



**CITY OF DOVER, DELAWARE
BOARD OF ADJUSTMENT MEETING
Wednesday, December 17, 2025 at 9:00 AM**

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

AGENDA

IN-PERSON and VIRTUAL MEETING

This Board of Adjustment Meeting for December 17, 2025 will be held in City Hall, City Council Chambers. The public is welcome to attend in person. The Meeting will also be provided as a Virtual Meeting using Webex, an audio/video conferencing system as an electronic means of communication. See the participation information below to join by phone or computer.

PUBLIC PARTICIPATION INFORMATION

To Attend City of Dover Board of Adjustment Meeting of December 17, 2025 at 9:00 AM

Join by Phone: Dial 1-650-479-3208
Access Code: 253 783 40619
Password for Phones: 36837262

Join Online: <https://bit.ly/BOA12172025>
Webinar Number: 2537 834 0619
Webinar Password: DoverBOA

If you are new to Webex, get the app now at <https://www.webex.com/> to be ready when the meeting starts. For problems accessing the meeting, please call the Planning Office at (302) 736-7196.

Written comments are accepted via mail to City of Dover – Board of Adjustment,
P.O. Box 475 Dover, DE 19903 and via email at CompPlan@dover.de.us.

WELCOME

ROLL CALL

APPROVAL OF AGENDA

APPROVAL OF MINUTES

- [1.](#) Adoption of Minutes of Training Session on September 17, 2025
- [2.](#) Adoption of Minutes of October 15, 2025

COMMUNICATIONS & REPORTS

Meeting Reminder: The next Board of Adjustment Meeting regular meeting date is Wednesday, January 21, 2026 at 9:00 AM.

Schedule of Deadlines

- [3.](#) 2026 Schedule of Deadlines and Meetings for Board of Adjustment - DRAFT

ELECTION OF OFFICERS**OLD BUSINESS**

- [4.](#) Continued Discussion of Draft Rules of Procedure for Board of Adjustment

NEW BUSINESS**PUBLIC COMMENTS OPPORTUNITY****ADJOURN**

Posted Agenda: December 10, 2025

THE AGENDA ITEMS AS LISTED MAY NOT BE CONSIDERED IN SEQUENCE. PURSUANT TO 29 DEL. C. §10004(e)(2), THIS AGENDA IS SUBJECT TO CHANGE TO INCLUDE THE ADDITION OR THE DELETION OF ITEMS, INCLUDING EXECUTIVE SESSIONS, WHICH ARISE AT THE TIME OF THE MEETING

CITY OF DOVER
BOARD OF ADJUSTMENT MINUTES
September 17, 2025

A Regular/Hybrid Meeting of the City of Dover Board of Adjustment was held on Wednesday, September 17, 2025, at 9:00 A.M. in person in the City Council Chambers and using the phone/videoconferencing system Webex. Members present were Vice Chairman Senato, Mr. Coburn, Ms. Brinkley and Mr. Wagner (arrived at 10:12 A.M.) Mr. Swalm was absent.

The Board welcomed new member, Ms. Carylin Brinkley.

Staff members present were City Solicitor Mr. Griffith, Mrs. Melson-Williams, Mrs. Duca, and Mrs. Mullaney (Acting Secretary).

APPROVAL OF AGENDA

Mr. Coburn moved for approval of the agenda. The motion was seconded by Ms. Brinkley and unanimously carried 3-0. Mr. Wagner and Mr. Swalm were absent.

It is noted that consideration of previous Meeting Minutes, a Special Recognition, and other items of Business will be scheduled for the next meeting of the Board of Adjustment. This Meeting is intended as a Training Session.

Vice Chairman Senato asked if there were any questions. There were none.

COMMUNICATIONS & REPORTS

Mrs. Melson-Williams mentioned that the next Board of Adjustment Meeting is Wednesday, October 15, 2025, at 09:00 am. We have received at least one Application that will be scheduled for that meeting. Vice Chairman Senato mentioned that he will not be in town on that date. She was not sure if any other members had any conflicts on that day. I would have to check with the Applicant that has filed if they would wish to defer to the next meeting of the Board. The regular meeting date for November is November 19, 2025.

City Solicitor Griffith asked if we proceed in the absence of the vice chair and would the vice chair be permitted to appoint another member of the Board to serve as a presiding officer at that October meeting. Mrs. Melson-Williams replied, "I think" I would generally say yes. At this point there has not been a Chair elected since our previous Chair, his term has ended. So, I think that in the absence of that election occurring, that could certainly be done. In other Boards, they may take the individual with ranking seniority, but in this case that's about all the next three as all were appointed about the same time.

Vice Chairman Senato mentioned he believes we do have one member with senior ranking at this time.

Mrs. Melson-Williams mentioned it is a decision that could be made and then you could keep a meeting on October 15th. I certainly want to give the Applicant an opportunity to weigh in on this if the City Solicitor feels that's appropriate.

City Solicitor Griffith mentioned that he does think it's helpful to make sure that these Applications are processed, timely. So, I think if there's a matter in which we can have in the absence of a Chairman or Vice Chairman of the Board, a ranking member or presiding officer that is the preferable way to go and keep the October meeting.

Mr. Senato asked Mr. Coburn if this was to come about, would you be willing to, as a ranking member as far as the Board is concerned, would you be willing to handle that meeting in October? Mr. Coburn replied yes. Mr. Senato mentioned that he appreciates that very much. That way the Applicant meeting won't be postponed, and the process will be a lot faster. Thank you very much.

Mrs. Melson-Williams stated that it's her understanding that the concept now is to continue with the October meeting with hopefully a contingent of the rest of the members.

As previously noted, the Planning Staff mentioned that Chris Salzano, who had been serving as a Planner II in our office, has left employment with the City. So we are again looking for that position. For Planning Staff, we do have consultant services that assist us, but we've got a lot going on.

Mrs. Melson-Williams noted that two of the Board of Adjustment members were missing. Mr. Swalm and Mr. Wagner. Mr. Wagner arrived at 10:15am during the Workshop Training Session.

WORKSHOP TRAINING SESSION

The Workshop Training Session was conducted and presented by Dawn Melson-Williams, Principal Planner of the Planning Office and City Solicitor Dan Griffith. The workshop involved presentations, and questions and discussion from the Board of Adjustment members.

1. Training Session Topics:

- City Ordinances and State Code Provisions
- Role and Responsibilities of Board of Adjustment Members
- Conduct of Meetings
- Discussion of DRAFT Rules of Procedure

The Board of Adjustment was provided copies of the following documents:

-Zoning Ordinance, Article 9 – Board of Adjustment

-Delaware Code, Title 22, Chapter 3 Subchapter II

- Dover Code of Ordinances, Chapter 30-Standards of Ethical Conduct and Ethics Commission
- Copy of Superior Court of Delaware case: Middle Cap Associates, LLC v. Town of Middletown
- Draft Rules of Procedure of the Board of Adjustment of City of Dover Delaware.

PUBLIC COMMENTS OPPORTUNITY

Vice Chairman Senato stated that as an open meeting, the public is given the opportunity to provide comments the Board of Adjustment. He asked if there was anyone who wished to speak?

Mrs. Melson-Williams noted that the audience in the room is all City Staff, and there are no virtual attendees today. I do not believe we have any public wishing to speak.

Mr. Coburn made a motion to adjourn the meeting. It was seconded by Mr. Wagner and unanimously carried 4-0.

The meeting/training adjourned at 11:00 A.M.

Sincerely,
Maretta Savage-Purnell/km
Secretary/Acting Secretary

**CITY OF DOVER
BOARD OF ADJUSTMENT MINUTES
October 15, 2025**

A Regular/Hybrid Meeting of the City of Dover Board of Adjustment was held on Wednesday, October 15, 2025, at 9:05 A.M. in person in the City Council Chambers and using the phone/videoconferencing system Webex. Members present were Mr. Swalm, Mr. Coburn, Ms. Brinkley, Mr. Wagner and Mr. Senato (virtually).

Staff members present were City Solicitor Mr. Daniel Griffith, Mrs. Melson-Williams, Mrs. Savage-Purnell, and Mrs. Duca.

SELECTION OF ACTING CHAIR FOR the MEETING

Ms. Brinkley moved for approval to select Mr. Coburn as the Acting Chair for this meeting. The motion was seconded by Mr. Swalm and unanimously carried 5-0.

APPROVAL OF AGENDA

Mr. Swalm moved for approval of the agenda. The motion was seconded by Mr. Wagner and unanimously carried 5-0.

APPROVAL OF THE REGULAR BOARD OF ADJUSTMENT MEETING MINUTES OF AUGUST 20, 2025

Mr. Wagner moved for approval of the meeting minutes of August 20, 2025. The motion was seconded by Mr. Swalm and unanimously carried 5-0.

APPROVAL OF THE TRAINING SESSION MEETING MINUTES OF SEPTEMBER 17, 2025

The meeting minutes of September 17, 2025, are still being prepared. They will be considered for approval at the next meeting.

Acting Chairman Coburn mentioned that the next Board of Adjustment Meeting is Wednesday, November 19, 2025, at 09:00A.M.

Acting Chairman Coburn asked if there were any questions; there were none.

