

**CITY OF DOVER BOARD OF ADJUSTMENT
AGENDA**

Wednesday, July 19, 2017 at 9:00 AM

**Dover Public Library Multi-Purpose Room
35 Loockerman Plaza, Dover, Delaware**

ROLL CALL

APPROVAL OF AGENDA

APPROVAL OF MINUTES of May 17, 2017 Meeting and June 21, 2017 Meeting

COMMUNICATIONS & REPORTS

1. Reminder: The next Board of Adjustment regular meeting is scheduled for August 16, 2017 at 9:00am in the City Council Chambers.

NEW BUSINESS

Applicant #V-17-12

550 Bay Road. Bay Road One, LLC has requested a variance from the requirements of the *Zoning Ordinance*, Article 6 §3.11 pertaining to the maximum number of parking spaces permitted, and a variance from the requirements of the *Zoning Ordinance*, Article 5 §7.22 pertaining to the landscape component of the opaque barrier requirement. Specifically, for the first variance request the applicant proposes 119 parking spaces, 14 over the 105 permitted for Phase 1 of the project; in future phases the project will no longer require this variance. For the second variance request, the applicant proposes to eliminate the landscape component of the opaque barrier required along the northern edge of the properties. Subject property is zoned C-4 (Highway Commercial Zone). Tax Parcels are ED-05-077.00-01-10.01-000 and ED-05-077.00-01-11.00-000. The owner of record is Bay Road 1 LLC.

Applicant #V-17-13

20 and 28 Spruance Road. Matthew L. Smith has requested a variance from the requirements of the *Zoning Ordinance*, Article 3 §2.1 pertaining to permitted uses in the RG-1 Zone, and Article 7 §1.5 pertaining to nonconforming uses in residential zones. Specifically, the applicant seeks to permit continued operation of the school bus vehicle storage lot currently on the properties. The use of the properties was determined to be a nonconforming use in a residential zone by the Planning Office, and in accordance with Article 7 §1.5 and Council action the property must come into compliance with the *Zoning Ordinance* either by discontinuing the existing use or using a sanctioned method of permitting the existing use. Subject property is zoned RG-1 (General Residence Zone). Tax Parcels are ED-05-068.18-04-48.00-000 and ED-05-068.18-04-47.00-000. The owners of record are Matthew L. and Rosa L. Smith.

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 17, 2017

A Regular Meeting of the City of Dover Board of Adjustment was held on Wednesday, May 17, 2017 at 9:14 A.M. with Vice Chairman Colonel Ericson presiding. Members present were Vice Chairman Colonel Ericson, Mr. Hufnal, Mr. Keller, and Mr. Senato. Chairman Sheth was absent.

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

APPROVAL OF AGENDA

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

APPROVAL OF THE REGULAR BOARD OF ADJUSTMENT MEETING MINUTES OF APRIL 19, 2017

Mr. Senato moved to approve the meeting minutes of April 19, 2017 with the necessary corrections, seconded by Mr. Hufnal and unanimously carried 4-0. Chairman Sheth was absent.

OPENING REMARKS CONCERNING DEVELOPMENT APPLICATION

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

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

NEW BUSINESS

Applicant #V-17-08 Revised Day Care Center at 868 South State Street: Shell's Early Learning Center

868 South State Street. 868 State Street LLC has requested a variance from the requirements of the *Zoning Ordinance*, Article 5 §14.31 pertaining to maximum number of children in a day care center in a residential zone; and Article 3§1.14(a)(v) pertaining to maximum building coverage of a conditional use in a residential zone. The requested variances are to allow the number of children in the day care center to increase from a maximum of 70 children to 83 children, and to allow the permitted total building coverage of the lot to increase from a maximum of 20% to 24%. Subject property is zoned R-8 (One-Family Residence Zone). The Tax Parcel is ED-05-

077.17-03-49.00-000. The owner of record is 868 State Street LLC. The current day care center tenant is Shell's Early Learning Center. *This application was originally scheduled to be heard at the March 15, 2017 meeting of the Board of Adjustment but was withdrawn before the meeting.*

Exhibits for the Record: Staff report, zoning exhibit, statements and plans submitted by the applicant. Legal Notice was published in the Delaware State News on May 7, 2017. The public was notified in accordance with regulations.

Mrs. Harvey gave a brief overview of the application.

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

Correspondence Distributed

Correspondence was distributed and reviewed by all members present including the Applicant. The correspondence was from the Fire Marshal in regards to the occupant load for the daycare.

Representative: Mr. Wilfred Martin, Agent, 868 State Street LLC

Mr. Martin was sworn in by Mr. Rodriguez.

Mr. Martin stated that he realizes the sole purpose is to determine whether or not the variance is necessary to prevent harm. He feels that the application was adequately presented regarding the harm both to the tenant and to the landlord. This is one of those unexpected consequences where a profitable operation as a daycare facility has been going since 1980. Everything was working sufficiently to take a tenant into the middle class status that they deserve by virtue of running their own business. It would keep the minimum wage and living financial situations, Therefore, they applied for an increase to 70 children which put them back into a small business category whereas, the middle class could make a living and prepare themselves financially for the future. Then there was an unfortunate circumstance from their standpoint where the square footage requirement per child was raised from 25 to 35 S.F. which then dropped them down to the point of a survival type of business. Since 1983 they have had five (5) tenants, which is an average 4.7 years per tenant. These are the small business people that put their whole life savings into their dream that they are going to get this business and it is going to be a success. The applicant is asking to move forward with the variance for the increase in children. He is happy and has no problem with the Fire Marshal's restrictions. The facility on State Street is a home facility that has no change to the appearance. All of the land usage is in the rear and it is a fenced area. The building to the north is also a daycare (Mom's House) and the building to the south has been rented. It is not the type of business that their operation is going to influence because the nature of the community is becoming more commercial. In 1968, he opened and owned a General Business Public Accountant Service where he specialized in business consulting for small family owned businesses. He is aware of what the people are putting up with. On a win-win situation, they are asking for the following sideline considerations: the people that they are trying to get stabilized into the building are in fact the stability of the community. As a small business, and they are the last ones to suffer from the effects of the recession and the first ones to recover and they do 65% of the employment nationwide. Fifty percent of employees are hired by small businesses such as this out of the private

employment agency. In this particular situation, this is absolutely necessary because the people we deal with are primarily single parents and low income person(s). The nature of their community and building up just does not have any daycare facilities close enough for those person(s) that are already struggling and trying to make a living. They are trying to put their contribution in this particular community and to have a facility nearby that takes care of their children. Also, the employees of this particular facility fall into the same category as mentioned above. The impact on the community and by them making it a sustaining business is really great. He would like to have the sideline to be considered. If there are any doubts about the validity of the variances that these sidelines impact on the City and would impact the community and the people, they are taking care of. These people if not in their position very probably would be living on some kind of tax payer assistance support. He thinks that it is a win-win situation for himself, the City as a whole, tenants, and the types of people they are dealing with both as employees and the people we serve.

Colonel Ericson commented that the applicant had a chance to read the handout from the Fire Marshal and the applicant is in agreement with the 87 occupant load. However, you would have to subtract the number of staff. Colonel Ericson questioned whether he employed 12 people. Mr. Wilfred replied that the tenant has the ability to stay with the kids. She has the capacity to control the input whereas she can control the number of teachers needed. He figured with the 87 occupant load they would probably have ten (10) staff, which would give them 77 spaces for the children. That is only an increase of 7 from the City standpoint, but what the building does with the additional space is give a whole group 35 S.F. blocks for additional children in order to raise the income level from this particular facility to where it becomes a sustainable, attractive situation for when it is occupied by the small business people.

Colonel Ericson questioned when does it become profitable. Mr. Wilfred replied it is a profitable business. The problem is that so many small business people put their love, attention, finances, and time into something they love. The chances are that most of the small businesses that they have dealt with do not have the step up position of moving into the higher middle class income level where they can in fact do the things for their children, schooling, and retirement, along with everything else. Yes, he would much rather have more than 77 spaces in order to make it a more viable small business opportunity. If the number decreased, he would not know at what point this incentive will produce enough to keep the income level for a particular tenant appropriate. At the current time, it is a standard of living for the person(s) he is referencing.

Mr. Keller questioned for clarity the maximum number of children permitted for a daycare as he referenced the Code is limited to 50 children and there is an increase proposal by the applicant to increase the number of children from 57 to 83. Mrs. Harvey replied that they were approved by Child Care Licensing to have 57 children. The original approval in 1991 was for 70 children. In 1990 they were approved by Child Care Licensing for 50 children. Since then with the addition they had a previous increase to 57 children which again was approved by Child Care Licensing.

Mr. Keller questioned whether it was approved by virtue of a City oversight or variance increase or a simple licensing matter. Mrs. Harvey replied it was simply a licensing matter. They were in operation in 1990. They were approved by the Planning Commission for 70 children. However, as previously mentioned, Child Care Licensing at that time approved them for 50 children. Since then when the addition was added, they were allowed by Child Care Licensing to increase by

square footage to allow for 57 children. The handout that Mrs. Harvey received from the Fire Marshal states that they are approved by Child Care Licensing for 57 children.

Mr. Hufnal commented that he had the same question as mentioned above, but also questioned whether they approved the addition to the 57 or it was done by Child Care Licensing. Mrs. Harvey replied it was done by Child Care Licensing. Upon research the only thing she could find was from 2013 when the daycare was temporarily closed and when they reopened it was noted that they were approved for 57 children. She was not sure if there was any formal process at that time.

Mr. Hufnal questioned if the request today was from the 57 children to 83 children. Mrs. Harvey replied that is correct.

Mr. Keller questioned whether there was a Code or Statutory allowable increase from 50 to 57 by virtue of the City Ordinance. Mrs. Harvey replied not that she was aware of.

Mr. Hufnal questioned whether the approval today was from 50 to 83 children.

Mr. Keller stated that it would address a shortcoming in the allowance as a matter of adhering to the Code. Mrs. Harvey agreed and replied that upon research she did not find anything in the file of there being any approval from the City of the increase from 50 children to 57 children.

Mr. Hufnal questioned the Planning Commission approval in 1990 to allow 70 children. He questioned if the Board of Adjustment need to take it from the 70 to 83 or does it have to go back to the 50 from the Code. Mrs. Harvey replied it should be based on the Code.

Colonel Ericson stated that there are three different agencies that work together to determine the maximum number of children. Upon his understanding it is still 57 children per Child Care Licensing. No matter what the Board does they do not have authority over Child Care Licensing. He also referred to the letter received from the Fire Marshal states that the maximum is 87 occupants. This number would consist of staff and children.

Mr. Hufnal questioned whether the number approved today should include Staff. Mrs. Harvey applied that it is true, but it can also change as previously stated by Child Care Licensing or the Fire Marshal's Office.

