. However, Staff would consider this a self-inflicted hardship, given that they did have the option of gaining approval in

the first place. The properties that would be affected by increased on-street parking mostly belong to the applicant.

Variance Recommendations

Staff recommends **denial** of the variance for reasons as follows:

- The use of gravel/stone for parking is inconsistent with the nature of similar industrial areas where new development is occurring.
- At four and a half years old, the gravel parking lot should not be considered a temporary or transitional improvement, but rather a permanent one, and should be developed to the code standards expected of permanent improvements.
- No parking would be displaced by denying this variance and requiring the applicant improve and gain approval for their parking area, unless the applicant failed to do so. Any parking displaced for that reason would be a self-inflicted hardship.

Advisory Comments to the Applicant

- If the variance is approved, the applicant will need to follow up with a new application to the Planning Commission to approve the gravel parking lot, as a gravel parking lot with no improvements and potential waiver requests would be a significantly different project than the paved, improved parking lot previously approved. This applies regardless of whether the variance is granted indefinitely or with a specific time limit.
- If the variance is denied, the applicant has the opportunity to gain Final Approval of the Site Plan previously approved (S-16-17) and begin construction before September 30, 2019. If construction is not begun before September 30, the approved Site Plan will expire and a new application, showing all required improvements, will need to be submitted for Planning Commission review.

GUIDE TO ATTACHMENTS

Exhibit	Description/Author	# Pages
A	Plot Plan of 623 Fulton Street dated 6/13/19 (Applicant)	1
B	Photos of surrounding area dated 8/13/2015 (Applicant)	1
C	Zoning Exhibit Map (Staff)	1
D	Applicant Responses (Applicant)	2



NOW/FORMERLY
FOUNTAINVIEW, LLC

100 RIDGELY STREET
ED-05-076.08-01-01.01-00001
D/R 7233-0071
ZONING: IPM

N 82°33'00" E 114.02'

NOW/FORMERLY
AVA COMMERCIAL

641 FULTON STREET
ED-05-076.08-01-12.00-00001
D/R 7729-0249, 2516-0031
ZONING: IPM

RESIDENCE

N 06°26'00" W 125.98'

GRAVEL PARKING AREA

NOW/FORMERLY
HARRINGTON COMMERCIAL, LLC

601 FULTON STREET
ED-05-076.08-01-14.00-00001
D/R 2849-0068
ZONING: IPM

**PRIME CARE
MEDICAL TRANSPORT
MECHANICS SHOP**

S 06°26'00" E 128.00'

123.5± FEET TO
RIDGELY STREET

S 83°34'00" W 114.00'
grass strip
curb & gutter

FULTON STREET
60' WIDE

GEDE INSULATION

LEGEND

POB POINT OF BEGINNING
BRL BUILDING RESTRICTION LINE
● IRF IRON REBAR FOUND
● SPKF SPIKE SET



GRAPHIC SCALE

EXHIBIT
FOR

HARRINGTON COMMERCIAL, LLC

TAX MAP ED-05-076.08-01-13.00-00001
ZONING: IPM

CITY OF DOVER — EAST DOVER HUNDRED— KENT COUNTY
STATE OF DELAWARE

DESIGNED BY:	INITIALS
DRAWN BY:	T.L.A.
CHECKED BY:	T.L.A.
APPROVED (DESIGN)	
APPROVED (CONSTRUCTION)	



103 S. Bradford Street
Dover, DE 19904
P.O. Box 558
Dover, DE 19903
302.744.9875 Tel
866.672.6428 Fax

EXHIBIT A

623 FULTON STREET
DOVER, DE 19904

SCALE 1"=30'	DATE 6/13/2019	PROJECT NO. 2016047	FIGURE 1
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GRAVEL PARKING AREA



FULTON STREET



RIDGELY STREET



PRIME CARE MEDICAL TRANSPORT



DESIGNED BY:	INITIALS
DRAWN BY:	TLA
CHECKED BY:	TLA
APPROVED (DESIGN)	
APPROVED (CONSTRUCTION)	