Status Update: Preparation of DRAFT Rules and Procedure

Mrs. Melson-Williams mentioned that as part of your Training Session back in September you were provided a Draft copy of a Rules of Procedure document to formally put in writing how you function at a meeting such as this to resolve some of those questions of tie votes, chairmanship and the like. Staff are continuing to review that as should you. At this point, I just wanted to keep it in front of you, and we will bring that back to you with some edits in the future. I know the City Solicitor took notes in this discussion you had in September. If Mr. Griffith has any other formal comments about the updates to establish the Rules of Procedure for this Board, we can go to him now.

City Solicitor Griffith mentioned that the only update he would have is that we discussed during

the Workshop one or two proposed edits. What was presented to the Board at the September 17, 2025, meeting was an initial DRAFT and intended as an editing process. We are starting the edits, and we would invite comments from any Board members and Staff. Once we get all those comments together, we can formalize and vote on the adoption of the Rules. Right now, as Dawn mentioned, we are in the editing process. All members have a copy of the DRAFT.

COMMUNICATIONS & REPORTS

Mrs. Melson-Williams mentioned that I don't believe we have any other items for you. Your next filing deadline is later this week. So, upon receipt of any new applications, the next Board of Adjustment Meeting is Wednesday, November 19, 2025, at 09:00A.M. We will keep you posted on that.

SPECIAL RECOGNITION

Resolution honoring the service of Mr. Kishor C. Sheth to the Board of Adjustment. Staff read the Resolution into the record. (Attached)

Mr. Wagner made a motion to adopt the Resolution honoring the service of Mr. Kishor C. Sheth. The motion was seconded by Mr. Swalm and unanimously carried 5-0.

Mr. Kishor C. Sheth said thanks to all of you. He mentioned that he enjoyed serving for 33 years and is wishing good luck as all of you continue the same job. Thank you. Acting Chair Coburn said thank you Mr. Sheth for your service.

Mrs. Melson-Williams asked if any other members have any comments; we can certainly take those now. She also mentioned his 33 years of service.

Mr. Senato mentioned that he served with KC for many years and he's been an inspiration for me. When I first came on, he taught me a lot. It was really a pleasure working with him and I wish him all the best. Thank you.

Mrs. Melson-Williams mentioned I think I would echo that for the Staff. Over the years KC has worked through multiple Directors and multiple Staff members that have provided support to the Board of Adjustment. We won't talk about the 33 years because I was still in college when he started.

OLD BUSINESS

Mrs. Melson-Williams mentioned for the record that there were no items of Old Business.

NEW BUSINESS

Mrs. Melson-Williams read the Procedure Statement for New Business.

Mrs. Melson-Williams noted that the legal notice for this Application was published in the Daily State News on October 3, 2025, and the property owners within 200 feet of the subject site were notified by letter sent by the Planning Office in accordance with the procedures for public notice of a variance application. The meeting agenda was posted on October 15, 2025, in accordance with the Freedom of Information Act requirements.

NEW BUSINESS

Mrs. Melson-Williams gave a brief overview of the Application V-25-05 referencing the Staff Review Report and Recommendations.

Mrs. Melson-Williams stated that the Presentation as noted and the Review Report of the Variance Request were previously provided to the Board and consists of a narrative and a list of Exhibits A through F that was attached. Exhibit A is the application materials as the Board of Adjustment Application Form and a Zoning Map Exhibit item which is Exhibit B was provided by Planning Staff. Exhibit C is the Applicant's written narrative. Exhibits D and E are the Site Plan as provided in two different sizes (depending on how well your eyes work) and then Exhibit F which is a series of architectural graphics that show information about the request and the building in particular. This application was advertised by the City's Planning Office in the local newspaper on October 3, 2025, and the mailing was completed on that same date. The applicant is going to be presenting a Presentation. They also provided that to us in hard copy; so, we will enter that as Exhibit G into the record.

Acting Chairman Coburn asked if there were any conflicts of interest. There was none.

Application #V-25-05

Property at 640 South State Street for the Bayhealth Medical Center – Kent Campus. A Request has been made for two Variances from the requirements of *Zoning Ordinance*, Article 4 §4.15 as associated with a proposed 10-story Hospital Bed Tower Building Addition. Variance Request #1 seeks to increase the allowable height from 150 feet to 175 feet for a new 10-story Hospital Bed Tower. Variance Request #2 seeks a reduction of the minimum 10-foot front yard setback to allow for building encroachment of the Bed Tower Elevators and Stairs were adjacent to South Street. The property is zoned IO (Institutional and Office Zone) and partially subject to the SWPOZ (Source Water Protection Overlay Zone). The owner of record is Bayhealth Medical Center, Inc. Property Addresses: 640 South State Street and 625 South Governors Avenue, Dover DE. The Tax Parcel ID is ED-05-077.13-01-52.00-000.

Representative(s): Mr. Michael Metzger, Bayhealth Medical Center; Mr. Gregory Moore, Engineer with the Becker Morgan Group

Mr. Michael Metzger was sworn in by City Solicitor Mr. Griffith.

Presentation

Mr. Metzger said thank you for this opportunity to tell you a little bit about our project and the why's and underlying items. My name is Michael Metzger, and I serve as the Vice President of Facilities and Support Services at Bayhealth. I have been with Bayhealth for about 21 years now and have overseen most of their projects from Milford up through Dover. This is an opportunity to tell you about our plans for the Bayhealth Kent Campus Expansion. Bayhealth's mission is to strengthen the health and community one life at a time. Ours is a safety responsibility. We help bring people into this world and we are there when people leave this world and we are there to bring comfort to their family. We're also there to plan events that require care and we do that every day. We are here for all of those things. And it should be no surprise to any of you that Delaware's population is growing quickly and a large cohort of that is the senior population. We

are trying to prepare for that as we come before you today. This means more patients to care for and those patients are sicker. Over the last two decades that I've been with Bayhealth, we have reinvested hundreds of millions of dollars in our facilities, both hospital and outpatients, to keep pace with changes and how care is delivered. But now we find ourselves at a crossroads. We currently need to add 64 beds immediately and an additional 32 beds by 2033. That's how large the community has grown, and that's how the needs of the community have come to us. That's even with us investing significantly in outpatient facilities and the move to render care considerably on an outpatient basis. What that has resulted in is more and more patients coming to us sicker because now they can't be taken care of with an outpatient basis. What does that mean? That means they spend more time with us and usually don't have the level of care and need intermediate care or intensive care. And we need to evolve to be able to meet those needs. We also need to modernize our facilities as more than 50% of our facilities are 45 years old or older. They were built in different standards and with different expectations. The slab-to-slab heights are such that modern utilities systems just do not fit in them. We can't move it on there; we can't provide the other required standards that are established in hospital codes. This would normally mean that we would renovate our existing buildings, but we just can't. We can't reimagine it through renovation. We need another answer. We believe that answer is to go upward. That answer was brought over almost 20 years ago when we established our first project on that campus and started the four-story building.

Hospitals are critical infrastructure to the community. They are built within natural disasters and to operate during times of outside utility services failure. We never close and we are open to serving people when the community needs us most. As such, we are different from every other building type in the I/O Zoning and we have to be because of what is required of us because of how we function. Also, it's what's required of the building fire and specialty codes that we're subject to. The example of those unique requirements is that hospitals are built to be defended in place should a fire or smoke condition occur within our walls. Because hospitals have patients that cannot preserve themselves. That is they cannot move themselves from an area in an emergency because we did the treatment they received or because of their condition. Hospitals are built in a manner to provide horizontal smoke and fire compartments. We move somebody from an area that's on fire to an area that's not on fire safely and also be able to move them very quickly. They are also built in a manner that requires us to have additional elevators and additional stair towers so that we move them horizontally should the fire continue. Last but not least, we have to be built in a manner to provide safe methods for our first respondents should they have to respond to help us. These systems occupy ceilings, mechanical rooms, and penthouses, and play a key role in ensuring they continue with a safe environment for our patients and those that care for them regardless of what is going on around them. These are large systems with redundant pathways that require space, significant space. It's space that you will not find in other commercial facilities and that is because hospitals are different; they need to be the human beings they are today. Strictly one of our former board members and former chair reminds us often that it's not a question of if, but a question of when you or a family member or a loved one's going to need the services of the local hospital and you want your hospital to be the best they can be. And today we're coming to you to ask that you consider our application. Bayhealth's been serving this community since 1927 in the same location on State Street. Over the years we've worked tirelessly to bring the best care to the patients and our patients in Dover. To continue that legacy, we need to rebuild our hospital, Dover's hospital. We are committed to

our mission. We're committed to Dover and the citizens. With that Gregg Moore will share the rest of the presentation.

Mr. Gregory Moore was sworn in by City Solicitor Mr. Griffith.