Mr. Martin stated that they have done a lot of study on this project. From a City standpoint, they were told that they could have 50, then it was changed to 70, and now we are asking the City to go to 83. They have the capacity in the building to go to more than that, but the second element is that the State Licensing testified that they must have at the time 25 S.F. per child, then it was changed to 35 S.F. per child. Literally, keeping within the City allowance they went from 50 to 70. Then they changed the criteria and the daycare had to decrease according to the State to 57, but the City authorization still remained at 70. The numbers conflict because there are two different agencies. He is asking to go to the 83 because the Fire Marshal now has the same set of restrictions. He intends to meet with the Fire Marshal regarding the conditions. There have been a lot of improvements that have been made regarding safety exits. He does not feel that the daycare is

efficient as it could be. He would like the daycare to become efficient especially with the teacher(s) and student ratio.

Mr. Hufnal questioned whether the Board should be looking at the maximum number. Colonel Ericson replied that he gathered from the applicant they would like to stick with the 83.

Mr. Senato questioned whether the parking was a separate issue. Mrs. Harvey replied that the parking already meets the requirement.

Mr. Hufnal stated that the two items today are the proposal to increase the number of children allowed in a Day Care from 57 to 83 and to approve the variance to increase the building coverage on the lot from 20% to 23.7% (2,576 S.F. to 3,614 S.F.) for the land use and the elimination of the garage in the rear. Mrs. Harvey replied that is correct, but the proposal is for the parking and not the garage. The garage removal will help with the parking.

Mr. Martin stated that the new rules and regulations could change at any time. They could work with the 83 either way.

Mr. Keller commented that he still had concerns by not having had previously, according to testimony, any increase in the allowable number of children from 50 children as he referred to the *Zoning Ordinance*. If there is any consideration, he would hope that the Board would overcome that void to increase that number from 50 to whatever number may be considered. Per Mrs. Harvey, during her due diligence she was unable to determine whether there was ever a Code variance approved to increase from the original 50. He questioned if this was correct. Mrs. Harvey replied yes. The only thing that she saw in her research was a Zoning Verification Letter and a Business License which did not have the increase from 50 to 57.

Mr. Keller stated that Child Care Licensing cannot change City Ordinances nor can the City change the Fire Protection Services or Child Service License requirements. Mrs. Harvey replied that is correct.

Mr. Martin stated that he had the Planning document from 1993 that changed the 50 to 70 which is permanent and in effect at the current time. Therefore, his request is an increase from 70 to 83.

Mrs. Harvey stated that she was not aware if they were approved for 70 by the Planning Commission in 1990 and if Child Care Licensing approved them for 50 whether or not the applicant would need to come back if the applicant increased the number to 57 based on Child Care Licensing.

Mr. Keller and Mr. Hufnal questioned whether the authorization by the Planning Commission increasing children occupancy to a limit of 70, constituted a Code change. Colonel Ericson replied no. The Code still stands at 50. The Planning Commission looked at this one specific property and made a decision that they wanted to increase the number to 70 and they were legally authorized to do so. It did not change the Code, but the Code needs to be changed.

Mr. Keller questioned whether the Planning Commission actions addressed this particular property and not a general Code overview. Colonel Ericson replied correct.

Mrs. Harvey reiterated what she found in the file and what was previously stated.

Colonel Ericson read “New Business from the Planning Commission dated September 17, 1990 states that Conditional Use approval to permit the construction of a 673 S.F. addition, existing 1,754 S.F. child care center with 50 children to permit the enlargement of the facility to provide childcare for 70 children on the property located at 868 South State Street.”

Colonel Ericson stated that there is no change to the Code. Only City Council can ultimately approve a Code change. However, there are different agencies with different rules. All of us rule over the number of capacity for this facility.

Mr. Hufnal questioned when the change is made today even though the Planning Commission made their statement in 1990, the Board still has to go by the Code to change the Code to allow for the extra area. Mr. Rodriguez replied that is exactly right. The Board would go by the Code and if you grant the entry the Board would change it to 83.

Mr. Senato questioned what precedent would it set based on all of the information presented today and what would it produce in the future. Mr. Rodriguez replied that he did not believe it would set a precedent because it is kind of unique to this particular home. The Code is 50 and the Board has to go by the Code. If the Board wishes to increase the number to 83 then it is up to the other agencies to do whatever they need to do.

Vice Chairman Colonel Ericson opened the public hearing.

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

Vice Chairman Colonel Ericson questioned if there was any additional correspondence for the record. The Fire Marshal correspondence was distributed to all members present. There was no correspondence from the public.

Mr. Keller asked for a point of clarification whether the Board could accept the correspondence submission by Fire Marshal Jason Osika. Colonel Ericson replied that the correspondence will be a part of the record.

Mr. Hufnal moved to approve application V-17-08 variance request based on the testimony today, to increase the number of children allowed in the Day Care Facility from 50 to 83, and to increase the building coverage on the lot from 20% to 23.7% (3,614 S.F.)

Mr. Keller amended the motion to include the advisory comments and the regulatory bodies approval and/or licensing requirements. The amendment was seconded by Mr. Hufnal and the motion as amended was unanimously carried 4-0. Chairman Sheth was absent.

There was a brief discussion regarding the 83 number and if it should be included in the motion.

Mr. Hufnal moved to adjourn the meeting, seconded by Mr. Senato and unanimously carried 4-0. Chairman Sheth was absent.

Meeting adjourned at 10:05 A.M.

Sincerely,

Maretta Savage-Purnell
Secretary

CITY OF DOVER
BOARD OF ADJUSTMENT MINUTES
June 21, 2017

A Regular Meeting of the City of Dover Board of Adjustment was held on Wednesday, June 21, 2017 at 9:03 A.M. with Chairman Sheth presiding. Members present were Chairman Sheth, Mr. Hufnal, Mr. Keller, Colonel Ericson and Mr. Senato.

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

APPROVAL OF AGENDA

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

APPROVAL OF THE REGULAR BOARD OF ADJUSTMENT MEETING MINUTES OF MAY 17, 2017

Mr. Keller moved to delay the approval of the meeting minutes of May 17, 2017 until the next regular meeting due to late distribution and the absence of a member, so that all members would have the opportunity to review them. The motion was seconded by Mr. Senato and unanimously carried 5-0.

OPENING REMARKS CONCERNING DEVELOPMENT APPLICATION

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

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

Chairman Sheth questioned Mr. Rodriguez on how to review the application since it had been before the Board previously. Mr. Rodriguez replied to review the application as an amendment.

Colonel Ericson questioned if the application was to go before the Planning Commission and whether a variation was needed for the site from the Planning Commission or the Board of Adjustment. Mr. Rodriguez replied from the Board of Adjustment and then to the Planning Commission.

OLD BUSINESS**Applicant #V-17-09 Revised 1310-1324 Forrest Avenue**

1310-1324 Forrest Avenue. Margaret H. Johnson has requested a revision of the variance granted on March 15, 2017 from the requirements of the *Zoning Ordinance*, Article 3 §27.66 pertaining to the maximum allowed number of stories and allowable height of buildings located with the COZ-1 (Corridor Overlay Zone). Specifically, in its motion to approve the variance, the Board of Adjustment voted that the provisions of Article 3 §27.66 remain in force for the first 200 feet of depth of the property, as measured from the front property line. The applicant seeks to revise this restriction to the first 150 feet of depth. The revision is sought because the previously approved 200 feet is too deep to accommodate the previously proposed building. The position of the building has not changed. Subject property is zoned C-2A (Limited Central Commercial Zone) and subject to the COZ-1 (Corridor Overlay Zone). Tax Parcels are ED-05-076.10-01-01.00-000, ED-05-076.10-01-02.00-000, ED-05-076.10-01-03.00-000, ED-05-076.10-01-04.00-000, ED-05-076.10-01-04.01-000. The owner of record is Margaret H. Johnson.

Exhibits for the Record: Staff report, zoning exhibit, statements and plans submitted by the applicant. Legal Notice was published in the Delaware State News on June 11, 2017. The public was notified in accordance with regulations.

Mr. Diaz gave a brief overview of the application.

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

Colonel Ericson asked Mr. Diaz to explain how the applicant was at a “competitive disadvantage” because he saw it as an increase in profit. The Board is not here to make sure the person maximizes their property. There has been testimony in the past either in the first or second time that the number of units proposed would be making a profit. He questioned why is it necessary to increase the number. Mr. Diaz questioned for clarification “why is it necessary to increase the number” of units. Mr. Diaz replied that he did not think it was the Planning Staff’s role to scrutinize how many units exactly the project needs in order to make a profit. At the last meeting, the applicant presented 37 units and stated they needed a certain minimum in order to build the project at all. Their competitive disadvantage was other projects that were subject to different restrictions under the *Zoning Ordinance* were allowed to build more units, and because of that they could realize the profit. Whereas, without a certain number of units this one would not have been able to realize any profit at all. It is not a question of maximizing the profit, it is a question of being able to realize any profit. Colonel Ericson stated that it was not a hardship. It does not follow the criteria of increasing a person’s profit. This is the Board’s third time hearing the application and it has also been before the City Council.

Colonel Ericson asked Mr. Diaz about setting a precedence. He has been on the Board for over 10 years and anytime the Board made an exception to the Code it was stipulated that it was a unique situation because of the shape of the land or whatever which causes the hardship. He did not see it in this case. He did not see the precedence Mr. Diaz was speaking of and asked which case. Mr. Diaz replied that he did not recall saying that. Colonel Ericson referred to the Report

“Competitive Disadvantage” item (b) (i) which states “although we are not supposed to speak in terms of precedence, there has been a precedence set by allowing the four story building within the COZ, which he did not understand and wanted to know which case that was. He would like to see the case where the Board set a precedence, because they are very careful not to do that. Mr. Rodriguez replied that the Board decided the last time when the variance was granted he believes this time it is just an amendment to the variance that was granted previously. It is an unusual situation because the curb line is normally the property line. In this particular case on Forrest Avenue, the property line is actually 55 feet beyond (back from) the curb line.

Colonel Ericson questioned whether the applicant should have known that before he ever brought it up the last time; that is due diligence. Mr. Rodriguez replied that he would think so. It is different and there are several properties on Forrest Avenue that have the same problem where the curb line is not the property line. In this case as previously mentioned 55 feet back from the curb line where the property line starts. They are asking for an amendment because it would change the location of the building. It would be good to consider when the variance was granted previously, everything was found necessary to grant the variance. We should not get in to anything other than the amendment.

Representative: Mr. Ed Ide, President, i3a Consulting Engineers.

Mr. Ide was sworn in by Mr. Rodriguez.

Mr. Ide testified that they requested to be heard again because when they were working on the plans and documents to present to the Planning Commission and as he and Mr. Diaz were looking over other plans, Mr. Diaz pointed out that the way the minutes were read showed that the 200-foot setback for the 3-story limitation was actually taken from the property line. In the presentation, the point of reference that was used was from the edge of the pavement which was 230 feet to the face of the building. When Mr. Malmberg presented (reading the minutes), it was requested generally 200-feet would suffice for that setback. When Mr. Malmberg turned to him and asked if it would be okay, he was still referencing it from the edge of the pavement. If it is actually referenced from the property line, it is approximately 50-60 feet back from the edge of the paving because it is so deep at that location. The 200-feet would push it into the portion of the building. In the new exhibit presented the building was kept exactly where it was when the variance was granted, it showed that 150-feet was a much more applicable distance. The 175-feet would work as shown in the exhibit as well. He asked Mr. Diaz and Mr. Hugg who consulted with Mr. Rodriguez whether the application could be administratively amended or would he need to come back before the Board of Adjustment to have the application amended. He is not present to ask for any other variances other than to amend the setback distance. They have gone through the exceptional practical difficulties with the last variance with respect to the geometry of the site. We know that it is long and narrow. In order to get the building and retail center set the way that it is set, they needed the variance for the 3-story facility. Originally, when it was presented the equitable owner requested that the facility be 4-stories, and it was compromised back down to 3-stories. This is the reason they are present today, to ask the Board to kindly amend the 200-foot setback from the property line to a 150-foot setback for the 3-story building.