103 S. Bradford Street
Dover, DE 19904

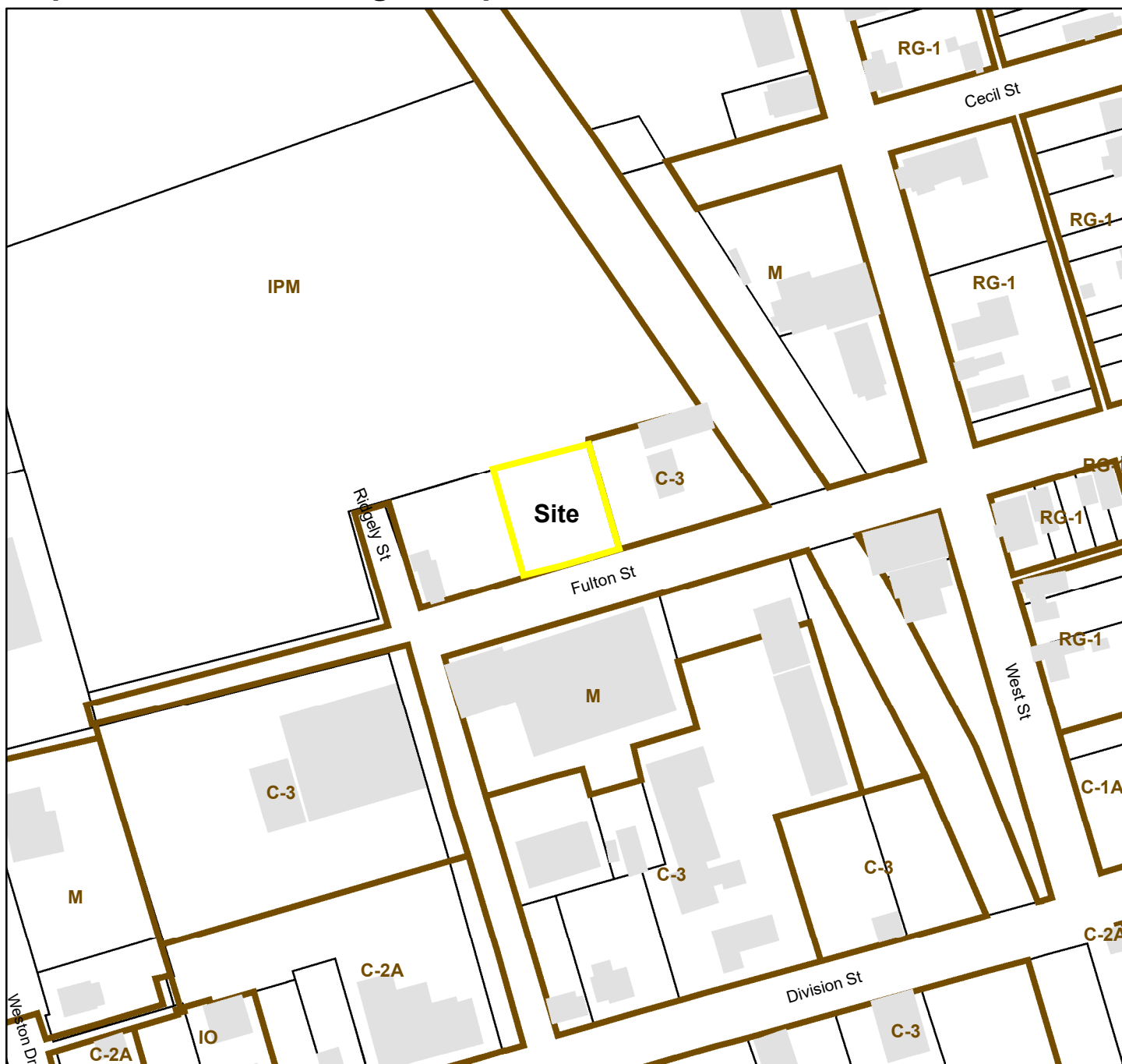
P.O. Box 558
Dover, DE 19903

302.744.9875 Tel
866.672.6428 Fax

EXHIBIT B – PHOTOGRAPHS







623 FULTON STREET
DOVER, DE 19904

SCALE	DATE 6/13/2015	PROJECT NO. 2016047	FIGURE 1
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Title: Lands of Harrington Commercial LLC
Address: 623 Fulton Street
Parcel IDs: ED-05-076.08-01-13.00-000
Zoning: IPM (Industrial Park Manufacturing Zone)
Owner: Harrington Commercial LLC
Date: 07/02/2019

Legend

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



0 100 200 400 Feet

Office Location
103 South Bradford Street
Dover, DE 19904

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

Phone: 302-744-9875
Fax: 866-672-6428
www.mountainconsultinginc.net



Kim I. Adams
President

Troy L. Adams, P.E.
Vice President

VARIANCE REQUESTED

"Area Variance" for relief from the requirement of the Zoning Ordinance, Article 6, Section 3.6 that all permanent parking areas and access drives be "paved asphalt, concrete, or other hard, paved, dust-free surface. In addition, seeking waiver from the installation of lighting, curbing, sidewalk and stormwater requirements.

RESPONSES TO CRITERIA

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

The property is in the Industrial Park Manufacturing (IPM) zone to the west of the railroad tracks. This location is bordered on the north by unimproved lands of Fountainview, LLC, on the east by other lands of AVA Commercial, LLC, on the south by Fulton Street, and on the west by other lands of AVA Commercial, LLC zoned IPM containing a residential dwelling. AVA Commercial, LLC also owns most of the properties across the street on the south side of Fulton Street. AVA Commercial, LLC is an entity owned by the applicant, Mr. Michael Harrington, Sr.

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