Presentation Continued:

Mr. Moore stated that he was proud to be here as a human being that was actually born in that hospital many years ago, I will leave out what year, but I am approaching being a senior citizen. So, this is an image of the building that we are proposing. That building was actually in this very chamber before the Planning Commission in 2006. I was here. Dawn was here and we did get approval to build a ten-story tower in the exact location that we're proposing now and as part of this application. We built four stories of that in our first phase in 2010 and that is the 2010 Pavilion. You can see that there in the dark (as he referred to the slide). All the lighter areas (as he referred to on the slide) are the older facilities, which I will call hospital sprawl that happened over many years. That is what Mike referred to as buildings that are 50 years and older. There's only one there, which is the building of 1986 that is going to remain as part of functional hospital and hospital beds as part of our proposed Master Plan. You can see in the center of all that, the old building that was commissioned in 1927 believe when the first patient came in and that building is embedded inside of all of that expansion around it as Dover and our community grew. But the problem is those parts of the building must remain in service because we have many functions there that we do every day and we can't take them out of service. But they don't meet current standards, they do not meet current Codes, and we cannot functionally renovate them to meet those standards or Codes. We'll go through that. This is a graphic showing inside the hospital. You can see it is positioned between Governors Avenue and South State Street. The blue is the main entrance and that main entrance is the new entrance that was built in 2010. And then behind it, you can see the pavilion; that's what we call the bottom of the ten-story tower where the beds will be and the actual individual rooms and the six-story tower on them. The key to this slide is that we have two other locations where people have to go for beds. That is a little bit difficult for our patients to find. One of those elevators (in green) is the oldest and is almost 425 feet from the main entrance. I know I've heard from my mother who was 89 years old and she tells me, Gregg, I can't walk 425 feet to find an elevator and then go up and walk through. It is becoming a problem with wayfinding and confusion. Not only does it affect our community and our patients, but it also affects our Staff because they have to be everywhere that makes us less efficient. So, the strategy of going vertical, one elevator up makes it simpler. Staff understands that it is efficient, and the community understands it. So, this is the same graphic, just a little bit of a different presentation, and this is what we call our Phase I. Our Phase I will be to build the ten-story tower, which means adding six stories on top of the four that we've already built. We also need significant improvements to our emergency department. We are having problems because we do not have enough beds. Mike mentioned that we need close to one hundred new beds to meet the demands. The problem that we are having now is we are getting people in our emergency department, and we are seeing more people in our emergency department, which is a nationwide issue. More people are coming in for instant care because of all kinds of issues in our community. We take them in and if they get stuck in the emergency department, they get stuck there because we don't have a bed for them to go to. We have to wait for a bed to clear, and that causes a backup; so we're trying to correct that issue. You may have been there, and you may have seen some of those delays. That's a huge issue for us. In the light blue is the tower and that

is a very, very small version of beds around the outside. Those are individual beds per room. Now we have a series of rooms that have two beds in them, and that's not modern healthcare. HIPAA (Health Insurance Portability and Accountability Act) and other regulations are more attuned to one person in the room so that your doctor can talk to you and that information isn't transferred to any other people. And it's a much better way to care for the hospital. The yellow piece at the far right is what we call the elevator tower and the stair that Mike referred to, and the blue is the same bed tower on the fourth floor all the way up to the tenth floor. The entrance off South State Street and the entrance off Governors Avenue, all those things won't change; we will do the same thing. Everything to the left is white is what we call the legacy buildings that are 40-50 years and even older than that.

Next is the engineering documents in your packet that we submitted with the two variances. On the left is the height variance, and on the right is the building restriction line projection. And if you blow it up a little bit further, you can see as we focus is the tower itself. In red is the tower and that little sliver of red along South State Street is the area that we are proposing that we need to project into the building restriction line, and it is about 3 feet at the bottom side of the shape. This is request number one; excuse me, we have two. If we go to the next slide, we are going address both of them. I want to make sure that you understand exactly where they are located and what they're doing before we make the request. The height variance is 150 to 175 feet. The current Code states 150 as Dawn told you, and we need to be at 175. The ten-story tower was approved in 2006, and we were going to be ten stories, and we were going to be 150 feet. We had not finished that; we built four stories. I do want to point out that the 150 does not include what we call the penthouse equipment on top of the roof. If we could build more than 20% of the roof area on top of this pavilion, we would not have to seek this request. It's not that we need more than ten stories; we are meeting the Code. It is that we have so much equipment on the building that makes our penthouse wider than the Code allows. Four of the ten stories are already constructed, and if you go to the next slide, you will see a building that is ten stories. This is actually a hotel. Notice that the total height of this building is 120. Almost all other buildings can be built at ten stories at a 150 feet with exception of a hospital and that is the clear space that we are going to go through. This building is actually being built at 120 feet. It has average floor height of 12 feet. Our averages are greater than 15 feet. So, at greater than 15 feet, ten stories, automatically you are over 150. We have the issue, which is why we are here.

This is actually a section looking from South State Street. You can see the hospital entrance that was built in 2010 on the existing podium. We call it that because the sixth bed tower floors are going to come above it. And that is what you see in white. And that's the purpose of today's conversation and request. Notice at the far-right side, you can see the clear spaces from floor to floor. All of them are 15 feet and four of them are 17 feet and two are 18 feet. And we'll talk about that and why that is. And that is really the reason why we are here. But what I want you to get from this slide is on the very top, you see the 18 feet which is the penthouse. That penthouse, we are going to cover up completely with our building to make it look better. We are actually going to cover our equipment which is heating, ventilation and air conditioning, air exchanges, etc. It will cover a large amount of our roof that we are going to cover with screening so that it looks like a building. And it will be more aesthetic, and you saw that on our first slide.

This is a section through a room. Notice on the right, the tenth floor is 18 feet tall, but look what's above it. There's almost 10 feet of structure. And then there is almost 5 feet of mechanical space to allow gases, heating, ventilation and air exchanges. All of these things that are more demanding in the hospital and require extra space. And that's why we're here today. Our structure needs to be stronger; we need to be able to withstand every kind of condition that we're going to get. And we can't have vibrations in our hospital. We have to be stable, and that's different than most buildings. If you're in a hotel, sometimes you can hear things on the sides, below, and above you. Here we cannot have that. We have to have a better structure and deeper. On the left is our typical room at 15 feet. There are Codes that actually require us to be in that realm; so, it's not just our request, it is actually Code driven. Many of our floors are 15 feet. So, the fact that we have more than four stories that are 17 to 18 feet is the reason we are here today. Next slide. This is the section from South State Street. You can see the bed tower above the podium in the top, right above the 17-foot section on the 5th floor, and then you can see the pipes coming down from the very top, which is the mezzanine and that mezzanine is 18 feet. So, all of that gets us to the 175. Just another section showing the actual room, very similar to the section that I showed you earlier.

Variance request number two is the exit stair and the elevator that is going to be projected out on the side of the building next to South State Street. It is about 3 feet at its minimum and about 8 feet at its maximum. It covers about 400 square feet. So, it's not that much of a projection, but it is essential to this building. It is essential because of the ingress and egress and fire and other conditions in case we have to evacuate the building, But it's mostly for our fire protection folks who are going to have to go in and get out of the building. The yellow shows that exact structure that is only for two purposes: the elevator and the stairs. It is going to be located at the other end of the building; the current stairs are located over by the main entrance on the far left of that building. And it is basically developing the existing bridge which already projects into the building restriction line. And as a result of that, we think that will make it easy to understand and it's not a big impact. Notice on the top those three red dots and the gray. That is the equipment on top of the roof that will provide all the heat, ventilating, and gas materials and exchanges, and it all will go down. Part of that is why we have to have so much structure and part of that is air exchange and infectious disease removal, etc. Next slide, this is a photograph from the Governors Avenue side of the existing bridge. We got approval of that bridge to project into the building restriction line back in 2006 and that structure there is actually supporting it. Our elevator and stair addition will run right into that and basically go straight up ten stories (the four stories that are currently there and the six stories that are not there yet). So visually, it's not a huge impact because this is already there. From South State Street, it's the same. We will not go to the sidewalk. There will be a gap between the sidewalk and this structure. It will look very usual to be able to see continuously down; we will not visually change the sidewalk at all. But that bridge is actually there, and it provides a connection to what we call our central utilities building over on the other property. This is where we bring materials to the hospital. Those materials come across the bridge, and we need this elevator to get those materials up vertically into the hundreds of new rooms officially and safer.

On this slide is the variance criteria; and Dawn referenced that as the information was included in your packet. There are four distinct criteria that we must demonstrate to you, so that we can request the variance. And hopefully we've done that. We'll go through each one individually. The

first one is the nature of the zone. Dawn was very good in her Report as she always is of it being very clear that the I/O Zoning allows us to do this. We've been there since 1927. The community is aware. The hospital is in a great spot with the two gateways coming into the City. Everybody knows where we are. We've operated for a long time, and we've been a good neighbor to our neighbors. It's a very appropriate zone for a hospital because of all those things.

The next criteria is the character of the immediate vicinity. We're going to look at a graphic here that's not in your packet. You can see in the center of this graphic, the Bayhealth insignia that's the old building, and the tower is shown graphically just as all the other slides are, the ten-story tower, and all of the blue Bayhealth with the insignia is property that Bayhealth owns in support of the facility itself. And those properties across from Governors Avenue are C-3 commercial. They've been there for decades. We have been coexisting with those commercial properties for decades. They're very aware of what we're doing. They're aware that we have a proposal for ten stories, as is Holy Cross on the I/O zone to the opposite side of South State Street. And there is also an RGO Zone which is yellow there with that logo and there is a doctor's office there. Certainly, that doctor's office wants to be near the hospital because it is very effective for their care and they can then get in and out of the hospital easily. So, we don't believe there's a big impact because of our length of stay and the nature of the users that surround us.

Item three is similar, if we remove this projection and go above 150, what impact are we going to have on our neighbors and will we affect them? If you go to the next slide, we don't think we will. This is the exact same slide. You can see our tower, which is where these variances are. It's in the center of our largest piece of property and the surrounds are almost all Bayhealth and support services for the hospital, parking, buildings, offices, etc. The closest building, which would be the C-3 commercial, is about 325 feet or almost a block from our tower projection above the 150 feet and the elevator stair that we are asking for. So, we believe that we are very compatible with our neighbors and that this has a minimal impact on them. Partly because we have been there so long and partly because it's already been approved. They know it and partly because of the tower positioning.