Mr. Senato questioned whether an amendment to the motion can be done at a later time once the application was already approved. He also asked for clarification whether this was the right thing to do and proper procedure for an amendment. Mr. Rodriguez replied that the location of the building is not being changed at all. It just a matter of the measurements. It was a mistake because you normally measure from the curb line, and normally the curb line and the property line are the same. It was not discovered by the applicant in this case that the curb line was not the property line. The property line is actually 55-feet back from the curb line which is true for several properties on Forrest Avenue that is kind of unusual. He would classify the application as an amendment. He has never seen an application come back before the Board for amendment. It is pretty apparent that nothing has changed except the setback.

Colonel Ericson mentioned that there is a slight change because they are going from 37 to 44 units and there was a design changes without requiring a variance.

Mr. Keller mentioned that the motion is not being amended, but the decision of case V-17-09. Mr. Rodriguez also stated correct.

Mr. Keller stated that in the decision the offset distance was inadvertently incorrect. Mr. Rodriguez replied correct.

Chairman Sheth asked the applicant how did he find the problem. Mr. Ide replied as previously stated he and Mr. Diaz were working on some additional items that had come up namely June Lane and a proposed bisecting road that was planned. They were reading all the documents and getting into the planning and zoning, and it was brought to his attention by Mr. Diaz that the motion was made from the property line and they had placed their arrow or leader for the measurement of the building off of the curb line or drive lane. He stated that this would need to be adjusted in order for the building to stay where they had it placed. There is no question about it; had they known to take it off the property line which they should have done, they would have known that the distance would have to be shorter than 200-feet.

Mr. Keller stated that he seems to recall some of the testimony given by Mr. Malmberg. There was a statement relating to the 235-feet. At that time, he had a concern about perhaps things in the future like changes of ownership, and an interest in preserving the COZ zone to a depth shy of the proposed apartment building. He proposed in discussion the 200-foot offset and he recalls Mr. Malmberg stating that he did not have a problem with the 200-feet. Mr. Ide also replied yes. Mr. Keller stated that today some confusion arose to the offset distance to which they both were referring. He personally had no problem in changing the distance to accommodate that, but he does have a problem with discussion as to an increase in the size of the building and the number of units that may or may not be ultimately constructed. He did not think that the Board was there today to again discuss changes such as that.

Mr. Keller questioned whether the building had changed in the planning. Mr. Ide replied that the physical size of the building has not changed at all.

Mr. Keller stated that he was encouraged by Mr. Diaz statement in the City Report recommendations to perhaps utilize a 175-foot offset. His interest as a Board member is still in

protecting and retaining the COZ for the front portion. He would be inclined to limit the distance to 175-foot so as to preserve as much as possible as he thinks was originally intended during the application and subsequent approval in March. Mr. Ide replied that Mr. Keller was absolutely correct. The intent was to preserve the COZ setback and perhaps make it as tight as possible, and make it specific to this project.

Mr. Hufnal agreed with Mr. Keller's assessment as to the application. Had the Board been given the information at the last meeting, the Board would not have necessarily done the 200-foot preservation of the COZ zone and possibly compromised to the 175-foot offset. He noticed by the drawing that the building is actually 178-feet. Mr. Ide replied that is correct.

Mr. Hufnal questioned if the Board amended the offset to 175-feet if he would still be within the same perimeters of what was there before. Mr. Ide replied that is correct.

Mr. Hufnal questioned if that is so, why would the number of units change. Mr. Ide replied that when the owner went back to the architect to physically lay out the spaces they found some efficiencies to be able to increase the number of units within the same footprint of the 75x250 feet, which is the same number in square footage that was used before.

Colonel Ericson questioned if the units were going to be smaller. Mr. Ide replied yes and they are removing two (2) of the elevators. They still have elevators for the units themselves.

Chairman Sheth commented on the previous and current submissions.

Mr. Ide stated that he was before the Board today because there was a mistake from the measurement of the setback. When the Board previously acted and acted to preserve the COZ requirements, a number was picked so that the setback would work. Unfortunately, when he and Mr. Malmberg consulted the 235-feet should have been measured from the property line to the face of the building. They misspoke when they said the 200-feet was okay. Two hundred feet from that point would still have placed it up beyond the building to give enough room for that setback. He is stating today that 175-feet is acceptable. The building footprint has not changed at all. When the architect went back to look at the number of units that could be placed, he came up with a revised number for the applicant and owner for this project. Those number of units still work with the parking requirements and impervious area. The building height of 3-stories is still the same and the outside dimension of the building still has not changed.

Colonel Ericson commented that he agreed with Chairman Sheth regarding the previous submissions and he felt that it was hard to understand how an experienced person like Mr. Ide, Mr. Malmberg, and the City would all miss this and go through this whole procedure. The Board would like to know what is really going on. Mr. Ide replied that what he previously mentioned is exactly what is going on. When the request came back of 200-feet, he thought it would work as a setback; in his mind, they were still taking it from the edge of the road and that distance would work.

Colonel Ericson questioned the key issue; if this application was denied what affect would it have on the construction? Mr. Ide replied if the request is denied it would reduce the size of the apartment building.

Mr. Keller questioned as a point of clarification, in the decision rendered in the March application, the 200-foot depth issue was incorporated in the decision, but there is no mention of the number of units. He did not take it by virtue of that application approved in March, this subsequent request for a revision, and with their variance requested. He was looking at it only as an issue regarding the footage offset from the property line or the edge of the pavement. He did not consider the Board to have any interest today in revising the number of units to be built within a structure that is otherwise fully approved. The Board went through the entire process from four (4) stories after several months. A compromise was made to allow an approved a height of three (3) stories and that is still the case. As testified by Mr. Ide, the structure limits of the building have not changed. However, the number of rental units within the building changed. He did not see it as an issue before the Board today. If in fact, the Board reduces the offset from the 150-feet requested to a 175-feet, we would still accomplish allowing the building structure itself to be unchanged. Any issues involving Exceptional Practical Difficulty on profitability rest with the entrepreneur and not with the Board. He did not see issues that would be brought up today because otherwise he would agree with Colonel Ericson's statement. He thinks that the issue before the Board is the offset distance by virtue of their variance requested and the decision rendered in March.

Chairman Sheth mentioned that the 175-feet was discussed with Mr. Hugg and the City Solicitor. Any other issues will be discussed with the Planning Commission and not the Board of Adjustment.

Colonel Ericson mentioned in his opening remarks that he was bothered by the position that the City took in this matter and he did not think that it was legitimate comments.

Chairman Sheth questioned Mr. Ide if he agreed with the 175-feet. Mr. Ide replied yes.

Mr. Senato questioned for clarification that the only thing changing (if it does) is the requested footage. Mr. Ide replied no.

Mr. Keller mentioned that as a Board member he would be more inclined to lean to an approval for a 175-feet offset as opposed to a 150-feet offset. The applicant agrees with the 175-feet setback.

Chairman Sheth opened the public hearing.

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

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

Discussion

Mr. Keller stated that in light of the variance request to simply move to amend the building zone ordinance decision of March 15, 2017 wherein the requirements for the COZ-1 where the zone was indicated at a 200-foot in depth measured from the front property line on Forrest Avenue. He would simply ultimately in his formal motion propose to change the measurement from the

front property line to a depth of 175-feet and leave all other matters that were concerned with the previous motion and decision of March 15, 2017 intact.

Mr. Keller asked if there were any comments. Mr. Senato and Mr. Hufnal agreed with Mr. Keller previous statement.

Mr. Keller moved to approve the requested variance for application V-17-09 Revised as presented on June 21, 2017 which the variance requested a change in the dimension as measured from the front property line regarding the COZ-1 (Corridor Over Lay Zone) which applicant requested 150-foot depth as measured from the front property line. He proposes within the motion to establish the distance of 175-feet as measured from the front property line for the area within which for all matters regarding the COZ-1 (Corridor Over Lay Zone) will be adhered to otherwise. All other matters of the decision of March 15, 2017, application V-17-09 will remain intact. The motion was seconded by Mr. Hufnal and unanimously carried 5-0.

Mr. Senato questioned for clarification the number of units have increased from 37 to 44 and that there is no increase in the approval of this motion in units. Colonel Ericson replied that it did not need to be addressed because there is no variance required.

Roll Call

- **Mr. Keller** – yes, in accordance with the terms and conditions of his proposed motion, the established testimony today, documentation presented in the City’s report, and hearing from the applicant representative.
- **Colonel Ericson** – approval
- **Mr. Senato** – approval
- **Mr. Hufnal** – approval
- **Chairman Sheth** – approval

Approval 5-0. Granted

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

Meeting adjourned at 9:45 A.M.

Sincerely,

Maretta Savage-Purnell
Secretary



City of Dover

Board of Adjustment

July 19, 2017

V-17-12

Location: 550 Bay Road, located on the west side of Bay Road south of Miller Road

Applicant/Owner: Bay Road One LLC

Tax Parcels: ED-05-077.00-01-10.01-000 and ED-05-077.00-01-11.00-000

Application Date: June 1, 2017

Present Zoning: C-4 (Highway Commercial Zone)

Present Use: Manufactured Home dealership

Proposed Use: Office Park with flex/warehouse building on rear parcel

Reviewed By: Eddie Diaz, Planner I

Variance Type: Area Variance

Variances Requested: 1) To increase the parking on site for Phase 1 of the project above the maximum number of spaces permitted by *Zoning Ordinance*.

2) To eliminate the landscape component of the Opaque Barrier Requirement along the northern edge of the property.

Project Description

The applicant is proposing construction of an office park and flex/warehouse building in four phases on property known as 550 Bay Road. The site is divided into two parcels, one at the front with frontage on Bay Road and additional proposed access to Martin Street, and one at the rear with proposed access to Cowgill Street only. The front parcel is addressed as 550 Bay Road and the rear parcel is unaddressed. The existing manufactured home dealership is proposed to be demolished to allow redevelopment. Each phase will include construction of one building and associated site improvements. Construction will result in a final floor area totaling 58,870 SF on the front parcel for the office park and 15,000 SF on the rear parcel for the warehouse when all site improvements are complete.

For the front parcel, the applicant is requesting an area variance from the requirements of *Zoning Ordinance* Article 6 §3.11 related to the maximum number of parking spaces permitted. The applicant is proposing to construct a total of 231 parking spaces on this parcel. For both parcels, the applicant is requesting an area variance from the requirements of *Zoning Ordinance* Article 5 §7.22 related to landscaping options for the Opaque Barrier Requirement. The applicant proposes to eliminate the landscape component of the Opaque Barrier and provide only the fence component.

This Board of Adjustment application was submitted concurrently with Site Development Plan Application S-17-19, scheduled to be heard before the Planning Commission on July 17, 2017. At the time of writing of this Report, Commission action on application S-17-19 is not yet known. If the Commission issues conditional approval of the project but the Board denies the variances, the project may need to return to the Commission for reapproval following required changes to the design of the site.

Zoning and Adjacent Land Uses

A Zoning Map exhibit (Exhibit A) prepared by staff is attached to this report showing the subject property location and surrounding zoning.

The subject property is zoned C-4 (Highway Commercial Zone), and located on the west side of Bay Road south of Miller Road. Miller Road extends southwest from Bay Road toward South DuPont Highway, but does not intersect with South DuPont Highway. Miller Road does intersect with Martin Street and Cowgill Street. Cowgill Street extends from the subject property north to a cul-de-sac, while Martin Street extends from the subject property north to Martin Luther King Jr. Boulevard. Overall access to the site is therefore both directly to Bay Road and to either Bay Road or Martin Luther King Jr. Boulevard through the neighborhood streets to the north.

Neighboring property to the east across Bay Road is zoned IO (Institutional and Office Zone) and is home to the Kent County Levy Court. Property adjacent to the south is vacant land zoned C-4; this land is subject to a proposal to develop a 120,000 SF shopping center (application S-17-20 heard before the Planning Commission on July 17, 2017). Property adjacent to the east is zoned C-4 and is the site of warehouses for a building supply company. To the north of the property is a vacant C-4 parcel as well as a small residential subdivision zoned RG-1 (General Residence Zone) and RG-3 (Group Housing Zone), with access on Cowgill Street, Martin Street, and Miller Road.

Code References

Variance 1: Parking

Parking regulations under the provisions of Article 4 §4.15 for the C-4 Zone require at least one (1) parking space for each 300 square feet of floor area, or one (1) parking space per employee, whichever is greater. The total number of people to be employed on site is unknown. The number of people to be employed in the Century Engineering Building (Building 1), the building to which this variance request most applies, can be interpreted to be anywhere between 40 and 110, depending on whether one counts employees who come to the building less often than the full-time in-office staff (See “Project Background Information” on page 1 of Exhibit C). Because of the uncertainty in number of employees the parking needs of the site have been calculated on the basis of square footage.

Zoning Ordinance Article 6 §3.11 states that “the maximum number of parking spaces shall not exceed 25 percent over the number of parking spaces required by the code.” This applies to each individual phase of the development as well as the development as a whole.

Table 1 shows a summary of the required minimum parking spaces, maximum permitted parking spaces, and requested parking spaces for the site under the proposed development scenario. The project phases are shown.

The applicant proposes to construct in each phase one new building and an associated parking lot. The parking provided in Phase 1 to Building 1 is greater than what is allowed by code for that phase. However, future phases will not provide parking up to their maximum parking allowance. Because of this at the conclusion of the project, and as early as the completion of Phase 2, the site as a whole will no longer exceed its maximum parking allowance.

Table 1
Off-Street Parking Calculations
550 Bay Road (V-17-12)

Project Phase	Total Bldg. SF	Parking Spaces			
		Min. Required	Max. Permitted	Provided	Over/ (Under)*
Phase 1	25,120	84	105	119	14
Phase 2	42,620	143	178	177	0
Phase 3	58,870	197	246	231	0
Phase 4 (Rear Parcel)**	15,000	50	62	50	0

* Difference above maximum permitted or below minimum required.

** Parking requirements and totals for rear parcel are calculated separately from front parcel.

Variance 2: Opaque Barrier

Zoning Ordinance Article 5, §7.2 specifies the requirements for opaque barriers:

7.2 *Buffering*. Visual and sound screening shall be provided on a non-residential use when abutting a residential use. Screening shall consist on an opaque barrier at least six feet in height, accompanied by landscaping.

7.21 *Opaque barrier options*. The requirement for the opaque barrier may be met by choosing one of the following:

- a) An opaque wooden fence.
- b) A wall constructed of masonry materials, either stucco, brick, split-faced block, or decorative concrete. If the principal structure on the lot is of masonry construction, the wall shall match the exterior of the building.
- c) An earthen berm (3:1 slope maximum).
- d) An earthen berm (3:1 slope maximum) and either an opaque wooden fence or a wall constructed of masonry materials, either stucco, brick, split-faced block, or decorative concrete. The total height of the buffer may be no less than six feet high.

7.22 *Landscaping options*. The required opaque barrier must be accompanied by one of the following:

- a) A durable and continuous evergreen planted screen, six feet in height at [the] time of planting, located on the residence side of the barrier. In the case of an earthen berm, the evergreen screen may be on top of the berm.
- b) A hedge that will grow to a height of at least six feet at maturity, planted on the residence side of the barrier. The hedge shall be interspersed with evergreen trees at least six feet high at [the] time of planting. The hedge shall be at least four feet high at [the] time of planting.

According to *Zoning Ordinance* Article 5 §7.24, the Planning Commission may waive the requirement for the “fence component” of the Opaque Barrier (§7.21) and require only the “landscape component” (§7.22) when noise is not a concern and the vegetation alone is considered a desirable aesthetic alternative. Further flexibility on the design of the opaque barrier has also been offered in the past either administratively or via waiver, most commonly to allow materials not specified in the Ordinance or to remove the requirement that landscaping be planted specifically on the residential side of the barrier. However, the landscape component cannot be waived altogether.

For this project, an Opaque Barrier is required along the north side of the property, from the rear property line to Martin Street. All of the rear parcel’s north property line must be covered as well as about half of the front parcel’s north property line. The applicant proposes to provide the fence component of the Opaque Barrier along the entire required length, but seeks a variance from the requirement for the landscape component.

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 variances relate to the above criteria. The applicant's responses are provided below along with a staff assessment of the application in accordance with the required criteria. The two variance requests were addressed separately by the applicant, so staff provided separate responses as well.

Variance 1: Parking

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

Applicant Response:

"The existing property is currently zoned C4 (Highway Commercial). The current use of the property is a mobile home retailer. The proposed use would be office buildings; which is a permitted use within the zoning district."

Staff Response:

The property is zoned C-4 (Highway Commercial). This zone permits retail uses as well as business, professional, and government offices and wholesale, storage, warehousing, and distribution establishments. The proposed uses of the site are permitted under the zoning.

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

Applicant Responses:

"The property currently houses a mobile home retailer, which consists of various mobile homes and associated out-buildings. The site fronts along Bay Road (US 113).

There is an RG-1 (General Residence) zone along a portion of the North-East property line that has been developed into single family residential, C-4 (Highway Commercial) zone along a portion of the North-East property line, which contains a vacant parcel, a C-4 (Highway Commercial) zone along the South-East property line, which contains a vacant parcel, and a C-4 (Highway Commercial) zone along the North-West property line, which contains lumber yard/supplier. South of the site is the Blue Hen Mall and old Value-City shopping center, both of which contain expansive parking areas. East of the site is the Kent County Levy Court office. The proposed use of the site is not out of character for the area.”

Staff Response:

Staff concurs with the applicant’s description, and with the assessment that the office use of the site is not out of character for the area. Bay Road is home to a number of large office uses, including the Kent County Levy Court, DelDOT administrative offices, and the Blue Hen Corporate Center (former Blue Hen Mall). Warehouse uses are also somewhat in character for the area, although the nearby warehouse uses are off of South DuPont Highway instead of Bay Road. Aside from the applicant’s proposed project, there do not appear to be any other warehouse uses accessible from the neighborhood streets to the north of the property.

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

Applicant Response:

“Removal of the restriction would not affect the surrounding property owners. The existing parcels along the North-East property line are currently screened with a hedgerow of various species of trees and a portion of the South-East property line is screened by existing woods. The propose landscape plan is proposing a fence along a portion of the North-East property line and additional plantings along a portion of the South-East property line. Maintaining the restriction would have a detrimental effect due to the potential for site visitors to park on neighboring roadways if parking is not available on site.

Additionally, Proposed Building 1 is located approximately 507’± from US113, Bay Road with boulevard access to the building with screening with various plantings.”

Staff Response:

The Landscape Plan described in the applicant’s response above is provided in Exhibit E. This Landscape Plan does not show existing trees that appear to be just outside the edges of the site. Those trees can be seen in the aerial provided in Exhibit B.

It does appear that all of the parking spaces on site will be fairly well screened, especially if one assumes the lines of trees that appear to be just outside the property will never be removed. When considering excess parking, the Board should also look at two other factors: whether the extra parking negatively affects the urban design of the area and whether there are excessive traffic impacts due to the extra parking.

In both these cases, staff does not believe the 14 extra spaces in Phase 1 would create a significant negative impact. In the first case, the open space gained by elimination of the 14 parking spaces would not be of significant benefit to the area's urban design, nor would there be appreciable gains to the walkability of the site. In the second case, the traffic impact of the 14 spaces is not significant because their impact will in later phases be subsumed into the overall traffic impact of the site. Even if the later phases are not developed, the site accesses constructed in Phase 1 will be designed to handle the site's planned full buildout.

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:

"With the growth of the economy, Century has plans of growing its staff, with a reduction of parking, the company would experience a deficiency of available parking for their employees and visitors.

If the variance would not be approved, the parking restriction would constitute a hardship for Century and limit the number of employees/visitors the office could accommodate. Century consistently hosts various government representatives and clients for various meetings/events, and with the additional parking would allow for these representatives to have a safe experience when attending meetings and events. If the additional parking is not provided visitors may need to park on the adjoining streets, creating a potentially unsafe condition."

Staff Response:

Zoning Ordinance Article 6 §3.11 imposes a cap on parking so the maximum number of spaces provided cannot exceed 25% over the minimum code requirement. Although the site as a whole when fully developed will not exceed this cap, Building 1, planned to house Century Engineering, will exceed it during Phase 1.

The applicant states that unless Building 1 is allowed to exceed its maximum parking requirement, it will be underparked from a practical standpoint. In the provided Project Background Information, the applicant cites the existing staff Century has, (Exhibit C, page 1) including 40 full-time in-office staff, 20 field staff, and 50 full-time staff that will report to the Dover office intermittently. The need to accommodate 5 fleet vehicles and 10 visitors is also shown. Above, the applicant cites plans to grow the business in the future. Since the current and future numbers of employees in the building cannot be determined with certainty, the parking requirement cannot be based on employee count. However, if that number could be determined with certainty, it would be appropriate to use it. The result would be both a larger minimum parking requirement and a larger maximum parking allowance.

The extra parking spaces for Phase 1 could simply be provided in Phase 2, but this may result in a temporary shortfall. If this happens, staff disagrees that parking on the nearby neighborhood streets would be dangerous, (parking on Bay Road would be prohibited) but it would be a nuisance to the neighbors.

Variance 2: Opaque Barrier

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

Applicant Response:

“The existing property is currently zoned C4 (Highway Commercial). The current use of the property is a mobile home retailer. The proposed use would be office buildings which is a permitted use within the zoning district.”