Item four is actually the legal standard of "Exceptional Practical Difficulty" and we have many. I'll go through them. Without the variance, we continue with wayfinding issues, distance problems, spread out multiple areas of bed care and different bed care. That is bad because the rooms in the old part of the hospital are different than the new rooms. They're not as modern. They don't have some of the code requirements, and we can't upgrade them. Mike told you that. The big reason that we are here is equipment. We have lots of equipment. We have lots of mechanical. We have to have a complete dual backup system, and we have heavy equipment, not only on the roof for the heating ventilation but inside the hospital, whether it's robotic equipment, whether it's imaging equipment or anything. We have a greater demand for a structure which pushes our height up.

We talked about the wayfinding challenges in terms of getting around the hospital. This will make it easier. Our community will be better served. The additional stairwell is essential for emergencies and there's nothing more important than handling an emergency to the hospital because that is where the people who need care the most and cannot move and cannot get around. We need to be able to get them out and that stairwell and that elevator tower allows that to happen more quickly for emergency evacuation. So, Mike talked about the Codes. This

building has Codes that address everything inside of it from vertical height. Notice the first one is new. Many of these Codes have been updated and require us to be higher since 2006. When COVID came earlier this decade, believe it or not, five years ago, the Codes were changed because of infectious disease. Everybody had masks. So, we now have to exchange air in and out of our facility at a higher rate so that is less of an issue inside the hospital because you're more susceptible to viruses when you're around other folks who are sick. So that requires us to put in more equipment, more air exchanges, more pipes requiring those structures above the rooms and below the rooms to be deeper. We have issues with the Energy Code; we have to have heat exchange. For Building codes in terms of structure, we have a 3-hour rating condition between floors. Most buildings are 2 hours. That 3-hour requires that structure to be deeper so that fire cannot penetrate up or down through those areas. Elevator and stair are for safety and Fire Codes; we talked about that. The big one here is the FGI regulations only to hospitals. They have just recently increased in 2021 the height required inside of a hospital room, and that is because of the patient lift that you see on the ceiling above the bed has had to move up because people were hitting some of that with their heads if they were tall. The COVID then said move that up, which is why our 15 foot is essential to us. And every single room has that mechanism in it just in case the patient needs to be moved. Lastly, there are the penthouse regulations. The City of Dover allows a penthouse on any building, but it only allows it to be 20% of the roof. And if it's more than 20% of the roof, it is considered part of the height, which is why we have our 175 feet request. We have to involve almost the entire roof because of all the demands of these Codes and air exchanges, etc. And in 2021, the City moved into 20-foot for the other projections of the building that would be above the roof like elevators. That limits the space that we can use for heating them. So, my point is, is that after 2006, there's been many code changes that have made height more of an issue to us that weren't there in 2006, and we think that's an Exceptional Practical Difficulty for us.

So it's maximizing our vertical for beds efficiency, we talked about that. If we can't do that, that is an Exceptional Practical Difficulty not only to the hospital but its workers but also to our community. And we think it's essential for modern health care, and you see that in most places. You see that in Milford. The Milford facility was built to that standard, and it operates much more efficiently. We are trying to match that here in Dover. Staying in operation all the time, that's essential. We cannot be out of service for any function. As a result of that, it's an Exceptional Practical Difficulty where we can build this tower. And since we have already built the podium, we need to be able to maximize the building above it. You may not know this, but the fourth floor that is below that proposed 6-story tower is what we call shell space. We designed it, we built it, and we left the shell so that we could go up six stories. That way we don't bother anybody on the first three stories. We will not take those first three floors out of the commission. We cannot do that. But that middle floor allows us to build on top of it and if we cannot do that, we have to go somewhere else and it completely changes our care.

I talked about the podium already being there. We had graphics showing that if you have any questions about that one, once I conclude you can certainly ask any questions. We cannot do it elsewhere. We do not want multiple towers. We want one tower for ease of use, and we think it's an Exceptional Practical Difficulty if we would have to do it elsewhere and keep it below the 150 feet. As I have mentioned, Dawn will confirm that the City does allow ability to be above 150 for mechanical equipment on top of the roof, that is permitted and normal. It's not counted in the

150, but Dawn would be the person that would make sure that you build all that equipment properly when you put it in the 20%. We already know we cannot do that. As a result, 18 feet of our request is to allow our equipment to be more than 20%. It is Exceptional Practical Difficulty because we must have that equipment by Code. With that I will turn it over for any questions. This is the exact same image that you saw below. The glass band is the building that is there and you are looking at the entrance which will remain. We want to maximize that, so people understand what the entrance of the facility is and continue using our hospital as they started before we finish this tower. So, with that I will answer any questions.

Acting Chairman Coburn asked the Board if they had any questions.

Are there any questions from the Board of Adjustment members?

Mr. Senato was curious regarding the property on South State Street where the lab is located. He wanted to know if it would be staying there or going around. What are you doing with that?

Mr. Moore asked what do you mean when you say on South State Street?

Mr. Senato mentioned where the entrance is located, the lower entrance on the ground across from the parking lot between South State Street and Governors Avenue where people go in that area there. Is there still going to be an entrance on the ground level or is that going to be eliminated and that area is going to be moved?

Mr. Moore stated that the parking will stay as is. The Emergency Department will stay on the Governors Avenue side and the entrance to the facility will stay as it is. We are, as part of this Application actually making improvements and heightening the levels of the Emergency Department for the reasons I said because we are slow there and we need to improve. We are doing a Master Plan and we are going to be back before the City. We're not done with that yet. We know that Phase I is essential to get us started. Our Master Plan will be presented to the City Staff probably December or January. We're working on that as we speak, but we are certain that our ten stories have to be able to be achieved which is why we're here now before we present the Master Plan. You may have seen some visions of that in the paper. And at the time we made this submission, we had not completed our work enough to actually include it here. And in addition to that, we have many properties and we wanted to focus on the ten stories so that it was very clear what we were asking for in this request. On Monday, I will appear before the Planning Commission for a Rezoning. I did not point out the one RGO piece of property which does allow for doctor and medical offices. We are going to request that for the I/O Zone so that our entire property is all zoned the same. That is pending as well.

Mr. Senato said thank you sir.

Acting Chairman Coburn asked the Board if they had any additional questions.

Mr. John Pardee, Attorney with the law firm of Brockstedt Mandalas Federico, LLC, here in Dover, Delaware and Counsel for the hospital. I just wanted to make for the record a brief statement about the legal standard, and you've heard Mr. Moore say "Exceptional Practical Difficulty." That is in fact the standard; I'm sure this Board is familiar with that. It was first

defined by the Delaware Supreme Court in 1978 in a case called Board of Adjustment of Newcastle County versus Kwik-Check Realty. The Delaware Supreme Court says that the “Exceptional Practical Difficulty” is present where the harm to the applicant if the variance is denied will be greater than the probable effect on neighboring properties if the variance is granted. So, it is literally a balancing test. You look at what is the harm to the applicant if you deny the request of the variance which Mr. Moore did a nice job of explaining that it would be pretty severe here. The hospital would not be able to deliver the quality of care that it needs to for its community. So it's really an “Exceptional Practical Difficulty,” not just for the hospital, but for the future healthcare needs of the community. Versus on the other side, what is the probable effect to neighboring properties if you grant the variances.

Mr. Moore also made a nice record of the fact that impact will be minimal if any, because we own most of the properties around the proposed tower. And the businesses on Governors Avenue and the church across South State Street has coexisted with the hospital for decades and it's my understanding that they have no objection and are actually supported. As Mr. Moore outlined, this ten-story tower was originally proposed and approved back in 2006, so it's not a secret that this was coming. In that event, the point is simply we need to satisfy the legal standard, and we thank you for your consideration.

Acting Chairman Coburn opened the public hearing.

Acting Chairman Coburn asked if there was anyone who would like to speak against the Variance Application. There was none.

Mrs. Melson-Williams noted that there were no other attendees that have joined us virtually for the meeting. I am not seeing anyone in the audience raise their hand to speak against the application.

Acting Chairman Coburn asked if there was anyone in the audience or online who would like to speak in favor of the Variance Application.

Mr. Zach Prebula, Director of Operations at Kent Economic Business Partnership, was sworn in by City Solicitor Mr. Griffith.

We are the Economic Development Organization for Kent County. So, we focus on business attraction but also supporting businesses through their expansion progress as well. This is a great example of a local company looking to do just that and expand their health care service to support the needs of a growing population in Kent County. This here is a great demonstration of one of our largest employers looking to support this community and confirm their commitment to this area by increasing new services. And for those reasons, we ask you to please approve these variances. Thank you.

Mrs. Melson-Williams stated that there are no other participants online or members of the public wishing to participate in today's public hearing and I'm not seeing any other members of the public raise their hands.

Acting Chairman Coburn asked if there was any additional correspondence received for this Application? Mrs. Melson-Williams noted that there was no written correspondence received regarding this application.

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

Acting Chairman Coburn asked the Board if they had any questions. There was none.