Staff Response:

The applicant provided the same answer to this question as they did for the first variance request. The property is zoned C-4 (Highway Commercial). This zone permits retail uses as well as business, professional, and government offices and wholesale, storage, warehousing, and distribution establishments. The proposed uses of the site are permitted under the zoning.

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

Applicant Response:

“The property currently houses a mobile home retailer, which consists of various mobile homes and associated out-buildings. The site fronts along Bay Road (US 113).

There is an RG-1 (General Residence) zone along a portion of the North-East property line that has been developed into single family residential, C-4 (Highway Commercial) zone along a portion of the North-East property line, which contains a vacant parcel, a C-4 (Highway Commercial) zone along the South-East property line, which contains a vacant parcel, and a C-4 (Highway Commercial) zone along the North-West property line, which contains lumber yard/supplier. South of the site is the Blue Hen Mall and old Value-City shopping center, both of which contain expansive parking areas. East of the site is the Kent County Levy Court office. The proposed use of the site is not out of character for the area.”

Staff Response:

The applicant provided the same answer to this question as they did for the first variance request. Staff concurs with the applicant’s description, and with the assessment that the office use of the site is not out of character for the area. Bay Road is home to a number of large office uses, including the Kent County Levy Court, DelDOT administrative offices, and the Blue Hen Corporate Center (former Blue Hen Mall). Warehouse uses are also somewhat in character for the area, although the nearby warehouse uses are off of South DuPont Highway instead of Bay Road. Aside from the applicant’s proposed project, there

do not appear to be any other warehouse uses accessible from the neighborhood streets to the north of the property.

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

Applicant Response:

"Removal of the restriction would not affect the surrounding property owners. The owner is proposing a privacy fence along the side of the property bordering residential zones. The privacy fence will screen residents from any vehicles or activities."

Staff Response:

Staff believes granting a variance from the requirement to provide landscaping has the potential to negatively impact the residents in the neighborhood to the north of the site. At present, the negative impacts would be mitigated by the line of existing trees, which appear to be just outside the northern boundary of the site. These trees should be an effective substitute for the required landscaping. However, if these trees are in fact outside the applicant's property, the neighbors could remove them. If they were to do so, there would be negative impacts from the applicant's site.

The use of the rear parcel is specified as "flex/warehouse." Particularly if the ultimate use is a warehouse, loading and unloading of supplies may create loud sounds audible from nearby properties. The purpose of the Opaque Barrier is to provide both visual and sound screening, and it is not certain that the proposed fence alone would be able to adequately absorb the sound.

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 applicant is proposing privacy fence between the site and the residential properties. Due to the site layout the area for landscaping is extremely limited. The applicant believes that any landscaping planted in this area will be difficult to maintain and will have poor survival rates. There are existing mature trees along the residential properties that will work in conjunction with the privacy fence to shade out new landscaping. The limited area available will make it difficult to access the trees for maintenance and pruning. For this reason the applicant proposes the use of a privacy fence only and requests a variance from the requirements for landscaping."

Staff Response:

There appear to be about three feet of space between the applicant's proposed fence and the northern property line. While this is too narrow a space for a line of evergreen trees, it should be enough space for a hedge. The space between the fence and the parking lot drive aisles widens in enough places that evergreen trees could still be interspersed. To

ease maintenance of the plants, the applicant may ask the Planning Commission for a waiver to allow the landscaping to be planted on the near side of the fence rather than in between the fence and the property line. It would also be easier to find a species tolerant of shade due to the mature trees if a hedge was used. Finally, if space is still a concern, it looks like the parking lots and drive aisles can be moved a few feet to the south to allow more space for the landscaping.

Variance Recommendations

Staff recommends approval of the variance to allow for the increase in parking, noting that the number of spaces in excess of the code maximum will be 14 spaces for Phase 1 only. Staff recommend approval for reasons as follows:

- The increased number of spaces would not have significant negative impacts on neighboring properties in terms of traffic or the urban design of the area. Before Phase 2, the extra parking may be needed to keep employees and visitors from parking on neighborhood streets.
- The parking proposed for Building 1 is reasonable considering the anticipated staffing of the business intended to occupy it. Requiring the 14 spaces to be constructed in a future phase would be a hardship to this business until the future phase is constructed.

Staff recommends **denial** of the variance eliminating the requirement for the landscape component of the Opaque Barrier, for reasons as follows:

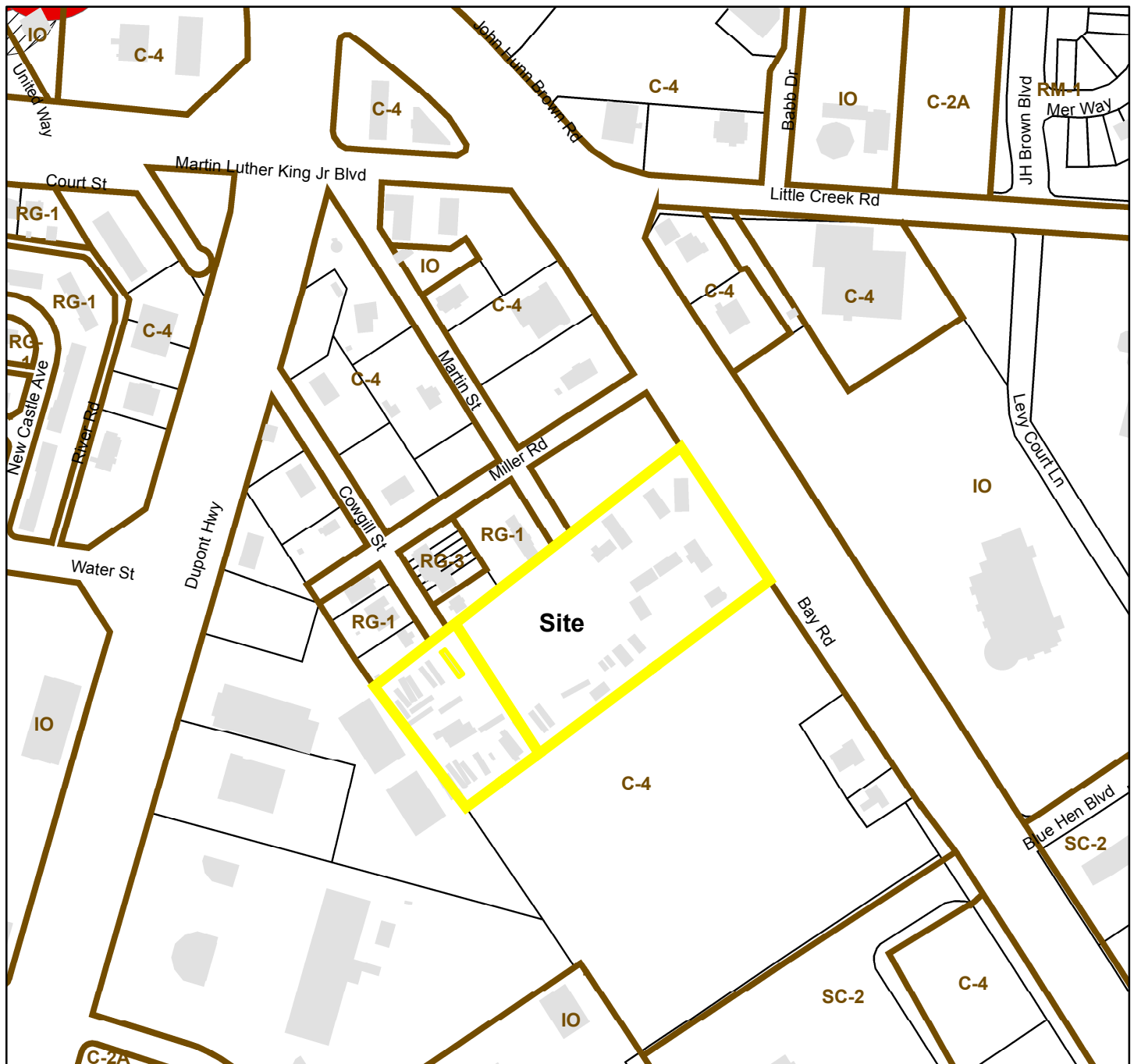
- The permanence of the existing line of trees along the north property line is uncertain. If they are on the applicant's side of the line, the plan does not appear to propose preserving them. If they are on the neighbor's side of the line, they could be removed at any time. Removal of the existing trees would likely mean negative impacts to the neighbors.
- The practical difficulty of planting the landscape component does not appear to be exceptional, as there are a number of solutions that would allow planting in a confined space.

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.

GUIDE TO ATTACHMENTS

Exhibit	Description/Author	# Pages
A	Zoning Exhibit Map (Staff)	1
B	Site Aerial (Staff)	1
C	Background Information and Criteria Responses (Applicant)	4
D	Site Plan with Phasing Breakdown (Applicant)	1 (24"x36")
E	Landscape Plan (Applicant- provided with Planning Commission application)	1 (11"x17")



Title: Lands of Bay Road One LLC
 Address: 550 Bay Road
 Parcel IDs: ED-05-077.00-01-10.01-000 and ED-05-077.00-01-11.00-000
 Zoning: C-4
 Owner: Bay Road One LLC
 Date: 7/5/2017

Legend

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



0 200 400 800 Feet



Applicant: Bay Road One, LLC

Variance Request: Variance from City of Dover Code, Appendix B, Article 6, Section 3.11

Variance Requested: Variance to allow the site to exceed the maximum allowable parking spaces.

Project Background Information: The proposed project is located on Bay Road (US113) in Kent County, Delaware, within the limits of the City of Dover. The project proposes four (4) new buildings constructed in four (4) phases. The buildings have had parking assigned based on requirements for “office” use.

Of the four (4) buildings, only Building 1 is proposed to exceed parking allowances, and the allowance is temporary until the site is further built out. Building 1 is being constructed for the use of Century Engineering, Inc (Century). Currently Century has approximately: 40 full-time in-office staff; 20 field staff that report to the office in the morning and evening; 5 fleet vehicles; and 50 full time staff that report to the Dover office intermittently. Century also frequently has meetings that require as many as 10 additional visitors to attend and park at the office. While the number of staff is not expected to double with the move to an office that is twice as large, it is expected to increase beyond the 105 spaces currently permitted by code.

After Phase 1, the site will consist of 119 striped spaces which exceeds the code maximum of 105 spaces. However, after Phase 2, the site will contain 177 spaces which is below the code maximum of 178 spaces.

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

The existing property is currently zoned C4 (Highway Commercial). The current use of the property is a mobile home retailer. The proposed use would be office buildings; which is a permitted use within the zoning district.

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

The property currently houses a mobile home retailer, which consists of various mobile homes and associated out-buildings. The site fronts along Bay Road (US 113).

There is an RG-1 (General Residence) zone along a portion of the North-East property line that has been developed into single family residential, C-4 (Highway Commercial) zone along a portion of the North-East property line, which contains a vacant parcel, a C-4 (Highway Commercial) zone along the South-East property line, which contains a vacant parcel, and a C-4 (Highway Commercial) zone along the North-West property line, which contains lumber yard/supplier. South of the site is the Blue Hen Mall and old Value-City shopping center, both of which contain expansive parking areas. East of the site is the Kent County Levy Court office. The proposed use of the site is not out of character for the area.