Mr. Senato made a motion for Variance Request #1, Variance Application V-25-05 be granted to increase the allowable height from 150 feet to 175 feet for a new 10-story hospital bed tower. And Variance Request #2 for a reduction of the minimum 10-foot front yard setback to allow for building encroachment of the Bed Tower Elevators and Stairs adjacent to South State Street. There will be hardship if these two requests were not permitted due to the extent of the hospital and what they do for the community. The motion was seconded by Mr. Swalm.

Acting Chairman Coburn asked the Board if they had any additional questions. There was none.

Roll Call Vote

- Mr. Wagner – yes, one of the things that concerned me was fire safety/patients. I have to compliment both Staff and Bayhealth for addressing those fully.
- Mr. Swalm – yes, my reasons are that the nature of the zone in which the property lies is consistent. The characteristics are also consistent in the immediate vicinity. It's all health care. And I also do believe if the restriction weren't removed, it would prevent and be an Exceptional Practical Difficulty to the hospital in providing the health care that they need to provide for the region.
- Ms. Brinkley – yes, to approve variance request number one and number two, because Bayhealth has been a long-standing organization in our community. They've been around for a long time with the safety and health of our community. I believe that it would be a wonderful addition and we've already started it, so let's complete this wonderful project.
- Mr. Senato – yes, I made the motion to approve because the presenter definitely based on the information shown and heard that there would definitely be a hardship with and it would not allow the expansion of the programs or the height for the tower. And we definitely know that they do a great service and following the Board of Adjustment Code Section 2.11 and I believe 2.12, they definitely proved a hardship.
- Mr. Coburn - yes, I vote for the approved variances. Without the variances it would create a hardship for the hospital and they would not be able to do the expansion and the expansion will definitely serve the community.

There are five members in favor of the motion, and no one opposed to approve the Variances is successful. Vote 5-0.

Public Comments Opportunity

Mrs. Melson-Williams stated that there were no additional members of the public that have joined us online or any members of the public wishing to speak.

Mr. Senato apologized for technical difficulties at the beginning of the meeting. He thanked everyone for their patience.

Mr. Swalm made a motion to adjourn the meeting. It was seconded by Mr. Wagner and unanimously carried 5-0.

The meeting was adjourned at 10:16 A.M.

Sincerely,
Maretta Savage-Purnell/km
Secretary/Acting Secretary



Resolution

***Whereas, Mr. Kishor “KC” Sheth** became an appointed member of the City of Dover Board of Adjustment on July 27, 1992 and has served with diligence and distinction in this capacity to ensure that the spirit of the City’s Zoning Ordinance is observed and substantial justice is done; and,*

***Whereas, Mr. Kishor “KC” Sheth** has played a role in ensuring fundamental fairness and careful forethought in the interpretation of the Zoning Ordinance to ensure undue hardship and exceptional practical difficulties are mitigated by the granting of variances through his service on the Board of Adjustment; and,*

***Whereas, Mr. Kishor “KC” Sheth** in reviewing and deliberating on variance applications considered a property’s zoning classification, character of the area, effects on neighboring properties and uses, and the creation of exceptional practical difficulties for property owners seeking to make normal improvements to their properties; and,*

***Whereas, Mr. Kishor “KC” Sheth** served as the Chairman of the Board of Adjustment leading each meeting’s proceedings in the consideration of applications and sharing his knowledge of previous applications acted upon; and,*

***Whereas, Mr. Kishor “KC” Sheth** completed his term of service on the City of Dover Board of Adjustment in August 2025.*

*Now Therefore Be It Resolved That, the City of Dover Board of Adjustment does hereby express its sincere appreciation to **Mr. Kishor “KC” Sheth** for his faithful and diligent service to the Citizens of the City of Dover as an active member of the City of Dover Board of Adjustment and extends it best wishes to **Mr. Kishor “KC” Sheth** in future endeavors.*

Richard Senato
Board of Adjustment Vice-Chair

Sharon Duca
Assistant City Manager

2026 City of Dover, Delaware BOARD OF ADJUSTMENT



Item 3.

Here is the Schedule of the Application Deadlines and Board of Adjustment Meeting dates for the year **2026**. The submittal procedures for the Board of Adjustment are outlined in *Zoning Ordinance*, Article 9, Section 3. Prior to an Application submission, a Pre-Application Meeting with Planning Staff is required. The Board of Adjustment Meetings are typically scheduled for 9:00AM start time and held at City Hall in Council Chambers.

<u>MONTH</u>	<u>DEADLINE DATE</u>	<u>MEETING DATE</u>
JANUARY	12/12/2025	01/21/2026
FEBRUARY	01/16/2026	02/18/2026
MARCH	02/13/2026	03/18/2026
APRIL	03/13/2026	04/15/2026
MAY	04/17/2026	05/20/2026
JUNE	05/15/2026	06/17/2026
JULY	06/12/2026	07/15/2026
AUGUST	07/17/2026	08/19/2026
SEPTEMBER	08/14/2026	09/16/2026
OCTOBER	09/11/2026	10/21/2026
NOVEMBER	10/16/2026	11/18/2026
DECEMBER	11/13/2026	12/16/2026
JANUARY	12/18/2026	01/20/2027

For Information Contact:

City of Dover
Department of Planning & Inspections
City Hall at 15 Loockerman Plaza, P.O. Box 475 Dover, DE 19903
(302) 736-7196 Planning Office Phone
(302) 736-4217 Fax
www.cityofdover.gov Email: compplan@dover.de.us

ARTICLE 9. BOARD OF ADJUSTMENT

Section 1. Creation, appointment and organization.

There shall be a board of adjustment pursuant to the provisions of chapter 3 of title 22, Municipalities, of the Delaware Code Annotated (22 Del. C. § 301 et seq.).

Section 2. Powers and duties.

The board of adjustment shall have the powers and duties as specified in Delaware Code Annotated (22 Del. C. § 301 et seq.) and as articulated below:

- 2.1 *Variance.* The board shall have the authority to authorize variances from provisions of the zoning ordinance that are not contrary to public interest where the board determines that a literal interpretation of the zoning ordinance would result in undue hardship or exceptional practical difficulties to the applicant. In granting variances, the board shall determine that the spirit of the zoning ordinance is observed and substantial justice done.
- 2.11 *Area variance.* A variance shall be considered an area variance if it relates to bulk standards, signage regulations, and other provisions of the zoning ordinance that address lot layout, buffers, and dimensions. In considering a request for an area variance, the board shall evaluate the following criteria and document them in their findings of fact:
- (a) The nature of the zone in which the property lies;
 - (b) The character of the immediate vicinity and the contained uses therein;
 - (c) Whether, if the restriction upon the applicant's property were removed, such removal would seriously affect neighboring properties and uses; and
 - (d) Whether, if the restriction is not removed, the restriction would create unnecessary hardship or exceptional practical difficulty for the owner in his efforts to make normal improvements in the character of that use of the property that is a permitted use under the provisions of the zoning ordinance.
- 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.

2.2 *Appeal of administrative order, requirement, decision, or determination.* The board shall have the authority to hear and decide appeals where it is alleged there is any order, requirement, decision or determination made by an administrative official in the enforcement of the zoning ordinance. Appeals to the board may be made by any person aggrieved or by any officer, department, board or bureau of the municipality affected by any decision of an administrative officer.

Section 3. Procedure.

The powers and duties of the board of adjustment shall be exercised in accordance with the following procedure:

- 3.1 The board of adjustment shall not decide upon any appeal or variance without first holding a public hearing, notice of which hearing and of the substance of the appeal or application shall be given by publication in the official newspaper of the city at least ten days before the date of such hearing. In addition to such published notice, the board of adjustment shall cause notice to be given of the substance of every appeal for a variance, together with notice of the hearing thereon, by causing notices thereof to be mailed by postal card or other means at least ten days before the date of said hearing to the owners of all property abutting that held by the applicant in the immediate area (whether or not involved in such appeal) and all other owners within 200 feet, or such additional distance as the board of adjustment may deem advisable, from the exterior boundaries of the land involved in such appeal, as the names of said owners appear on the last completed assessment roll of the city. Any or all of the notices required by this subsection shall be issued by the office of the city planner on order of the board of adjustment or upon order of the chairperson of said board if the appeal is received when the board is not in session and the chairperson deems it necessary or desirable to expedite the public hearing on such appeal. Provided that due notice shall have been published as above provided and that there shall have been substantial compliance with the remaining provisions of the subsection, the failure to give notice in exact conformance herewith shall not be deemed to invalidate action taken by the board of adjustment in connection with the granting of any appeal or variance.
- 3.2 If the land involved in an appeal or application lies within 500 feet of the boundary of any other incorporated municipality, the city planner shall also transmit to the municipal clerk of such other municipality a copy of the official notice of the public hearing thereon not later than the day after such notice appears in the official newspaper of the city.
- 3.3 Unless work is commenced and diligently prosecuted within one year of the date of the granting of a variance, such variance shall become null and void.
- 3.4 All variance applications and appeals made to the board of adjustment shall be in writing, on forms prescribed by the board. All variance requests and appeals from an order, requirement, decision or determination made by an administrative official, board or agency of the city shall be accompanied by a fee as provided for in Appendix F—Fees and Fines. The board of adjustment may, in its discretion, return to the applicant part or all of the fee paid by him in the event that his appeal under section 2.2 Appeal of administrative order, requirement, decision, or determination hereof is partially or wholly successful. The fees filed in connection with applications under section 2.1 Variance shall not be returnable, regardless of disposition of the case by the board.

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- 3.5 Each variance application or appeal shall fully set forth the circumstances of the case. Every variance application or appeal shall refer to the specific provision of the ordinance involved, and shall exactly set forth, as the case may be, the interpretation that is claimed, the details of the variance that is applied for and the grounds on which it is claimed that the same should be granted.
- 3.6 Every decision of the board of adjustment shall be recorded in accordance with standard forms adopted by the board, and shall fully set forth the circumstances of the case and shall contain a full record of the findings on which the decision is based. Every decision of the board shall be filed by case number, together with all documents pertaining thereto.
- 3.7 All the provisions of this ordinance relating to the board of adjustment shall be strictly construed. The board, as a body of limited jurisdiction, shall act in full conformity with all provisions of law and of this ordinance and in strict compliance with all limitations contained therein; provided, however, that if the procedural requirements set forth in this section have been substantially observed, no applicant or appellant shall be deprived of the right of application or appeal.
- 3.8 Whenever the board of adjustment denies an application for variance, such application for variance, or an application on the same property which is substantially similar, shall not be accepted for reconsideration by the board of adjustment sooner than one year from the date of denial.
- (Ord. of 7-12-1982, § 4; Ord. of 6-24-1991; Ord. of 7-12-2004(2) ; Ord. of 4-28-2008(2); Ord. No. 2009-09, 6-22-2009; Ord. No. 2010-18, 8-9-2010)



Title 22

Municipalities

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Subchapter II Boards of Adjustment

§ 321 Creation and powers.

The legislative body of cities or incorporated towns shall provide for the appointment of a board to be known as the board of adjustment and in the rules and regulations adopted pursuant to the authority of this chapter shall provide that the board may, in appropriate cases and subject to appropriate conditions and safeguards, make special exceptions to the terms of the ordinance in harmony with its general purpose and intent and in accordance with general or specific rules therein contained.

(39 Del. Laws, c. 22, § 8; Code 1935, § 6234; 22 Del. C. 1953, § 321.)

§ 322 Composition; terms of office.

(a) In cities or incorporated towns not having heretofore adopted a home rule charter pursuant to Chapter 8 of this title, the board of adjustment shall consist of all of the following members or their authorized agents:

- (1) The chief engineer of the street and sewer department, the public works commissioner, or the city manager.
- (2) The city solicitor.
- (3) The mayor.

If the city or incorporated town has no city engineer or public works commissioner, or city solicitor, then the mayor or chief executive of such city or town shall appoint 2 members, each to be appointed for a term of 3 years and removable for cause by the appointing authority upon written charges and after public hearing, who, with the presiding officer of the zoning commission, shall constitute the board of adjustment for such city or town. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant.

(b) In cities or incorporated towns having heretofore or hereafter adopted a home rule charter pursuant to Chapter 8 of this title, the legislative body thereof may establish a board of adjustment consisting of 5 members who shall be residents of the city or incorporated town and who shall have knowledge of and experience in the problems of urban or suburban or rural development, and who, at the time of appointment, shall not be candidates-elect for or incumbents of an elective public office. The mayor or chief executive officer of such city or incorporated town, with consent of the legislative body thereof, shall appoint 4 members for terms of 4 years, provided that the terms of the original members shall be established in a manner that 1 shall expire each year. The mayor or chief executive officer of such city or incorporated town, with the consent of the legislative body thereof, shall appoint 1 member who shall be chairperson and who shall serve at the pleasure of that appointing official. The members shall be entitled to compensation as determined by the city or incorporated town.

(c) In the event that a city or incorporated town qualifying under subsection (b) of this section fails to establish a board of adjustment as permitted in subsection (b) of this section, the board of adjustment shall consist of those persons designated in subsection (a) of this section.

(d) (1) Anything heretofore in this section to the contrary notwithstanding, any city or town, by its legislative body, may establish a board of adjustment consisting of not less than 3 nor more than 5 members who shall be residents of the city or town and who shall have knowledge of the problems of urban or suburban or rural development and who, at the time of appointment and throughout the term of office, shall not be candidates nor members of the legislative body nor employees of the city or town. The mayor or chief executive officer of such city or town shall appoint such members of the board of adjustment, and all such appointments shall be confirmed by a majority vote of the elected members of the legislative body.

(2) All appointments shall be for a period of 3 years, provided that the terms of the original members shall be established in such a manner that the term of at least 1 member shall expire each year and the successor shall be appointed for a term of 3 years. The board of adjustment so selected shall elect from among their own number a chairperson and a secretary.

(3) Any member of the board of adjustment may be removed from office by the legislative body for cause after a hearing by a majority vote of all the elected members of the legislative body of such city or town. A vacancy occurring otherwise than by the expiration of term shall be filled for the remainder of the unexpired term in the same manner as an original appointment.

(39 Del. Laws, c. 22, § 8; Code 1935, § 6234; 22 Del. C. 1953, § 322; 57 Del. Laws, c. 717; 58 Del. Laws, c. 276; 59 Del. Laws, c. 137, § 1; 64 Del. Laws, c. 284, § 1; 70 Del. Laws, c. 186, § 1; 78 Del. Laws, c. 211, § 1; 81 Del. Laws, c. 218, § 1.)

§ 323 Rules; meetings; administration of oaths; records.

The board of adjustment shall adopt rules in accordance with any ordinance adopted pursuant to this chapter. Meetings of the board shall be held at the call of the chairperson and at such other times as the board may determine. Such chairperson, or in the chairperson's absence, the acting chairperson, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The board shall keep minutes of its proceedings showing the vote of each member upon each question or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record.

(39 Del. Laws, c. 22, § 8; Code 1935, § 6234; 22 Del. C. 1953, § 323; 70 Del. Laws, c. 186, § 1.)

§ 324 Appeals to board.

Appeals to the board of adjustment may be taken by any person aggrieved or by any officer, department, board or bureau of the

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

(39 Del. Laws, c. 22, § 8; Code 1935, § 6234; 22 Del. C. 1953, § 324.)

§ 325 Stay of proceedings.

An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the board of adjustment after the notice of appeal has been filed with the officer that, by reason of facts stated in the certificate, a stay would in the officer's opinion cause imminent peril to life or property. In such case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board or by a court having jurisdiction on application on notice to the officer from whom the appeal is taken and on due cause shown.

(39 Del. Laws, c. 22, § 8; Code 1935, § 6234; 22 Del. C. 1953, § 325; 70 Del. Laws, c. 186, § 1.)

§ 326 Notice and hearing on appeal.

The board of adjustment shall fix a reasonable time for the hearing of the appeal, give public notice thereof, as well as due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing any party may appear in person, by agent or by attorney.

(39 Del. Laws, c. 22, § 8; Code 1935, § 6234; 22 Del. C. 1953, § 326.)

§ 327 Determinations of board.

(a) The board of adjustment may:

(1) Hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official in the enforcement of this chapter or of any ordinance adopted pursuant thereto;

(2) Hear and decide special exceptions to the terms of the ordinance upon which the board is required to pass under such ordinance;

(3) Authorize, in specific cases, such variance from any zoning ordinance, code or regulation that will not be contrary to the public interest, where, owing to special conditions or exceptional situations, a literal interpretation of any zoning ordinances, code or regulation will result in unnecessary hardship or exceptional practical difficulties to the owner of property so that the spirit of the ordinance, code or regulation shall be observed and substantial justice done, provided such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of any zoning ordinance, code, regulation or map; provided, however, that notwithstanding any provision of law to the contrary, the legislative body of any city or incorporated town may, by ordinance, vest a designated town official or department with authority to administratively grant a dimensional variance for existing conditions that do not exceed 1 foot of the required dimension restrictions without the application being considered by the board of adjustment, subject to the standards, procedures and conditions set forth in the ordinance granting such authority.

(b) In exercising the powers provided in subsection (a) of this section the board may, in conformity with this chapter, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken.

(39 Del. Laws, c. 22, § 8; Code 1935, § 6234; 22 Del. C. 1953, § 327; 65 Del. Laws, c. 61, § 1; 76 Del. Laws, c. 371, § 1.)

§ 328 Appeal to Superior Court from board's decision.

(a) Any person or persons, jointly or severally aggrieved by any decision of the board of adjustment, or any taxpayer or any officer, department, board or bureau of the municipality may present to the Superior Court a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the Court within 30 days after the filing of the decision in the office of the board.

(b) Upon the presentation of the petition, the Court may allow a writ of certiorari directed to the board to review such decision of the board and shall prescribe therein the time within which a return thereto must be made and served upon the relator's attorney, which shall not be less than 10 days and may be extended by the Court. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the Court may, on application, on notice to the board and on due cause shown, grant a restraining order.

(c) The Court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.

(39 Del. Laws, c. 22, § 8; Code 1935, § 6234; 22 Del. C. 1953, § 328.)

§ 329 Priority of proceedings.

All issues in any proceeding under this subchapter shall have preference over all other civil actions and proceedings.

(39 Del. Laws, c. 22, § 8; Code 1935, § 6234; 22 Del. C. 1953, § 329.)

§ 330 Hearing on appeal.

If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take such evidence as it may direct and report the same to the court with findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made.

(39 Del. Laws, c. 22, § 8; Code 1935, § 6234; 22 Del. C. 1953, § 330; 70 Del. Laws, c. 186, § 1.)

§ 331 Record on appeal.