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

Removal of the restriction would not affect the surrounding property owners. The existing parcels along the North-East property line are currently screened with a hedgerow of various species of trees and a portion of the South-East property line is screened by existing woods. The propose landscape plan is proposing a fence along a portion of the North-East property line and additional plantings along a portion of the South-East property line. Maintaining the restriction would have a detrimental effect due to the potential for site visitors to park on neighboring roadways if parking is not available on site.

Additionally, Proposed Building 1 is located approximately 507'± from US113, Bay Road with boulevard access to the building with screening with various plantings.

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

With the growth of the economy, Century has plans of growing its staff, with a reduction of parking, the company would experience a deficiency of available parking for their employees and visitors.

If the variance would not be approved, the parking restriction would constitute a hardship for Century and limit the number of employees/visitors the office could accommodate. Century consistently hosts various government representatives and clients for various meetings/events, and with the additional parking would allow for these representatives to have a safe experience when attending meetings and events. If the additional parking is not provided visitors may need to park on the adjoining streets, creating a potentially unsafe condition.

Applicant: Bay Road One, LLC

Variance Request #2: Variance from City of Dover Code, Appendix B, Article 5, Section 7.

Variance Requested: Variance from landscape requirement along the northeast property line.

Project Background Information: The proposed project is located on Bay Road (US113) in Kent County, Delaware, within the limits of the City of Dover. The project also has access from Cowgill Road and Martin Street. The proposed project includes phased construction of four buildings, parking areas, and associated amenities. The site plan is proposing various species of trees throughout the site as well as a 6' tall privacy fence along the northeast property line where the site adjoins the residential zone and 4' tall privacy fence along the northeast property line of the proposed Warehouse building.

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

The existing property is currently zoned C4 (Highway Commercial). The current use of the property is a mobile home retailer. The proposed use is office buildings which is a permitted use within the zoning district.

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

The property currently houses a mobile home retailer, which consists of various mobile homes and associated out-buildings. The site fronts along Bay Road (US 113).

There is an RG-1 (General Residence) zone along a portion of the North-East property line that has been developed into single family residential, C-4 (Highway Commercial) zone along a portion of the North-East property line, which contains a vacant parcel, a C-4 (Highway Commercial) zone along the South-East property line, which contains a vacant parcel, and a C-4 (Highway Commercial) zone along the North-West property line, which contains lumber yard/supplier. South of the site is the Blue Hen Mall and old Value-City shopping center, both of which contain expansive parking areas. East of the site is the Kent County Levy Court office. The proposed use of the site is not out of character for the area.

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

Removal of the restriction would not affect the surrounding property owners. The owner is proposing a privacy fence along the side of the property bordering residential zones. The privacy fence will screen residents from any vehicles or activities.

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

The applicant is proposing privacy fence between the site and the residential properties. Due to the site layout the area for landscaping is extremely limited. The applicant believes that any landscaping planted in this area will be difficult to maintain and will have poor survival rates. There are existing mature trees along the residential properties that will work in conjunction with the privacy fence to shade out new landscaping. The limited area available will make it difficult to access the trees for maintenance and pruning. For this reason the applicant proposes the use of a privacy fence only and requests a variance from the requirements for landscaping.

G:\PROJECTS\175009.00 (550 Bay Road)\175009.01 (Master Plan and Phase I Design)\DESIGN PROJECT INFO\Correspondence\City of Dover
Waiver\2017-05-30_WaiverExplanation.docx

ADDRESS:
4134 NORTH DUPONT HIGHWAY
DOVER, DE 19901
P: (302) 734-9188 F: (302) 734-4588

th CENTURY
ENGINEERING
CONSULTING ENGINEERS ■ SURVEYORS

REVISIONS

Exhibit D

ADDENDUM

DESCRIPTION	DATE
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BOARD OF ADJUSTMENT
FOR
BAY ROAD OFFICE PARK
TP. ED-05-077-00-01-10-01, 550 BAY ROAD
T.P. ED-05-077-00-01-11-00, COWGILL STREET
CITY OF DOWER, KENT COUNTY, DELAWARE

PROJECT

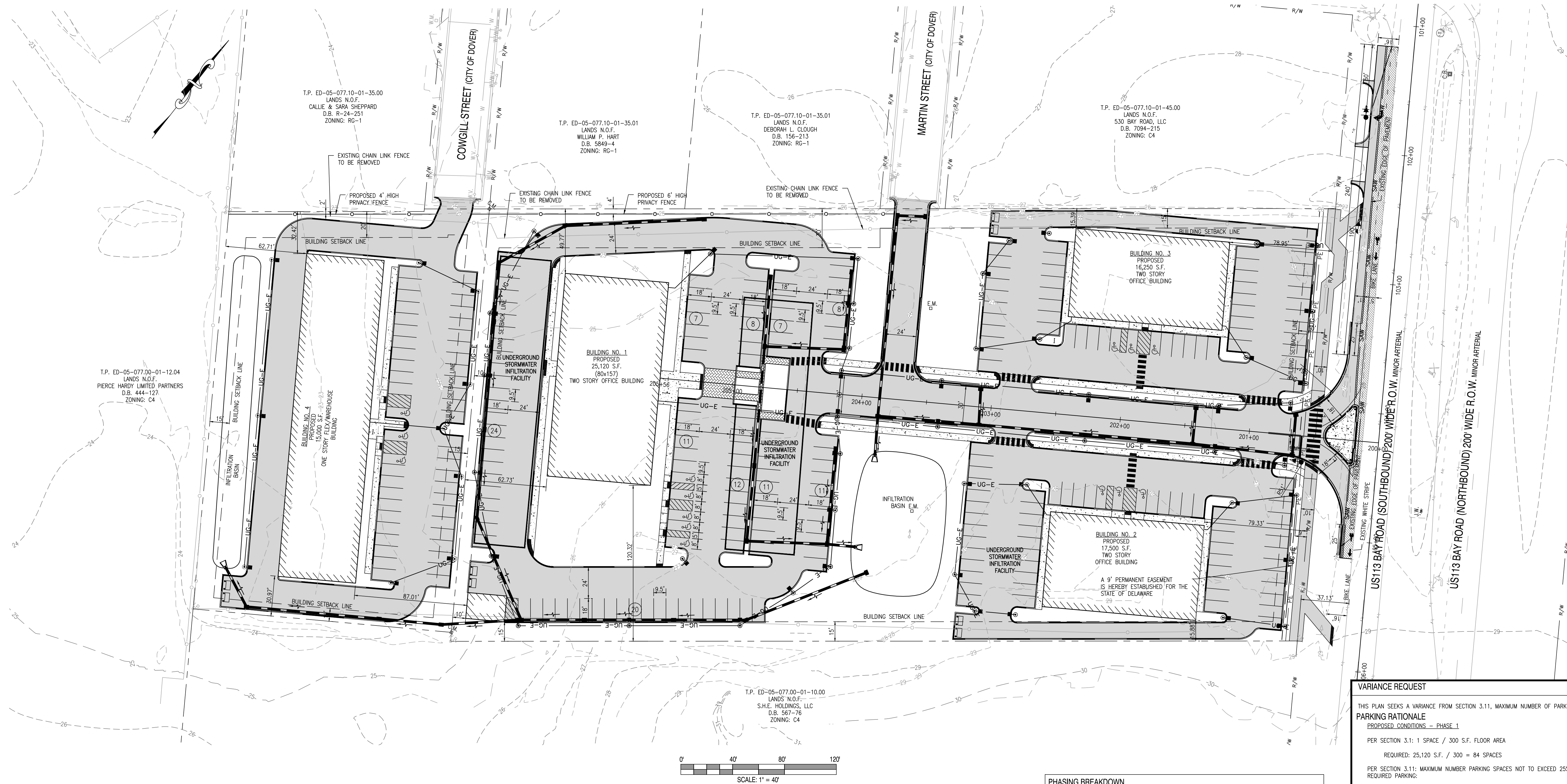
SHEET TITLE

BOARD OF
ADJUSTMENT PLAN

CITY OF DOVER
SUBMISSION

DRAWN	CHK'D/DESIGNER
DLD	AES
SCALE	SHEET NO.

1" = 40'
PROJECT NO. 175009.01



PHASING BREAKDOWN	
PHASE 1	PROPOSED TWO STORY 25,120 S.F. OFFICE BUILDING, PROPOSED ONE STORY 600 S.F. ACCESSORY STRUCTURE, PROPOSED PARKING LOT, ACCESS ROAD AND ENTRANCE, SHARED USE PATH, BAY ROAD WIDENING AND STORMWATER MANAGEMENT.
PHASE 2	PROPOSED TWO STORY 17,500 S.F. OFFICE BUILDING, PROPOSED PARKING LOT AND STORMWATER MANAGEMENT.
PHASE 3	PROPOSED TWO STORY 16,250 S.F. OFFICE BUILDING, PROPOSED PARKING LOT AND STORMWATER MANAGEMENT.
PHASE 4	PROPOSED ONE STORY 15,000 S.F. FLEX/WAREHOUSE BUILDING, PROPOSED PARKING LOT AND STORMWATER MANAGEMENT.

VARIANCE REQUEST
THIS PLAN SEEKS A VARIANCE FROM APPENDIX B, ARTICLE 5, SECTION 7, LANDSCAPE REQUIREMENT ADJOINING RESIDENTIAL DISTRICT.

VARIANCE REQUEST

THIS PLAN SEEKS A VARIANCE FROM SECTION 3.11, MAXIMUM NUMBER OF PARKING SPACES

PARKING RATIONALE

PROPOSED CONDITIONS – PHASE 1

PER SECTION 3.1: 1 SPACE / 300 S.F. FLOOR AREA

REQUIRED: 25,120 S.F. / 300 = 84 SPACES

PER SECTION 3.11: MAXIMUM NUMBER PARKING SPACES NOT TO EXCEED 25% OVER THE REQUIRED PARKING:

ALLOWABLE SPACES: 84 SPACES * 0.25 = 105 SPACES

PROVIDED SPACES: 119 SPACES NUMBER OVER: 14 SPACES

PROPOSED CONDITIONS – PHASE 2

PER SECTION 3.1: 1 SPACE / 300 S.F. FLOOR AREA

EXISTING BUILDING FLOOR AREA: 25,120 S.F.
PROPOSED BUILDING FLOOR AREA: 17,500 S.F.
TOTAL FLOOR AREA: 42,620 S.F.

REQUIRED: 42,620 S.F. / 300 = 142 SPACES

PER SECTION 3.11: MAXIMUM NUMBER PARKING SPACES NOT TO EXCEED 25% OVER THE REQUIRED PARKING:

ALLOWABLE SPACES: 142 SPACES * 0.25 = 178 SPACES

PROVIDED SPACES: 177 SPACES NUMBER OVER: 0 SPACES

PROPOSED CONDITIONS – PHASE 3

PER SECTION 3.1: 1 SPACE / 300 S.F. FLOOR AREA

EXISTING BUILDING FLOOR AREA: 42,620 S.F.
PROPOSED BUILDING FLOOR AREA: 16,250 S.F.
TOTAL FLOOR AREA: 58,870 S.F.