The board of adjustment shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by the writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified. The cost of a transcript of the hearing appealed from is the responsibility of the person appealing the decision, unless the cost is awarded against the board as provided in § 332 of this title.

(39 Del. Laws, c. 22, § 8; Code 1935, § 6234; 22 Del. C. 1953, § 331; 73 Del. Laws, c. 38, § 1.)

§ 332 Costs on appeal.

Costs shall not be allowed against the board of adjustment, unless it appears to the Court that it acted with gross negligence, in bad faith or with malice in making the decision appealed from. For purposes of this section, the word “costs” includes all fees paid or owed to the Prothonotary’s Office in connection with the appeal to the Superior Court and all documented out-of-pocket expenses incurred by the board of adjustment in preparing, filing and serving sufficient copies of the record of the proceedings appealed from, including but not limited to expenses for photocopying, copying and/or duplication of survey drawings or plots, audio tape recordings, video tape recordings, computer discs, and expenses for preparing the transcript of the hearing.

(39 Del. Laws, c. 22, § 8; Code 1935, § 6234; 22 Del. C. 1953, § 332; 73 Del. Laws, c. 38, § 2.)

RULES OF PROCEDURE OF THE BOARD OF ADJUSTMENT OF CITY OF DOVER, DELAWARE

These rules shall govern the procedure of the Board of Adjustment of the City of Dover, Delaware.

Definitions

"Agenda" includes but is not limited to a general statement of the major issues expected to be discussed at a public meeting, as well as a statement of intent to hold an executive session and the specific ground or grounds therefor.

"City" means the City of Dover, Delaware, unless otherwise specified.

"Board of Adjustment" or **"Board"** means the Board of Adjustment of the City of Dover, Delaware.

"Meeting" means the formal or informal gathering of a quorum of the members of the Board of Adjustment for the purpose of discussion or taking action on public business.

"Chairman" means the Chairman of the Board of Adjustment.

"Presiding Officer" means the Chairman of the Board of Adjustment, or such other person who presides over the meetings of the Board of Adjustment, pursuant to the Rules of the Board of Adjustment.

"Public business" means any matter over which the Board of Adjustment has supervision, control, jurisdiction or advisory power.

Rule 1 - Duties

- 1.1 The Chairman shall preside at all meetings or hearings of the Board, decide all points of order or procedure, and perform all duties required by law or these Rules.
- 1.2 The Department of Planning and Inspections shall conduct, at the discretion of the Board, all official correspondence of the Board, send out all notices required by law and by these Rules of Procedure, keep records of each examination of other official action of the Board and perform all duties required by law and these Rules of Procedure.
- 1.3 In the absence of the Chairman, the presiding officer, with all powers and duties of the Chairman enumerated herein, shall be the Vice-Chairman as elected from its membership by a majority vote of all of the members of Board of Adjustment. In the absence of the Vice-Chairman, the presiding officer, with all powers and duties of the Chairman enumerated herein, shall be such other member of the Board of Adjustment as is elected by a majority vote of the members of Board of Adjustment present.

Rule 2 - Order of Business; Conduct of Meetings

- 2.1 The order of business at each regular meeting of the Board of Adjustment shall be as follows:
 - Call to Order
 - Pledge of Allegiance
 - Roll Call
 - Approval Agenda
 - Approval of Minutes
 - Communications of Reports
 - Old Business
 - New Business
 - Adjournment

- 2.2 The order of business can be altered at any duly constituted meeting by an affirmative vote of a majority of the Board of Adjustment members present. The privilege of the floor may be granted to the public at any time by presiding officer.
- 2.3 During public hearings, the presiding officer may set reasonable time limits on public comments. An individual may submit a written statement in lieu of or in addition to verbal comments. The presiding officer may terminate or limit testimony which is irrelevant or unduly repetitive.
- 2.4 Every attempt will be made to complete all business scheduled. In the event that the presentation of a scheduled agenda item takes longer than reasonably anticipated, the presentation may be suspended by approval of majority of the Board of Adjustment members present. A motion to suspend a presentation should, to the extent possible, include the date and time at which the remainder of the presentation will be heard.
- 2.5 Testimony at public hearings shall be taken under oath which shall be administered by the Board's attorney or any other individual as may be directed by the presiding officer.

Rule 3 - Meetings of the Board of Adjustment

- 3.1 Regular meetings shall be held in City of Dover City Hall Council Chamber or such other location as designated by majority vote of all the members of the Board of Adjustment.
- 3.2 Regular meetings shall convene at 9:00 A.M. on those days when a meeting has been properly noticed and advertised.

- 3.3 Special meetings and executive sessions may be held as provided in Title 29, Chapter 100 of the Delaware Code. Special meetings may be called by the Chairman upon at least 48 hours' notice to each member. The Chairman shall call a special meeting within 10 days of receipt of a written request from any two members of the Board. Notice of a special meeting shall include an explanation as to why the notice required in Rule 4 could not be given.
- 3.4 Except for executive sessions, all meetings shall be open to the public.
- 3.5 Minutes of all meetings, including executive sessions, shall be kept and made available for public inspection and copying. At a minimum, the minutes shall include a record of attendance and a record, by individual members of the Board of Adjustment, of each vote taken and each action agreed upon.

Rule 4 - Public Notice of Meetings

- 4.1 Public notice of all meetings shall be posted on the public bulletin board located in City Hall and on the official City of Dover website.
- 4.2 Public notice, property posting and advertisement of meetings and public hearings shall comply with all applicable provisions of State law and City of Dover ordinances. In addition, notice of a public hearing shall be mailed to an appellant or applicant (or attorney or agent of the appellant or applicant) at least 15 days before the date of the hearing.

Rule 5 - Agenda

- 5.1 The agenda for Board of Adjustment meetings shall be available to members of the Board of Adjustment at least one week prior to the scheduled meeting.
- 5.2 The Director of the Department of Planning and Inspections shall be responsible for the preparation and contents of the agenda. Any member of the Board of Adjustment may place items on the agenda by contacting the Director of Planning and Inspections, either verbally or in writing, prior to the posting of the agenda. Any other person may

request to have items placed on the Board of Adjustment agenda by notifying the Director of Planning and Inspections, in writing; provided, however, that items requested to be placed on the agenda that are not, in the opinion of the Director or Planning and Inspections, of Board of Adjustment jurisdiction, or which do not meet requirements of notice or advertisement, will not be placed on the posted agenda. Those items that do not qualify as Board of Adjustment business will be responded to by the Director of Planning and Inspectiuons and copied to the members of the Board of Adjustment.

- 5.3 Items which arise at the time of the Board of Adjustment's meeting may be added to the agenda, and items may be deleted from the agenda, by a majority vote of all of the members of the Board of Adjustment present, subject to requirements of advertisement and other applicable provisions of state law and City of Dover ordinance.

Rule 6 - Attendance of Members of the Board of Adjustment at meetings; Quorums

- 6.1 No members of the Board of Adjustment shall be absent from scheduled meetings or from other official duties without cause. When

unable to attend a scheduled meeting, a member of the Board of Adjustment shall be responsible for notifying one of the following: the Chairman, the Director of Planning and Inspections, another Board of Adjustment member, or a staff member of the Office of Planning and Inspections.

- 6.2 The presence of no less than three (3) members of the Board of Adjustment shall constitute a quorum.
- 6.3 When a quorum is not present at any properly called meeting, the members of the Board of Adjustment present may adjourn.
- 6.4 If no members of the Board of Adjustment are present, any staff member of the Office of Planning and Inspections may adjourn the meeting.
- 6.5 Three (3) affirmative votes shall be required to approve any special use exception or variance. Failure to receive three (3) affirmative votes shall be deemed to disapprove any matter.
- 6.6 Any other matter may be decided by majority vote of Board of Adjustment members present.

Rule 7 - Voting Procedure

- 7.1 On each motion duly made and seconded, the presiding officer shall call the roll or determine the vote in some other manner, and announce the results.
- 7.2 A written record shall be made of the vote by each member of the Board of Adjustment on each vote taken. Said record shall also reflect the number of "aye" votes, the number of "nay" votes and the number of "abstaining" votes.

Rule 8 - Record Keeping

- 8.1 A file shall be kept in the Office of Planning and Inspections of all Board of Adjustment meetings. The file shall include copies of meeting notices (including the time, date and place where they were posted), the agenda and the minutes of the meeting.

Rule 9 - Minutes of Board of Adjustment Meetings

- 9.1 Minutes shall be taken of each meeting of the Board of Adjustment, and shall reflect the following:
- a. Kind of meeting.
 - b. Date and place of meeting.
 - c. Name of the presiding officer.
 - d. Members of Board of Adjustment present.
 - e. Whether the minutes of the previous meeting were approved.
 - f. The proceedings of the Board of Adjustment, briefly and accurately stated. The minutes shall record what was done rather than what was said. However, a member of Board of Adjustment may request that a statement or written material be attached to the minutes and made a part thereof.
 - g. All motions voted upon and the results of said motions.
 - h. Names of members of Board of Adjustment making motions and those making secondary motions.
 - i. A record by individual members of Board of Adjustment, of each vote taken and action agreed upon.
 - j. Time of convention and adjournment.