REQUIRED: 58,870 S.F. / 300 = 196 SPACES

PER SECTION 3.11: MAXIMUM NUMBER PARKING SPACES NOT TO EXCEED 25% OVER THE REQUIRED PARKING:

ALLOWABLE SPACES: 196 SPACES * 0.25 = 245 SPACES

PROVIDED SPACES: 231 SPACES NUMBER OVER: 0 SPACES

PROPOSED CONDITIONS – PHASE 4

PER SECTION 3.1: 1 SPACE / 300 S.F. FLOOR AREA

PROPOSED BUILDING FLOOR AREA: 15,000 S.F.
TOTAL FLOOR AREA: 15,000 S.F.
(PRIOR PHASES NOT INCLUDED AS THEY ARE A SEPARATE PARCEL)

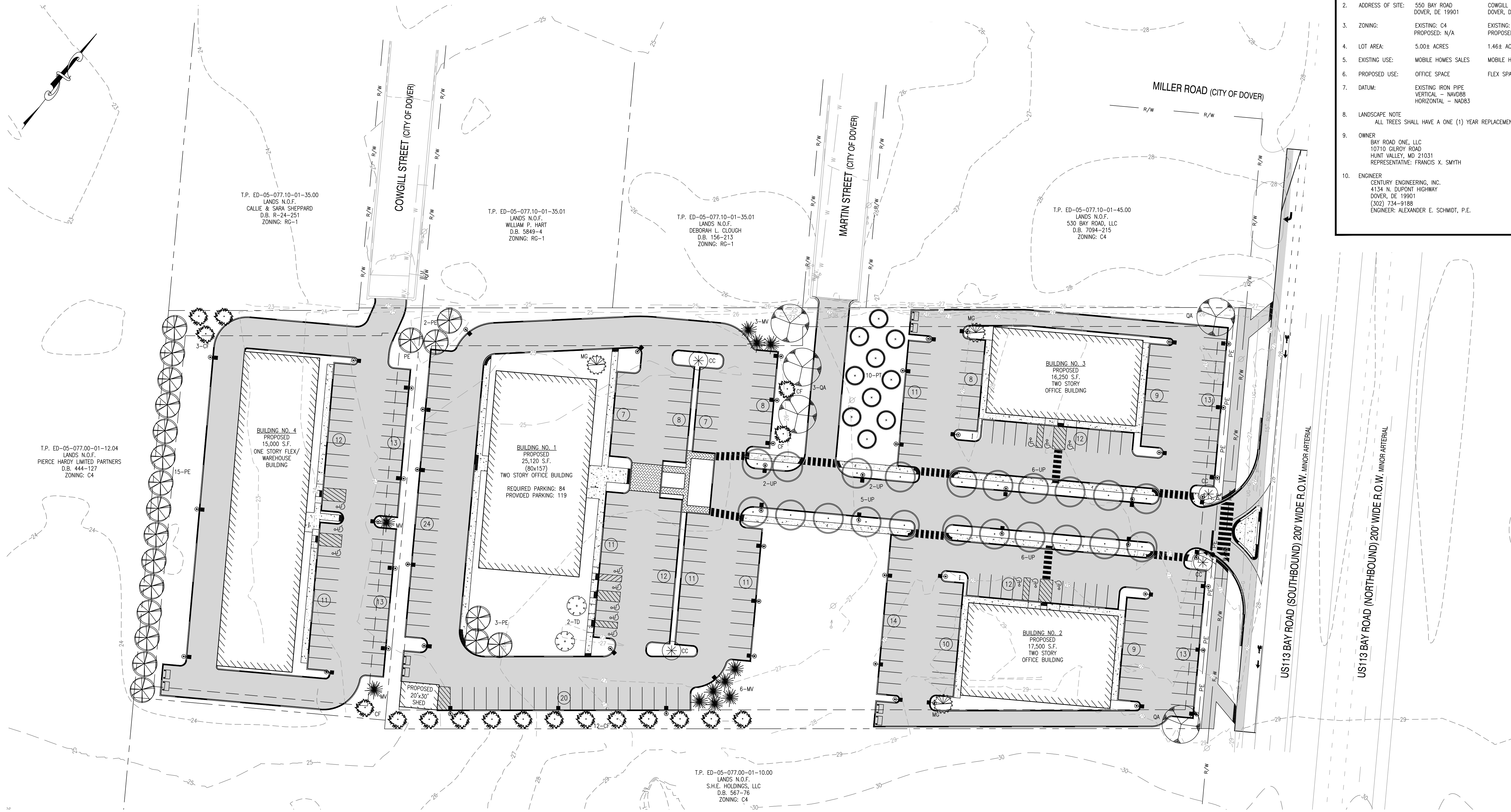
REQUIRED: 15,000 S.F. / 300 = 50 SPACES

PER SECTION 3.11: MAXIMUM NUMBER PARKING SPACES NOT TO EXCEED 25% OVER THE REQUIRED PARKING:

ALLOWABLE SPACES: 50 SPACES * 0.25 = 63 SPACES

PROVIDED SPACES: 50 SPACES NUMBER OVER: 0 SPACES

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T.P. ED-077.00-01-10.01				
SYMBOL	SPECIES	QUANTITY	SIZE	NOTES
	ULMUS PARVIFOLIA-ALLEE "EMER II"	21	2" CALIP.	30' O.C.
	CORNUS FLORIDA "ALBA"	7	5'-6"	25' O.C.
	CORNUS FLORIDA "RUBRA"	7	5'-6"	25' O.C.
	MAGNOLIA VIRGINIANA "GLAUCA"	9	5'-6"	10' O.C.
	QUERCUS ALBA	5	2" CALIP.	35' O.C.
	CERCIS CANADENSIS	4	5'-6"	20' O.C.
	PINUS TAEDA	10	5'-6"	30' O.C.
	PINUS ECHINATA	5	5'-6"	20' O.C.
	MAGNOLIA GRANDIFOLIA	3	5'-6"	
	TAXODIUM DISTICHUM	2	5'-6"	

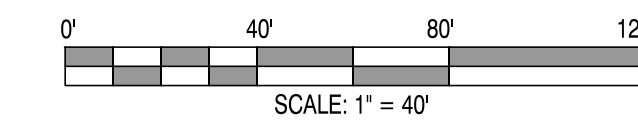
T.P. ED-077.00-01-11.00				
SYMBOL	SPECIES	QUANTITY	SIZE	NOTES
	CORNUS FLORIDA "ALBA"	2	5'-6"	25' O.C.
	CORNUS FLORIDA "RUBRA"	2	5'-6"	25' O.C.
	MAGNOLIA VIRGINIANA "GLAUCA"	2	5'-6"	10' O.C.
	PINUS ECHINATA	16	5'-6"	20' O.C.

TREE DENSITY CALCULATIONS - T.P. ED-05-077.00-01-10.01	
TOTAL LOT AREA:	5.00 ACRES
TOTAL AREA OF WOODLANDS ON SITE:	0.00 ACRES
TOTAL AREA OF WOODLANDS TO BE PRESERVED:	0.00 ACRES
NON-WOODLAND AREA:	5.00 ACRES (217,800± S.F.)
NEW TREE PLANTINGS REQUIRED: 1 TREE PER 3,000 S.F. OF NON-WOODLAND AREA	73 PLANTINGS REQUIRED
TREE PLANTINGS PROPOSED:	73 PLANTINGS

TREE DENSITY CALCULATIONS - T.P. ED-05-077.00-01-11.00	
TOTAL LOT AREA:	1.46 ACRES
TOTAL AREA OF WOODLANDS ON SITE:	0.00 ACRES
TOTAL AREA OF WOODLANDS TO BE PRESERVED:	0.00 ACRES
NON-WOODLAND AREA:	1.46 ACRES (63,598± S.F.)
NEW TREE PLANTINGS REQUIRED: 1 TREE PER 3,000 S.F. OF NON-WOODLAND AREA	22 PLANTINGS REQUIRED
TREE PLANTINGS PROPOSED:	22 PLANTINGS

GENERAL NOTES	
1.	EXISTING TREES TO BE PRESERVED SHALL BE PROTECTED BY ORANGE SAFETY FENCE (SENSITIVE AREA PROTECTION). THIS ITEM WILL BE SHOWN ON PHASE SPECIFIC EROSION AND SEDIMENT CONTROL PLANS.
2.	ALL NEW TREE PLANTINGS SHALL BE MULCHED TO PREVENT EROSION AROUND NEW TREES.
3.	ALL NEW TREES SHALL HAVE A ONE YEAR REPLACEMENT GUARANTEE.
4.	TREES SHALL BE LIMBED TO 12-FOOT OR ABOVE AT MATURITY.

CERTIFICATION OF PLAN ACCURACY	
I HEREBY CERTIFY THAT THESE DOCUMENTS WERE PREPARED UNDER MY SUPERVISION, AND THAT I AM A DULY LICENSED LANDSCAPE ARCHITECT UNDER THE LAWS OF THE STATE OF MARYLAND.	
MICHAEL PERANUNZI, RLA, MD NO. 1008, EXPIRES 5/20/18	DATE
CENTURY ENGINEERING, INC. 10710 GILROY ROAD HUNT VALLEY, MD 21031 (443)269-2400	



DATA COLUMN		
1. COUNTY TAX MAP:	ED-05-077.00-01-10.01	ED-05-077.00-01-11.00
2. ADDRESS OF SITE:	550 BAY ROAD DOVER, DE 19901	COWGILL STREET DOVER, DE 19901
3. ZONING:	EXISTING: C4 PROPOSED: N/A	EXISTING: C4 PROPOSED: N/A
4. LOT AREA:	5.00± ACRES	1.46± ACRES
5. EXISTING USE:	MOBILE HOMES SALES	MOBILE HOME SALES
6. PROPOSED USE:	OFFICE SPACE	FLEX SPACE/WAREHOUSE
7. DATUM:	EXISTING IRON PIPE VERTICAL - NAVD88 HORIZONTAL - NAD83	
8. LANDSCAPE NOTE	ALL TREES SHALL HAVE A ONE (1) YEAR REPLACEMENT GUARANTEE.	
9. OWNER	BAY ROAD ONE, LLC 10710 GILROY ROAD HUNT VALLEY, MD 21031 REPRESENTATIVE: FRANCIS X. SMYTH	
10. ENGINEER	CENTURY ENGINEERING, INC. 4134 N. DUPONT HIGHWAY DOVER, DE 19901 (302) 734-9188 ENGINEER: ALEXANDER E. SCHMIDT, P.E.	

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

CENTURY
ENGINEERING
CONSULTING ENGINEERS ■ SURVEYORS

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WEBSITE:
www.centuryeng.com

EMAIL:
ce@centuryeng.com

REVISIONS

Exhibit E

ADDENDUM

DESCRIPTION DATE

MASTER PLAN
FOR
BAY ROAD OFFICE PARK

TP. ED-05-077.00-01-10.01, 550 BAY ROAD &
T.P. ED-05-077.00-01-11.00, COWGILL STREET
EAST DOVER HUNDRED, KENT COUNTY, CITY OF DOVER, DELAWARE

PROJECT
SHEET TITLE

LANDSCAPE PLAN

CITY OF DOVER
SUBMISSION
MAY 30, 2017

DRAWN CHK'D/DESIGNER

DLD AES

SCALE SHEET NO.

1" = 40'

PROJECT NO.

165000.99

M106



City of Dover

Board of Adjustment

July 19, 2017

V-17-13

Location: 20 & 28 Spruance Road

Applicant: Matthew L. Smith

Owners: Matthew L. and Rosa L. Smith

Tax Parcels: ED-05-068.18-04-48.00-000 and ED-05-068.18-04-47.00-000

Application Date: June 6, 2017

Present Zoning: RG-1 (General Residence Zone)

Present Use: Bus vehicle storage lot

Proposed Use: No change

Reviewed By: Eddie Diaz, Planner I

Variance Type: Use Variance

Variance Requested: Exempt the properties from the requirement that nonconforming uses in residential zones sunset after the specified time.

Project Description

The applicant is requesting a variance from *Zoning Ordinance* Article 7, Section 1.13 – Nonconforming Buildings and Uses, and from Article 3, Section 2 – General Residence Zone (RG-1), to allow the preservation of the existing nonconforming use on the property. Nonconforming uses in residential zones are given a timeframe in which they may continue to operate before they must convert to a conforming use. The timeframe for this property has elapsed.

Adjacent Land Uses

The property has frontage on Spruance Road to the east and two alleys on its south and west sides. The nearest cross street is Division Street to the south. The properties to the south, west,

and north are zoned R-7 (One Family Residence Zone) and contain one-family detached houses. The property immediately to the north is owned by the applicant and rented out. The properties across Spruance Road to the east are zoned RG-1 (General Residence Zone) and include both one-family detached houses and duplex units. Nearby non-residential uses include a church to the east (zoned R-7) and a deli three blocks to the west (zoned C-1, Neighborhood Commercial Zone) both with frontage on Division Street.

Code Citations and Background

In December 2015, City Council assigned to the Planning Office a project to “sunset” nonresidential, nonconforming uses in the City’s residential zones. This sunsetting is required under the *Zoning Ordinance*, Article 7 §1.51 and §1.53:

- 1.51 In any residence zone, any nonconforming use of land, including such uses as a parking lot, junkyard, or open storage yard for materials or equipment, may be continued for three years after the effective date of this ordinance, or after annexation of the property into the City of Dover, provided that, after the expiration of that period, such nonconforming use shall be terminated (see also article 6, section 1.12). Any “mobile home” as that term is defined in article 12 hereof, that was located within the limits of the City of Dover at the effective date of this ordinance [November 22, 1976], or that was in place on any land subsequently annexed into the City of Dover, shall constitute a nonconforming use and shall be permitted to be maintained as a nonconforming use indefinitely. However, such mobile home shall be required to connect to city sewer and water mains, if available, and such mobile home shall be subject to and shall comply with all other city codes and ordinances applicable to structures and residences.
- 1.53 In any residence zone, any non-conforming use of buildings which is not permitted under the provisions of this ordinance may be continued for a period of:
- (a) Twenty years after the effective date of this ordinance, or
 - (b) Forty years after the initial construction of the building containing such use or of any addition thereto adding 50 percent or more to the floor area occupied by such use,
- whichever is the longer period, provided that, after the expiration of that period, such nonconforming use shall be terminated. However, no such nonconforming use shall be permitted to continue for a period exceeding two years, unless such use shall be operated in conformance with performance standards established in article 5, section 8.

The effective date of the current *Zoning Ordinance* is April 21, 1975. As such sufficient time has passed that most remaining nonconforming uses in the City’s residence zones must now be discontinued or otherwise brought into compliance with the *Zoning Ordinance*. Enforcement of the above sections did not take place between the effective date of the ordinance and December 2015. However, at Council’s direction the sections are now being enforced.

The current use of the applicant’s property as a vehicle storage lot for school buses is considered a nonconforming use under the zoning. The list of permitted uses in the RG-1 Zone is given in *Zoning Ordinance* Article 3 §2.1:

- 2.1 Uses permitted. In a general residence zone, no building or premises shall be used, and no building or part of a building shall be erected, which is arranged, intended or designed to be used, in whole or in part, for any purpose, except the following:
- 2.11 Any use permitted in one-family residence zones.
- 2.12 Garden apartments limited to placement within the RG-2 district only.

According to *Zoning Ordinance* Article 3 §2.4(h), parking lots are a conditional use in the RG-1 Zone. However, the kind of vehicle storage that would be considered a parking lot is public parking for non-commercial vehicles. A private lot for school buses would only be permitted in zones that permit warehousing uses.

Planning records indicate that prior to 2009, the property was split-zoned, with 20 Spruance Road being zoned C-3 (Service Commercial Zone) and 28 Spruance Road being zoned R-7. Both parcels on the property were rezoned to RG-1 as part of the 2009 Comprehensive Rezoning. It is not known how long 28 Spruance Road was zoned R-7 before 2009. The vehicle storage use would have been permitted under the C-3 zoning, but sufficient time has passed since the rezoning and overall that the sunset provisions of the *Zoning Ordinance* affect both parcels.

After City Council assigned the sunsetting project to the Planning Office in December 2015, planning staff conducted a “windshield survey” of the City’s residential zones, driving through them to identify all of the nonconforming uses within them. Staff identified a total of fourteen (14) nonresidential, nonconforming uses in residential zones citywide. Staff reached out to each of the property owners of the affected properties to inform them of the sunsetting requirement, also informing them of any options available to eliminate the nonconforming status of their properties besides actual termination of the use.

Of the fourteen properties, five (5) were rezoned, one (1) completed a Parcel Consolidation joining it to a conforming use, four (4) were subsequently determined to not actually hold a nonconforming use, one (1) was found to have been legalized by the Board of Adjustment in the year 2000 (Case #12-00), and one (1) was ordered to cease operations. One (1) property has a rezoning application pending. The remaining property is the subject of this application.

The applicant’s property in this case cannot be rezoned to a zoning classification permitting the vehicle storage use. The zoning classifications to which any property can be rezoned are controlled by the *2008 Comprehensive Plan*, which designates an underlying Land Use Classification for all properties in the City. The applicant’s property is depicted with the Residential Medium Density land use classification, which permits the R-8, R-7, RM-1, RM-2, RG-1, RG-2, RG-3, RGO, C-1, and MH zones. None of these possible zoning classifications would allow the vehicle warehousing use. Because a Parcel Consolidation in this case would also not turn the nonconforming use into a conforming use, all of the typical routes to conformity for this property, save ceasing operations, are closed to it.

To keep the current use in operation, the applicant’s only remaining option is to seek from the Board of Adjustment a variance from the sunsetting provisions of the *Zoning Ordinance*. Because the current use the applicant seeks to allow is not permitted under the zoning, the standard of review is for a Use Variance.

Review Standard for a Use Variance

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

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

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

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

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

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

Review of Application

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

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

Applicant Response:

"The property in questions has been a parking area for buses for over 60 years. The applicant purchased the property in 1997 and owns the abiding property listed as lot 36. It was previously purchased by the owner of lot 1125 for that same reason. The variance is to keep the present use of the property for what it was intended as a commercial property which was previously known commercial in 2008."

Staff Response:

The physical condition applying to the land is the presence of the bus parking itself. In most cases when an applicant seeks a use variance, the land is vacant or was previously developed as a different use; the applicant must develop the site to create the conditions accommodating a new use not permitted by the zoning. In this case the conditions already exist, given that the whole lot is paved and striped.

While the physical conditions of the land did result from actions of the applicant's predecessor in title, the zoning classification turning those conditions into an issue did

not. The property was rezoned by the City to RG-1 in 2009 as part of a Comprehensive Rezoning. The previous R-7 and C-3 zoning classifications may date to when the neighborhood was annexed into the City. If the property has been in continuous operation as a bus lot for 60 years, the use may predate the initial assignment of zoning with that annexation.

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

Applicant Response:

“This property as a residential property would deprive the applicant of any reasonable use that has been there for 60 years. The granting of the variance would be necessary for its use of the land in its present condition and said variance would minimally affect the neighborhood in its present condition.”

Staff Response:

If the applicant were ordered to cease operations on the property and develop a conforming use, he would be deprived of all reasonable use of the land in at least the short term. The bus lot is an active business and if the use were ordered to cease the land would sit vacant. Granting the variance is necessary for the continued current use of the land, and a variance from *Zoning Ordinance* Article 7, §1.5 as well as Article 3, §2 is the minimum variance that would allow continuing the use.

If the variance were not granted, in time the applicant could potentially develop a permitted use on the property, such as two one-family detached dwellings. However, the applicant may lack the resources to develop the parcels himself, and selling them to someone who could develop them may be very difficult. While there has been recent infill residential development in the City, greenfield development is still the norm. Any potential developer may be deterred from buying by the expense of removing the existing blacktop to make the property attractive for residential use.

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

Applicant Response:

“The present property has roadways on three of its sides leaving the fourth to abut the applicant’s personal property. Said property is fenced in and locked ever evening to keep the harmony of the neighborhood intact. Its present character is not detrimental to the public welfare and has recently been black topped to enhance its aesthetic appearance. Lastly there are other commercial lots across the street from the applicant’s present property in question.”

Staff Response:

The sunseting requirements outlined in Article 7, §1.5 are included in the *Zoning Ordinance* based on the assumption that nonconforming uses are detrimental to nearby residential uses, and should therefore be discontinued. If the bus lot is not detrimental to surrounding residential uses, then sunseting it does not advance the intent of the ordinance. If the bus lot were proposed for development today, planning staff would be concerned by the potential effects of the buses' noise; however, since the lot has been there for 60 years, the buses are already part of the character of the neighborhood.

Further, shutting down the bus lot would potentially be detrimental to the neighborhood and the public welfare. For the neighborhood, discontinuing the use would replace an active business with a vacant lot. The vacant lot may not be as well monitored as it appears the active lot is now based on the applicant's response. For the general public welfare, shutting down the business would disrupt some school bus service until a new home for the buses could be found.

Variance Recommendation:

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

- The property's requirement to sunset has been created by the City due to prior rezoning, and is not due to the actions of the applicant or any predecessor in title.
- Sunseting the current use will deprive the owner of all reasonable use of the land in at least the short term, and possibly also the long term depending on the difficulty of redeveloping the land.
- The variance requested is the minimum variance necessary to provide for reasonable use of the land.
- Sunseting the current use will likely provide more injury than benefit to the neighborhood and public welfare.
- As the current use does not appear to be detrimental to the neighborhood, sunseting it would not be in harmony with the intent of the ordinance.

Advisory Comments to the Applicant

- Any future improvements to the property are subject to Site Development Plan approval processes and appropriate permits from the City of Dover Department of Planning & Inspections and other agencies.

GUIDE TO ATTACHMENTS

Exhibit	Description/Author	# Pages
A	Zoning Exhibit Map (Staff)	1
B	Site Photos (Aerial and Street View) (Staff)	2
C	Applicant Responses (Applicant)	1