- 9.2 Minutes shall be taken, prepared and presented by a staff member of the Office of Planning and Inspections and the Board's attorney in written form for approval as written or as amended. The minutes as approved shall be filed in the minute book of the Board of Adjustment. Copies of the approved minutes shall be made available to the general public, except as otherwise authorized by law.
- 9.3 Recordings will be made of all Board of Adjustment meetings at which City of Dover business is transacted. The recordings shall be under the custody of the Director of Planning and Inspections and shall be open to inspection and copying in accordance with applicable law regarding access to public records.

Rule 10 - Conduct During Meetings

- 10.1 When a member of Board of Adjustment desires to speak, that member shall address the presiding officer and shall not proceed until recognized and granted the privilege of the floor. The presiding officer shall recognize the member of Board of Adjustment who is the first to address the presiding officer.
- 10.2 No member of Board of Adjustment shall interrupt another in debate without the consent of the other. To obtain such consent, the member shall first address the presiding officer.
- 10.3 If any member of Board of Adjustment, in speaking or otherwise, transgresses the Rules of the Board of Adjustment, the presiding officer shall, or any member of Board of Adjustment may, call the errant member to order. When a member shall be called to order, that member shall not proceed without the permission of the presiding officer.

Rule 11 - Change or Suspension of Rules

Any rule of the Board of Adjustment may be changed or suspended by the approval of a majority of all of the members of the Board of Adjustment.

Rule 12 - Rules of Order

- 12.1 These rules have been adopted in order to provide an orderly procedure for matters coming before the Board. However, these rules shall be interpreted and applied so as to afford substantial justice and to promote a fair but efficient hearing procedure. Consequently, strict adherence to these rules shall not be required but the Board may modify and digress from these rules for reasonable cause as the situation may demand. In the event that any rule herein contradicts state law or City of Dover ordinance, such rule shall be construed in compliance with such statute or ordinance. In the event that any of the foregoing rules is declared illegal or unenforceable by any court of competent jurisdiction, the balance hereof shall remain in full force and effect.

Rule 13 - Standards of Conduct

- 13.1 Persons attending Board of Adjustment meetings shall observe appropriate dress standards and standards of conduct. Attire that may distract from the proceedings shall not be permitted.
- 13.2 Persons attending Board of Adjustment meetings may wear one (1) "cause supporting sign" affixed to their clothing. The size of such "sign" may not exceed three (3) inches by five (5) inches. Signs offensive to the members of the Board of Adjustment or to participants, and signs that may distract from the proceedings shall not be permitted. No placards shall be permitted at any meeting of the Board of Adjustment.

- 13.3 The City Manager for the City of Dover may, from time-to-time, prescribe by policy reasonable and appropriate attire and conduct for persons attending meetings of the Board of Adjustment.
- 13.4 Members of the news media shall conduct themselves in such a manner as to not be disruptive of the proceedings of the Board of Adjustment.
- 13.5 Persons attending Board of Adjustment meetings shall at all times conduct themselves in an orderly manner and follow the direction of the presiding officer.
- 13.6 No applause or other disruptive behavior shall be permitted. All cellular phones, pagers, and other electronic devices which emit noise shall be turned off or placed on silent mode for the duration of the meeting.

Rule 14 - Appeals and Applications to the Board of Adjustment

- 14.1 Appeals and applications to the Board, as permitted by state law and City of Dover ordinances, shall be on forms to be prepared by the Director of Planning and Inspections and approved by the Board of Adjustment, and shall be accompanied by the proper fee. Appeals and applications shall be signed by any person authorized by law to make such an appeal or application, or an agent or an attorney of such person.
- 14.2 All appeals and applications to the Board shall be accompanied by a recent survey, prepared and approved by a licensed surveyor, of the subject property, except when this requirement is waived by the Board or the Office of Planning and Inspections.
- 14.3 Appellants, Applicants, supporters, and members of the opposition are encouraged to submit their exhibits and other supporting materials prior to the hearing, if possible.

- 14.4 All communication and correspondence with the Board shall be submitted through the Office of Planning and Inspections. Telephone, email, verbal or written communication to individual Board members regarding a case is prohibited.
- 14.5 Appeals and applications shall not be amended after public notice of the public hearing has been made except that the size of any variance requested may be increased or reduced by an applicant prior to or at the public hearing provided, however, that the type of variance requested (side yard variance, front yard variance, etc.) has been included in the public notice.
- 14.6 During the presentation of an appeal or application to the Board, persons addressing the Board shall identify themselves by name and place or residence. No cross-examination of witnesses or applicants will be permitted. All questions for others should be directed to the Board and the Board may direct the question to the appropriate person. Nothing in this paragraph shall limit an attorney from directly questioning witnesses in support of the position the attorney is advocating.
- 14.7 The Board may continue a hearing or vote to leave the record open for the purpose of supplementing the record and may put limitations or conditions thereon.
- 14.8 Following a decision by the Board on an appeal or application, a copy of the written decision shall be sent to the appellant or applicant, or the agent or attorney for the appellant or applicant. Any oral discussion of or vote upon the application by the Board shall be deemed in the nature of preliminary deliberations to the rendering of a final written decision and only the written decision, as adopted by a majority of the Board, shall constitute a decision of the Board.
- 14.9 The Board may impose conditions with respect to the granting of an application or appeal pursuant to the City of Dover Municipal Code. Whenever such condition is imposed by the Board, the condition should be stated in the decision of the Board. Such decision shall remain valid

only as long as the condition or conditions upon which it was approved exist or the conditions imposed by the Board are adhered to.

Rule 15 — Order of Proceeding:

- 15.1 The order of presentation shall generally be as follows subject to modification by the Chairman for reasonable grounds.
- 15.2 The Board shall identify the application number, the general nature of the proceeding (appeal, variance, or special use exception), the name of the filing party, the description of the subject property, and shall state whether the Office of Planning and Inspections has received any correspondence pertaining to the application.
- 15.3 The Applicant/Appellant will be afforded the opportunity to present testimony and evidence supporting the application. The Applicant/Appellant may appear with or without legal counsel. The Applicant/Appellant shall be permitted to present witnesses and introduce exhibits, petitions, and other documents into the record.
- 15.4 Upon the conclusion of each witness' initial testimony, members of the Board, the Planning and Inspections Department, and the Board's attorney shall have an opportunity to ask questions of the Applicant/Appellant and its witnesses and counsel.
- 15.5 In the case of a variance or special use exception application, at the conclusion of the Applicant's witnesses and evidence, any person desiring to make a statement in support of the application shall be given an opportunity to do so. Each person desiring to make such a statement shall identify himself or herself by name and address and shall be sworn in prior to making a statement.
- 15.6 In the case of a variance or special use exception application, at the conclusion of the statements in favor of an application, any person

desiring to make a statement in opposition to the application shall be given an opportunity to do so. Each person desiring to make such a statement shall identify himself or herself by name and address and shall be sworn in prior to making a statement.

- 15.7 At the conclusion of all evidence and public statements, if applicable, the Applicant/Appellant shall be given a brief opportunity to submit additional testimony or evidence in the form of "rebuttal." The presiding officer may allow for brief "sur-rebuttal" testimony from the opposition provided that such testimony is limited to the scope of the testimony presented in the "rebuttal" and is not repetitive, redundant, or irrelevant.
- 15.8 All exhibits presented to the Board for its consideration shall be identified and marked appropriately. All such documents shall be retained by the Office of Planning and Inspections.
- 15.9 Hearsay evidence shall be permitted a Board hearing and the Board shall be entitled to hear and consider any probative evidence which, in the Board's opinion, is relevant and of sufficient credibility to be entitled to consideration.
- 15.10 The Board shall have the authority to set reasonable time limits on all parties and speakers appearing before it.
- 15.11 The presiding officer shall have authority to terminate or limit any testimony or questioning which is irrelevant or unduly repetitive or provocative.
- 15.12 Once all testimony and evidence has been presented, the public hearing shall be closed and no new testimony or evidence will be permitted unless the Board votes to leave the public record open.

Rule 16 - Delaware Freedom of Information Act

- 16.1 All procedures of the Board of Adjustment shall comply with the Delaware Freedom of Information Act, as contained in Title 29,

Chapter 1000 of the Delaware Code, as amended. To the extent that any provision herein shall conflict with the provisions of the Delaware Freedom of Information Act, the more restrictive provision shall apply.

Rule 17 - Delaware State Employees', Officers' and Officials' Code of Conduct

- 17.1 Members of the Board of Adjustment shall be subject to the Delaware State Employees', Officers' and Officials' Code of Conduct, as set forth in Title 29, Chapter 58, Subchapter I of the Delaware Code.

Rule 18 - Request for a Rehearing

- 18.1 A motion for a rehearing shall be made not later than 10 days after the filing of a decision in the office of the Board of Adjustment. The Board of Adjustment may rehear a matter for the following reasons:

- a. Mistake, inadvertent surprise or excusable neglect.
- b. Newly discovered evidence which by due diligence could not have been discovered at the time of the original hearing.
- c. Fraud, misrepresentation or other misconduct of an adverse party.

- 18.2 A motion for a rehearing shall state the grounds therefore and may be accompanied by applicable affidavits. The motion and affidavits shall be provided by mail to the opposing party of record, if any. The opposing party shall have 10 days after receipt of the motion to file a response thereto and attach applicable affidavits. The Board shall determine the motion upon the written application, any responses thereto, and accompanying affidavits, if any.

Rule 19 - Adoption and Effective Date

- 19.1 These rules shall become effective upon adoption by a majority vote of all of the members of the Board of Adjustment.

Adopted:
Effective Date: