



**CITY OF DOVER, DELAWARE
BOARD OF ADJUSTMENT MEETING
Wednesday, August 14, 2024 at 9:00 AM**

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

AGENDA

IN-PERSON & VIRTUAL MEETING

The Board of Adjustment Meeting for August 14, 2024, will be held in City Hall 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 August 14, 2024

Public Participation Information: Dial 1-650-479-3208

Access Code: 254 203 85560

Password for Phones: 36837262

Webinar Number: 2542 038 5560

Event Password: DoverBOA

Event Address: <https://bit.ly/BOA8142024>

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.

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.

WELCOME

Welcome to new Board of Adjustment member as appointed July 22, 2024 to complete a Term to Expire July 2025: Christian Joshua Swalm

Welcome to returning Board of Adjustment member as reappointed July 22, 2024 for a Three-Year Term to Expire July 2027: Richard D. Senato

ROLL CALL

APPROVAL OF AGENDA**APPROVAL OF MINUTES**

- [1.](#) Adoption of Meeting Minutes of July 17, 2024

COMMUNICATIONS & REPORTS

Meeting Reminder: The next Board of Adjustment Meeting date is Wednesday, September 18, 2024.

Correspondence Received**SPECIAL RECOGNITION**

- [2.](#) Resolution honoring the service of Mr. James N. Keller to the Board of Adjustment

OLD BUSINESS**NEW BUSINESS**

- [3.](#) **Application #V-24-04**

Property at 1151 N. DuPont Highway. A Request has been made for a Variance from the requirements of *Zoning Ordinance*, Article 4 §4.15 associated with future construction of a new restaurant building with drive-through and site improvements. The Variance Request seeks reduction of the side yard setback of 15 feet to 8.5 feet to accommodate the drive-through canopy. The property is zoned C-4 (Highway Commercial Zone) and subject to the SWPOZ (Source Water Protection Overlay Zone: Tier 3 – Excellent Recharge Area). The owner of record is Tung Ching Lin. Property Address: 1151 N. DuPont Highway, Dover DE. The Tax Parcel ID is ED-05-057.00-01-30.01-000.

ADJOURN

Posted Agenda: August 7, 2024

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
July 17, 2024

A Regular/Hybrid Meeting of the City of Dover Board of Adjustment was held on Wednesday, July 17, 2024, at 9:00 A.M. in person in the City Council Chambers and using the phone/videoconferencing system Webex. Members present were Chairman Sheth, Mr. Keller, Mr. Wagner, and Mr. Senato. (Note: There is a vacant seat with one member not yet appointed.)

Staff members present were City Solicitor Mr. Rodriguez, Mrs. Melson-Williams, Ms. Katherine Oehmke, Mrs. Savage-Purnell, Assistant City Manager Mrs. Sharon Duca and Mr. Glenn C. Mandalas, Esquire.

APPROVAL OF AGENDA

Mr. Keller stated after some consideration and inspection and gathering background he is making a motion to dismiss and remove from the agenda the Appeal Application V-24-03. The motion Mr. Chairman is based largely on legal determinations from recent past, which has my opinion force substantiated the matter that the Board of Adjustment does not have appropriate jurisdiction. The motion was seconded by Mr. Senato unanimously carried 4-0.

Chairman Sheth asked if there were any questions. There was none.

Roll Call Vote

Mr. Keller -Yea
 Mr. Wagner -Yea
 Mr. Senato -Yea
 Chairman Sheth – Yea

(Per the Motion to Adopt the Agenda the following Appeal was dismissed.)

Application V-24-03

The Historical Society of Dover (Friends of Old Dover) has filed an Appeal of the determination of the Principal Planner to the Board of Adjustment regarding the implementation of the *Zoning Ordinance*, Article 10 Section 3.2 as administered at the June 17, 2024 Planning Commission Meeting and the determination that the Appeals before the Planning Commission were not subject to a public hearing. This is associated with the Planning Commission's consideration of Applications HI-24-02 and HI-24-03 as Appeals to the Planning Commission of the Historic District Commission action of May 16, 2024 to deny the Architectural Review Certifications for the Demolition of two buildings at 148 S. Bradford Street and 150 S. Bradford Street. The involved properties are zoned C-2 (Central Commercial Zone) and subject to H (Historic District Zone). Involved Properties: 148 S. Bradford Street (ED-05-077.09-02-25.00-000) owned by Russell and Dee Ann Widder; and 150 S. Bradford Street (ED-05-077.09-02-27.00-000) owned by CEI Properties, LLC. The applicant for HI-24-02 and HI-24-03 is the Downtown Dover Partnership.

Chairman Sheth asked if there were any comment(s) or anything?

APPROVAL OF THE REGULAR BOARD OF ADJUSTMENT MEETING MINUTES OF JUNE 20, 2024

Mr. Keller moved to approve the meeting minutes of June 20, 2024, with the necessary correction. The motion was seconded by Mr. Senato unanimously carried 4-0.

Chairman Sheth asked if there were any questions. There was none.

COMMUNICATIONS & REPORTS

Mrs. Melson-Williams mentioned the next regularly scheduled meeting for the Board of Adjustment is August 21, 2024, with a 9:00 am start time in the City Council Chambers and with a virtual format. We did receive at least one application as the filing deadline was last Friday.

OPENING REMARKS CONCERNING APPLICATION

Mrs. Dawn Melson-Williams, Principal Planner stated that the meeting today will be conducted in accordance with the agenda as amended and approved. There is one Variance application remaining on the agenda under New Business. The Appeal Request of V-24-03 by motion of the Board was dismissed with the Board finding that they did not have jurisdiction regarding it. With the Variance Application, the file will be referenced by title and a summary presented by Planning Staff. An opportunity will be given to the applicant to present on their variance requests. The floor will be open for questions of the applicant from the Board and then we will conduct a public hearing to include public testimony. The Chair can certainly set any parameters related to the length of time for each speaker in order to ensure we have an efficient meeting. The Chair will open the public hearing and we will proceed with public testimony on the item. If you're a member of the public and would like to address the Board on that application, please raise your hand and when the Chair calls on you, you'll be asked to step down to the podium and sign in. For the record, please begin your statement by listing your name and address. Also, if you received a mail notice of today's meeting, we ask that you identify that as well. If you have joined us online, you will be given an opportunity to speak regarding that variance application as well. In making your statement, we ask that you be as brief as possible and that your statements be limited to the variance before the Board. As noted, the Chair can limit the testimony of each speaker to three minutes to ensure an efficient meeting. The Board may consult the City Solicitor to discuss legal matters. There have been a number of public comments submitted for this Application that remains on the agenda as there were a number of public comments related to the Appeal Application that was dismissed earlier with the adoption of the agenda. If the applicant must leave the meeting before the Board of Adjustment makes their decision, you can contact the Planning Office to learn of that decision. There will be a formal notice in writing that is provided to the applicants once prepared. It is noted that approved variances expire after a period of one year if the approved project has not moved forward and commenced. I will note that the public notice for the items on the agenda was completed in accordance with the code requirements and will be noted specifically for the item. The meeting agenda was posted on July 3, 2024 in accordance with the Freedom of Information Act requirements. The advertisement was placed in the local newspaper.

Since Mr. Keller is not being reappointed, Chairman Sheth mentioned that he will be out of the country for the August 21, 2024 meeting. If you have not appointed any other board members, then

we will have a lack of quorum. So, is it possible to change the date one day before or whatever is required by Ordinance. He asked Mrs. Melson-Williams if it could be discussed after this case. Mrs. Melson-Williams replied yes Mr. Chair, she believed that would be more appropriate that we could discuss that to ensure that we have an adequate quorum for your August meeting.

NEW BUSINESS

Application V-24-02

Application #V-24-02 Property at 1494 McKee Road. A Request has been made for a Variance from the requirements of *Zoning Ordinance*, Article 3 §27.61 for future construction of a building. The Variance Request seeks relief from the maximum setback as it relates to the front yard in the Corridor Overlay Zone. The front yard setback requirement is a minimum of 40 feet and a maximum of 50 feet along McKee Road for a proposed non-residential building. The property is zoned R-8 (One Family Residence Zone) and subject to the COZ-1 (Corridor Overlay Zone). The owner of record is Abhay Patel. Property Address: 1494 McKee Road. The Tax Parcel ID is ED-05-067.00-01-090.000-000.

Mrs. Melson-Williams explained as she referred to the location diagram that this property is located on the old segment of McKee Road. It is a kind of a cul-de-sac area that you access from McKee Road after you've turned off Scarborough Road and continue heading north out of the city. The location is shown there in bright yellow and then on the Aerial Map that's there. It is a tract of land that is wooded and there are some clear areas. It has a little bit of frontage; we'll call it that old segment of the McKee Road, but the bulk of the property expands further west. It is surrounded by various residential properties that you find with The Meadows to the north. To the bottom of the page, which is to the west, are portions of Fox Hall. Along the segment of McKee Road, there are a series of individual lots, some of which have houses on them. So, in the Report the Code citations that they're seeking relief from are related to the Corridor Overlay Zone. The R-8 Zoning would allow for the proposed development of a community center building. This is identified that it will require a Conditional Use approval application with the Planning Commission, but that is not what is being considered today. What is being considered today is a variance from the Corridor Overlay Zone. The Corridor Overlay Zone sets up a series of design standards related to development activities that includes things such as setbacks from property lines, building placement, parking, site access, and more. Today, we're focused on a variance from the front yard setbacks. For this portion of the McKee Road that requires a minimum of 40 feet and a maximum of 50 feet, which means your building could be set back no further than that 50 feet maximum. The Board of Adjustment has to weigh a series of exceptional practical difficulties tests. There was a series of four items that the applicant responded to in that regard which includes the nature of the zone where the property lies, the character of the immediate area, and then two questions related to the restriction itself. If that variance was granted basically and the restriction was removed, how would that affect neighboring properties and uses? The fourth criteria is if that restriction is not removed, meaning the variance is not granted, how would that affect the property owner in their ability to develop the land? Planning Staff has reviewed this and as part of our Report has reacted to each of those four criteria items. We are recommending approval of the variance because it allows a more reasonable approach to placing the building on the parcel given the configuration of the property. The narrow area that has the frontage on the McKee Road would be very limiting in the placement of a building. We find that the applicant has demonstrated

exceptional practical difficulty. Being able to place the building much further back in the portion of the lot where that property is much wider will allow for a better location of the building, the space to locate it further away from most of the adjoining properties, and the opportunity to provide any necessary screening requirements. There are a series of attachments. They are labeled Exhibits A through E, including the Board of Adjustment application form, an exhibit map, an aerial map, the applicant's written comments called the narrative letters to those four criterias and then a conceptual plan that was prepared for the building itself. I would note that for this particular application, the legal notice was published in the Delaware State News, now known as the Daily State News, on June 30, 2024. Property owners within 200 feet of the subject site were notified by a letter sent by the Planning Office in accordance with the established procedures for public notice.

Representative: Mr. Nik Patel, Avi Consulting Group LLC

Mr. Nik Patel stated that he was not the owner of the property, but he was representing the equitable owner. The owner of the property is donating the property, and he is not here. I represent the equitable owner, the potential owner.

Mr. Nik Patel was sworn in by City Solicitor Mr. Rodriguez.

Mr. Patel mentioned that there is not much more that he can add on top of what Mrs. Melson-Williams had just explained. A few reasons for the request are that this property is currently owned by a member of our community. It has been up for sale for a while. Talks formed between them and members of the community that we have, and this land is going to be donated or is potentially looking to be donated to our community for a potential community center. This is a way for the owner to give back to us. There are no solid plans at the moment, but for this application and for the proposal that we are putting forward, we realized after speaking with the City of Dover that we did have this issue with the Corridor Overlay Zone and then the setback of the building itself. While we wanted to try to meet all the requirements, I just want to give you a quick layout of what we're planning, the reason for the request, and also the reason for the practical difficulty. Obviously, the layout of the property as it sits currently just doesn't allow for anything to go in front of that property.

Any community center, house, or anything that could have ever been proposed has to be set back regardless because of the shape of the property itself. The goal of our group and community is to build a community center for our local community where we can gather our seniors and have certain events and things like that. This is not something that's proposed to be open to the public; it's not going to be for commercial use. It's not going to be used for rental or anything like that. This is strictly going to be used for our seniors and community as previously mentioned. We anticipate having gatherings there once or twice a month. The data location and site usage will be taken care of when you have a chance to move forward into the conditional use process where we will have an engineer and architectural plans presented to the community for their review. But that's just a little bit of background of what we were trying to do and why we are requesting the variance today. As far as the specific data, it's a ten-acre parcel that is fully wooded. We are looking to try to do everything we can to meet the regulations and design factors requested by the City. This is just one of the variances we need so that we can move forward to the next step in our discovery process. I'm here for any questions you may have.

Chairman Sheth mentioned that during the 1992 to 1997 time, the (COZ-1) zoning passed because of expansion of the Route 8. Now, we have the bypass to connect to the Rodney Village extension of Route 1. The only people that probably would know are myself and City Solicitor Mr. Rodriguez. At that time, there was another Chairman of the Board of Adjustment when they approved the other expansion and economic advancement to take place on South Bay Road. It is an essential part of Route 1 that goes to Rodney Village and with Route 8 becoming a four-lane highway and the approval of Corridor Overlay Zone.

Chairman Sheth asked the Board if they had any questions.

Mr. Keller stated that he would like to speak first to a very good review and presentation by Mrs. Melson-Williams. In review of the critical components of evaluating your request, something that I have somewhat historically done is look at matters regarding exceptional practical difficulty. A number of things to keep in mind with regard to that, first of all, it's not the Board's job to solve your dilemma or your problem and your reason for being here. That burden is on the owner or the representative. Exceptional practical difficulty when presented by the owner and the applicant must be practical and not exceptional in your consideration of your dilemma, if you will regarding your application. What I find is with the Principal Planner's write up and what not, I think it's very well addressed that there is in fact, due largely to the layout of the site and the strange configuration, if you will, with only a small area of access to the existing roadway. That practical exception is to be considered. I think in this case if there was a denial of the application that you presented, it would create a rather large problem for any subsequent use or development of that site. Secondly with regard to that, I think that a denial of the application with regard to that special consideration would in fact prevent if not totally, severely, at least your use and development of that site otherwise. With that said, I believe that any consideration for denial of your application would in fact create an Exceptional Practical Difficulty. That was principally, Mr. Chairman my only response and I think the other issues which we typically address was Exception Practical Difficulty, etc. Those considerations were very well presented and very well substantiated by the presentation.

Mr. Senato mentioned that he agreed with his colleague. One of his comments is that Mrs. Melson-Williams makes his job a lot easier because of the information that's presented and given to us prior to. My feeling is that the participant has proved that there could be a difficulty and I agree with some of the statements my colleague Mr. Keller made. Chairman Sheth asked if there were any more questions for Mr. Nik Patel.

Chairman Sheth mentioned that with respect to your comment Mr. Keller, but that's what we ended up passing through the Corridor Overlay Zone approval in 1997. A lot of the questions were resolved because of that on Route 8 and South Bay Road. There are some buildings on Route 13 near the Home Goods that used to be other department stores. They were asked to do different signs so that Route 13 looks better. Before doing that, it looked like other commercial buildings, but didn't look like the presentation of the neighborhood image.

Chairman Sheth asked if there were any other questions or comments from the Board members?

Chairman Sheth opened the public hearing.

Chairman Sheth asked if there was anyone who would like to speak in favor of the project.

Mr. Dharmesh Patel stated that he lives at 1712 Windswept Court, Dover, Delaware.

Mr. Dharmesh Patel was sworn in by City Solicitor Mr. Rodriguez.

Mr. Dharmesh Patel stated that as a community member, I'm in favor of this application since we have a lot of difficulties for our community, for gathering events, and the seniors gathering events.

That's all I have to say.

Chairman Sheth asked if there were any questions.

Chairman Sheth asked if there was anyone else who would like to speak in favor of the project. There was none.

Chairman Sheth asked if there was anyone who would like to speak against these applications from the audience?

Mr. Tom Worley stated that he lives at 248 Meadow Drive, Dover, Delaware.

Mr. Tom Worley was sworn in by City Solicitor Mr. Rodriguez.

Mr. Tom Worley stated that he did receive a notice. He mentioned that he didn't realize that the hearing was going to have an either for or against. He actually took that as an information question. I don't quite understand the variance. Are you doing specific footage for this or is it open?

Mrs. Dawn Melson-Williams stated that the variance request is to seek relief from the maximum setback that is 50 ft. There is not a specific number. The site itself and the initial concept is showing a building that's well over 200 feet from the McKee Road frontage. However, it continues to maintain a separation at least 25 feet or up to 50 feet or greater from other adjacent property lines in their concept.

Mr. Tom Worley asked what if this is a conceptual building (which he understands.) and if the Planning Commission came back with a final design that was maybe 20 or 30 feet different from this design? Do they have to come back to the Board of Adjustment regarding the variance because they have adjusted the concept plan?

Mrs. Dawn Melson-Williams mentioned that Staff would note it depends on how the variance is adopted. If you grant relief to be something greater than 50 feet and not set a number, then it would not. But if you set a specific number for that distance and it would change, then perhaps they would have to return to the Board of Adjustment to make that change.

Mr. Tom Worley asked what's the application for? Just an open variance, not a specific footage? Mrs. Dawn Melson-Williams replied that is correct. It is to exceed 50 feet. The 50 feet that is in the Code acts as a must build-to line. Their request is not looking to set a new must build-to line;

they're looking to just exceed that 50 feet. There are other setback requirements from other property lines that would have to be met, but this just deals with the front yard setback.

Mr. Tom Worley asked, so, the Conditional Use hearing is where the property owners should be concerned about the location because they can adjust the building at that point? Is that correct?

Mrs. Dawn Melson-Williams replied the Planning Commission would need to consider a Conditional Use application. There are a number of setbacks that would have to meet Code. Planning Commission would be looking more closely at the placement of the building, as well as any opportunities or needs for screening of where that building's placed related to its adjacent properties.

Mr. Tom Worley said thank you very much.

Chairman Sheth mentioned without the approval of the Board of Adjustment, the Planning Commission cannot proceed because that is the first step.

Mr. Keller mentioned that it may be helpful and some perhaps assurance for you and your line of questions. If this requested variance is granted, the applicant must still obtain an appropriate Conditional Use Site Development Plan and construction activity Permits. Much more follows beyond today's hearing.

Mr. Tom Worley said I just want to make sure I understood that this was an open variance and not a specific variance. Thank you.

Chairman Sheth asked if there was anyone else that would like to speak against?

Ms. LeAnn Eroo stated that she lives at 15 Phillip Court, Dover, Delaware.

Ms. LeAnn Eroo was sworn in by City Solicitor Mr. Rodriguez.

Ms. LeAnn Eroo stated that our concern with this setback variance is that our property directly abuts the proposed building. So, if it's moved back, it is going directly affect our quality of life, the noise level, and then there's the wetland issue which came up before when this property was trying to be developed. I don't know if that's been addressed.

But those are wetlands. There's going to be more runoff to a very wet area already. And, you know, for somebody who's concerned about their property values and potentially selling their house in the next few years, this would be a disaster for us and for our neighbors who directly abut this property.

Chairman Sheth mentioned that he thinks this question will be addressed by the Planning Commission so that you can go to the hearing at that time.

Ms. LeAnn Eroo said okay.

Chairman Sheth said thank you ma'am.

Chairman Sheth said he would like to recognize Mike Petit de Mange (in the audience). He was not sure if Mr. Petit de Mange was going to speak; but how can we miss you.

Mrs. Melson-Williams mentioned to the Chairman that we do have some people that have joined us online and I also need to enter into the record the public comments that we received in writing. There are a number of people that have joined us online. If you wish to speak regarding this application, there is a Brett or Brent. He did not speak.

There is a Donna Miller. Do you wish to speak regarding variance application V-24-02? She did not wish to speak; she was only listening.

There's also a Sandy Fraser. Do you wish to speak regarding this application V-24-02? She did not speak.

There are two call-in users. If you have dialed in on the phone, I'm sending the ability to unmute.

My name is Andrea Carter. I live at 232 Meadow Drive in Dover, and I'm strongly against the variance change for most of the reasons that have already been spoken. But I do just want to reiterate that we are against it as well. Mrs. Melson-Williams thanked Ms. Carter and mentioned that the office received written comments from her as well.

Mrs. Melson-Williams asked if there was another caller that would like to speak. So, for any of our participants online if you don't have access to a microphone, you can enter something in the chat.

In the meantime, Mr. Chair, let me enter the written comments that we received. Regarding application V-24-02 Public Comments Set 1 which was those comments received through July 10, 2024, was provided in the meeting packet to our Board of Adjustment members. There was an email from Andrea Carter of 232 Meadow Drive. We just heard from her. Her email lists her strong opposition to the variance and notes items related to safety concerns, a decline in property values, impact on community character, and environmental concerns and quality of life, which are detailed in her email that was received.

Mrs. Melson-Williams noted that today as part of the preparation for the meeting, for this application V-24-02, we have Public Comments Set 2 which were those comments received this morning through 8:00 A.M. There were two letters. One is a letter from Christopher and Marie Paule Moore dated July 17, 2024 that was forwarded to our office by the City Clerk's office, and they note their location as 219 Meadows Drive. They list that they are strongly opposed to the request for the variance. They note a Community Center would be out of character with the surrounding residential neighborhoods and go on to detail their comments in opposition regarding this property.

Mrs. Melson-Williams noted that the second item in this Public Comment Set is a letter from Tracy Garofalo that is also dated today that was forwarded by the City Clerk's office. She notes that she is a resident in The Meadows and does not give a particular address, but she does give an address which is 134 Brandywine Drive. She notes the current status of The Meadows and her opposition of the variance noting specifically that it would have a negative impact on the landscape and

atmosphere in the development with increased traffic and noise created by it. She has concerns about lack of a sound barrier or tree buffer as part of the proposed project. It goes on to note some water issues that they have experienced in The Meadows and concerns that the woodland area helps absorb water runoff. She is opposing the variance.

Mrs. Melson-Williams mentioned that she did not see any additional comments in the chat or from any of our other participants. So again, is there a caller that wishes to make a public comment that has not done so already?

There is a Sandy Frazer who would like to comment.

I'm Sandy Frazer. I live at 224 Meadow Drive, which would be directly behind wherever the building is going to be located. It looks like it's going to be next to the parking lot area. So, one of the things that we run into is that wetland area that is right behind our house. It stays flooded most of the time. There's always like, I can't say deep pond, but there's always a little pond back there. So, when anytime it rains, it does flood into our yard, it floods into our neighbor's yards, and the grass already stays really wet most of the time even when it's not raining. Our fear is on top of like what everybody else has said: decreasing property value, having the eyesore, taking away our woods that shade our houses, and that's areas where our children play. Because the woods are blocking, we don't have to worry about people being back there. I'm not saying the kids play in the woods. I'm saying the woods block where our kids can play in our backyard. But that flooding is going to be a huge issue in our yards that we already have an issue with because as Tracy stated in her letter, it already causes issues now. If you guys build up to get out of the floodplain, that water is going to run off from where the business and the concrete and the asphalt is into our neighborhood, which will be a huge issue for us, as well.

Chairman Sheth mentioned to Mrs. Melson-Williams that all of these questions are much more justified for the Planning Commission because the Board of Adjustment is not changing any zoning or anything. We have no jurisdiction about what land can be or what can or should not be there, you know.

Mrs. Melson-Williams mentioned yes. For the couple of questions concerning wetland and water run-off, I will note that the City's *Zoning Ordinance* does address wetland areas. There will have to be identification of those as part of the development process and we have buffering requirements from them. There's also limitations on tree clearing and stormwater management for the references to runoff. The project will have to comply with the Delaware Sediment and Stormwater Management Regulations. This property will have to manage any stormwater runoff on it directly and cannot increase the amount of runoff that comes off this property onto any other property. Just so for our callers that have referenced.

Mrs. Melson-Williams mentioned that included in the chat here, I do have one of our other online participants. Brett Carter has typed into the chat noting "I am opposing the construction for some of the same recommendations that have already been said." So, Mr. Chair, I believe that is everyone on the virtual side. The City Clerk's Office is also in our virtual session, but that concludes on the virtual side. If you need to hear from a member of the audience, you can certainly do that as well.

Chairman Sheth stated that he would like to follow the order because of those who were in favor or those that were against. Please don't change your mind at the last minute. If you want to say that you are against, come up now. Later on, we will not accept it.

Thank you for allowing me to speak. I know it's a little out of order. I wanted to take a moment to formulate my thoughts a little bit. So, my name is Logan Kline. I'm at 113 Brandywine Drive inside The Meadows. I was notified by letter.

Mr. Logan Kline was sworn in by City Solicitor Mr. Rodriguez.

Mr. Logan Kline stated that to Mr. Sheth's point yes, I believe a lot of these are issues related not necessary to this variance on the approach to the property and are probably better suited for when the actual propositions are laid out for the building itself. However, this variance is the door to that, right? This is our earliest opportunity for us as a community to speak against this and sort of, for lack of a better term, shut down that proposed development. I personally in collecting feedback and opinions from members of the community and as well as hearing items here today, feel that there is very little that could be done to this property if anything that could be done to this property that doesn't have a fairly immediate and strongly negative impact both on the people that live in the surrounding area as well as the wildlife in the area. I think other people have made excellent points regarding the drainage, the runoff, noise issues, quality of life, property values, etc. One thing that I haven't heard touched on much is the impact on wildlife in the area. I live on the opposite side of the property on Brandywine Drive which is backed by the City of Dover property. On that property, we have a large number of small predators, owls, turkey vultures, and a family of foxes that live in the area. There is a nightly parade of them as they move their way across the properties to hunt in this wetland area. This is where their primary food source lies. And if we remove that, we are going to see an exodus of those animals from the area which are good for the environment. If we lose the opossums that are currently back there, we are going to see an increase in fleas and ticks on all of our dogs and all the properties lying in that area. I think that's something that's worth noting.

Chairman Sheth mentioned that he thinks Mr. Kline has an excellent issue on this one. Unfortunately, this Board legal focus is variance and interpretation of the ordinance; are you qualified or not qualified as a variance approver? We should not deprive all our wildlife as long as we cannot deprive the citizens, right? So, unfortunately, we are not in a position to be subjective. Let's say I agree with you 100%, but when I have to conduct the hearing, I have to follow according to how the attorney makes the interpretation of the ordinance. Now, next step if we don't do it, we'll see it in Superior Court and the City spend all the money. And you saw that when you came here, the whole audience was here, remember? It was discarded by the Superior Court. So, what do we do? Should I go against the Superior Court or then I go to jail? I am just trying to explain. You had an excellent point. The problem is, that's what I said, but now it's still open. Once they get approval, the next step is the Planning Commission for all the hearings they have. So, you have all the rights to present that time, and sometimes you may not get everything but sometimes we get something. And I'm sure that the applicant is very sensitive about public feelings. I am sure they are going to hear you.

Mr. Kline said yeah, I understand and I'm fully willing to come back and hear more about the proposed development of the area. If there are further concerns, you know, I will pose them again

if necessary. I understand that. This is maybe a little out of the order of things, but I felt it was important to bring it up now anyway. So, thank you for your time. Thank you.

Chairman Sheth asked if there any other comments he had.

Mr. Keller mentioned to Mr. Kline that we appreciate everything you've said. Regarding the very aspect of everything from opossums running wild and the ramifications of them maybe going down the street somewhere. The reason I mentioned a little bit earlier in this hearing that the subsequent development of the site, if in fact this variance request is approved, continues with as spelled out by Mrs. Melson-Williams. The Conditional Use Site Development Plan still has to be undertaken. There are still a number of those matters that you're addressing, expressing concern over rightfully so; they will be undertaken during the subsequent Site Plan development etc. There are still, as the applicants understand to the best of my knowledge, steps to be taken during which matters such as those that you bring forth will be given consideration.

Mr. Kline thanked Mr. Keller and the Board.

Chairman Sheth mentioned that he requested and the mayor agreed and he will also talk with the City Manager Mr. Dave Hugg that we should discontinue online. If they don't have time and they have a serious issue and don't have to come to the City Hall. They should come just like you guys are coming here. He is speaking about those who are online. All other counties have discontinued because there is no more pandemic and there's no more coronavirus going around. If they do, it is not that as restricted by government. So, I hope we just discontinue hearing online people. Those people work hard, and they are here. They are very serious about it as to whether they want to have an opposition or favor. They should take time and come to City Hall and say we like it or don't like it. Thank you very much.

Mr. Kline asked Chairman Sheth if he was open to feedback on that last point. Chairman Sheth replied sure. Mr. Kline mentioned that personally he's a proponent of making these things as accessible as possible. I happen to be in a privileged position where my work is understanding.

I can take a few hours off to come in here and voice my opinion and hear what's being said. For some other people, they are currently sitting at their job listening to this as best they're able because that is all that they're afforded the capability to do. Closing that avenue of accessibility, I think limits people's ability to be heard and to hear and stay informed. I do not believe it presupposed significant burden on the Board itself. Sure, an inconvenience yes, but when it's weighed against the benefits of providing additional voice and more information in the community. I think it is well worth the time and effort. Thank you.

My name is Connie Constance, and I live at 7 Gregory Court in The Meadows. I did not receive a letter.

Ms. Connie Constance was sworn in by City Solicitor Mr. Rodriguez.

Ms. Connie Constance stated that as a member of our Board of our HOA (Homeowners Association) I felt it important to come here as a representative because not all of us can be here

because a lot of us do work. I am fortunately on vacation this week and was able to take the time to come in here and do this.

I am speaking for several homeowners that have contacted our Board and we are in opposition of this variance being done and for a lot of reasons that were spoken to already. Thank you.

Chairman Sheth said thank you, ma'am. I'm sorry I missed the word. What Board is this? Ms. Constance replied I'm opposition for this. It is The Meadows; the Board is the HOA (Homeowners Association). Chairman Sheth said thank you ma'am.

Chairman Sheth asked if there was anyone else wishing to speak. There was no one else wishing to speak.

Chairman Sheth closed the public hearing after seeing no one else wishing to speak (online or in the meeting room).

Chairman Sheth asked Mrs. Melson-Williams if she had already mentioned the communications, right? Mrs. Melson-Williams replied yes, I did, by reference I included the Public Comments Set 1 and then from today the Public Comment Set 2. They were already entered into the record.

Chairman Sheth stated that he had no conflict of interest on this case, but I happen to be in the same community of India. So, I want you to just know that I don't have one side or the other side, but it is good for me to disclose.

Mr. Wagner mentioned that he noticed in the Board of Adjustment Report that was given to us on page four, the first paragraph, the last two sentences: "With the Conditional Use Plan application, Planning Staff finds the exceptional practical difficulty may be determined to be present." He asked what is that?

City Solicitor Mr. Rodriguez stated that it was very well explained by Mr. Keller earlier. I would only add to what he has already told us. He asked Mr. Wagner if he had any questions regarding Mr. Keller's statement. Mr. Wagner said he did not have questions.

Mrs. Melson-William said, I believe what Board member Wagner is referring to is on page eight. In that Planning Staff evaluates each of the variance applications and we have come to the conclusion that the applicant has demonstrated an "exceptional practical difficulty," which is their answers and responses to those four questions or statements. That is what the Board is charged with evaluating as part of their review. It is your decision, of course, but Planning Staff has made the recommendation that we believe they have satisfied those (the criteria) and would recommend approval of the variance related to the front yard exceeding that 50 feet built-to line if you will, for the project. The Board is charged with taking into account all of the information that the applicant provides and their responses and this Report as well as the public comments and testimony received today.

Chairman Sheth said thank you. He also stated to Mr. Wagner, when you vote we should know that one of the four met the criteria before we say deny or approve. That is the one that the court looks for to determine if we voted subjective or objective.

Chairman Sheth asked Mrs. Melson-Williams if there were any additional comments.

Mrs. Melson-Williams mentioned that Mr. Chair you've conducted a public hearing. So, if there's no other questions or statements from the Board of Adjustment members, I believe you're probably ready to consider a motion regarding this application.

Chairman Sheth asked the members if they had any suggestions or a motion.

Mr. Keller moved to approve Variance Request application V-24-02. His motion is a follow-up to the question of Mr. Wagner. The Board is obligated by the Zoning Ordinance, Article 9 Section 2 which dictates our specific responsibilities and duties and with regard to granting variances specifically, the Board must determine various exceptional practical difficulties tests. With my recommendation/motion for approval, I think those various things have been met. I'm in agreement with Mrs. Melson-Williams' finding also that there is in fact an exceptional practical difficulty t if this was not granted due to the unique size and configuration of the subject property. And with that in mind also I would certainly reemphasize that there, if approved, is still a number of matters with regard to a site development plan, preparation, etc. and subsequent approvals for various things regarding the development of the site. The motion was seconded Mr. Wagner and unanimously carried 4-0.

Roll Call Vote

Mr. Keller - Yea

Mr. Wagner - Yea

Mr. Senato – Yea

Chairman Sheth - Yea

Mrs. Melson-Williams stated that, for the members of the public that are participating today, the Board took the step to grant approval of the variance request to allow relief from that maximum setback of the front yard. As noted throughout this process, the next step for the application would be the preparation of a Conditional Use Site Plan Application. The applicant has the ability to file that at anytime to meet our future filing deadlines for the Planning Commission. The Planning Commission meeting would also be subject to a public hearing. There will be a posted agenda and public notice that goes out for that particular meeting when it is scheduled. It is not necessarily the next meeting of the Planning Commission. It could be anytime within the next year. If you have questions about status, you can certainly reach out to the Planning Office. We will be happy to give you an update if they've actually filed their application and how it would be moving forward. Our office is also a resource for viewing the application once submitted so that you can prepare for your future questions regarding the property.

Chairman Sheth asked if there were any other questions?

Chairman Sheth stated that this is not a part of the agenda, but he will be out of the country for the August Board of Adjustment meeting. He wanted to know if Mr. Keller would consider his service as Vice President until someone else is appointed by the Mayor.

Mr. Keller replied that he will also be out of the country for 14 days in August. He does not as of this moment know (dates) but would have to let you know as the trip has been paid for. If it conflicts with that, I'm inclined to go out of the country. I appreciate your consideration.

Mr. Senato stated that Mr. Keller has been an asset to this Board of Adjustment in the years that you have served, and you have been very honorable. You have had a lot of input, and he has a lot of respect for you. Losing a Board member such as yourself is unfortunate to the Board. I hope you at least reconsider until we have more people that the mayor will appoint so that we will have enough coverage. I just want to express my complete gratification. It has been an honor serving with you as another member of the Board. Mr. Keller responded that it has been his pleasure.

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

The meeting was adjourned at 10:24 A.M.

Sincerely,

Maretta Savage-Purnell
Secretary



Resolution

Whereas, Mr. James N. Keller became an appointed member of the City of Dover Board of Adjustment on January 25, 2010 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. James N. Keller 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. James N. Keller 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. James N. Keller was an involved reader/editor of the Board of Adjustment meeting minutes helping to ensure the accurate record of the meeting proceedings in the consideration of applications; and,

Whereas, Mr. James N. Keller completed his term of service on the City of Dover Board of Adjustment in July 2024.

Now Therefore Be It Resolved That, the City of Dover Board of Adjustment does hereby express its sincere appreciation to **James N. Keller** 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 **James N. Keller** in future endeavors.

K.C. Sheth
Board of Adjustment Chair

Sharon Duca
Assistant City Manager



City of Dover
Board of Adjustment
August 14, 2024

V-24-04

Title: Property at 1151 N. DuPont Highway - Application for a Variance

Location: East side of Route 13/North DuPont Highway and north of the intersection with College Road and north of the entrance drive to Bally's/ Dover Motor Speedway

Address: 1151 N. DuPont Highway, Dover, DE

Owner: Tung Ching Lin

Tax Parcel: ED-05-057.00-01-30.01-000

Application Date: July 12, 2024

Present Zoning: C-4 (Highway Commercial Zone)
SWPOZ (Source Water Protection Overlay Zone: Tier 3 – Excellent Recharge Area)

Present Use: Restaurant Building (vacant)

Proposed Use: New Restaurant Building with drive-through

Reviewed By: Dawn Melson-Williams, AICP, Principal Planner

Variance Type: Area Variance

Variances Requested: Request has been made for a Variance from the requirements of *Zoning Ordinance*, Article 4 §4.15 for future construction of a new restaurant building with drive-through and site improvements. The Variance Request seeks reduction of the side yard setback of 15 feet to 8.5 feet to accommodate the drive-through canopy.

Project Description

The property at 1151 N. DuPont Highway is located on the east side of North DuPont Highway north of the intersection with College Road. It is the second property (building) passed the signalized intersection with the entrance drive leading to Bally's Hotel & Casino and the Dover Motor Speedway. The property currently includes a vacant fast-food restaurant building with drive-through surrounding by a circulation drive and parking areas. Access to the property is via

a shared right-in/right-out entrance with the adjoining property to the north (Grotto's). On the eastern portion of the property there is a circulation drive that travels south to link to Bally's entrance drive. A Conceptual (Site) Plan sheet shows the project (See Exhibit E). The existing conditions of the property are shown on Exhibit F, an ALTA Survey.

The Applicant has requested a Variance from the requirements of *Zoning Ordinance*, Article 4 §4.15 for future construction of a new restaurant building with drive-through and site improvements. The Variance Request seeks reduction of the side yard setback of 15 feet to 8.5 feet to accommodate the drive-through canopy. The new restaurant building with drive through, a proposed Raising Cane's, would be subject to a separate Site Development Plan review process.

Property and Adjacent Properties: Zoning and Land Use

The 1.13 acre (49,149 SF) +/- property is zoned C-4 (Highway Commercial Zone) and is subject to the SWPOZ (Source Water Protection Overlay Zone: Tier 3 – Excellent Recharge Area). The two adjoining parcels also fronting are zoned C-4 (Highway Commercial and include a restaurant (Grotto's) and a multi-tenant building with retail stores and a restaurant. To the east are the properties of Balley's Hotel and Casino and the Dover Motor Speedway which are zoned RC (Recreational and Commercial Zone). To the west, across DuPont Highway is the main campus of Delaware State University that is zoned IO (Institutional and Office Zone). A majority of the surrounding area is also subject to the SWPOZ (Source Water Protection Overlay Zone)

A Map Exhibit (Exhibit B) prepared by Staff is attached to this Report. It shows the subject property's location and the surrounding zoning. Map Exhibit C shows an aerial view of the area.

Code Citations

C-4 (Highway Commercial Zone)

The subject project area is zoned C-4 (Highway Commercial Zone). *Zoning Ordinance*, Article 3 Section 16 lists the permitted uses, conditional uses, and other provisions of the C-4 zone. For the proposed redevelopment of the property for a new restaurant building with drive-through, the use as a restaurant with drive-through would require Site Development Plan approval. See the following excerpt of the permitted uses in the C-4 zone.

Article 3

16.1 *Uses permitted.* In a highway commercial zone (C-4), no building or premises shall be used, and no building or part of a building shall be erected, which is arranged, intended, or designed to be used, in whole or in part, for any purpose, except the following:

- (a) Retail stores.
- (b) Business, professional or governmental offices.
- (c) Restaurants.
- (d) Personal service establishments.
- (e) Service establishments.
- (f) Hotels and motels.
- (g) Places of public assembly.
- (h) Bus terminal.
- (i) Wholesale, storage, warehousing, and distribution establishments.
- (j) Indoor or outdoor recreation and amusement establishments.
- (k) Hospitals and medical centers.
- (l) Drive-throughs.

In the C-4 zone, there is a set of bulk standards for development outlined in *Zoning Ordinance*, Article 4 Section 4.15. It sets the side yard setback for the building at 15 feet. See code excerpt below; the side yard setback requirement is highlighted (the subject of this variance request).

Article 4 Section 4.15. - C-3, C-4, R-C, IO, and CPO zones.

Bulk and parking regulations for service commercial (C-3), highway commercial (C-4), recreation and commercial (R-C), institutional and office (IO), and commercial and professional office (C-PO) zones are as follows:

	C-4
Minimum required:	
Lot area	
Lot width (ft.)	150
Lot depth (ft.)	150
Front yard (ft.)	20
Side yard (ft.)	15
Rear yard (ft.)	10 or equal to bldg. height
Side or rear yards which adjoin a residence zone (ft.)	30
Off-street parking	
Per 300 sq. ft. floor area or	1
Per employee (whichever is greater)	1
Maximum permitted:	
Building height	
Stories	6
Feet	75
Floor area ratio	4.0
Lot coverage	75%

SWPOZ (Source Water Protection Overlay Zone: Tier 3 – Excellent Recharge Area)

The purpose of the Source Water Protection Overlay Zone (*Zoning Ordinance*, Article 3 §29) is to provide a safe drinking water supply and to ensure that groundwater is adequately protected and maintained. This site is subject to the Tier 3: Excellent Recharge Area. The *Zoning Ordinance*, Article 3 Section 29 lists a series of uses are prohibited throughout the SWPOZ, including in the excellent recharge area. The restaurant with drive-through use that this project proposes is not a prohibited use. SWPOZ: Tier 3 Lands are additionally subject to specific rules regarding impervious coverage if the redevelopment is subject to Planning Commission review. The maximum coverage within Tier 3 Lands is typically 30% or 60% if infiltration is used in the development's stormwater management with accommodations for redevelopment activities.

Additionally, the following definitions are part of the *Zoning Ordinance*:

Setback: The distance between the street line and the setback line.

Setback line: A line extending between the two side lot lines of a lot or a parcel of land, which is parallel to, and a stated distance from, a street line.

Street: A street shown on the official map of the City of Dover and improved to the satisfaction of the planning commission.

Street line: The dividing line between a lot and a street.

Yard, front: An unoccupied ground area fully open to the sky between the street line and the setback line. The minimum width of the front yard is equal to the setback.

Yard, rear: An unoccupied ground area fully open to the sky between the rear lot line and a line parallel thereto.

Yard, side: An unoccupied ground area fully open to the sky between any property line other than a street or rear lot line, and a line drawn parallel thereto, and between the front and rear yards.

Applicant's Proposed Project and Variances Requested

The Applicant has submitted a Plan Sheet (Exhibit E). This plan/drawing depicts the proposed building placement and other site improvements as currently proposed. The new restaurant Building with drive-through and associated site improvements is to be constructed after demolition of the existing building and site features on the property. The Applicant has requested a Variance from the requirements of *Zoning Ordinance*, Article 4 §4.15 for future construction of a new restaurant building with drive-through and site improvements. The Variance Request seeks reduction of the side yard setback of 15 feet to 8.5 feet to accommodate the drive-through canopy. The main mass of the building complies with the setback requirements.

Exceptional Practical Difficulties Tests

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

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

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

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

Review of Application

As part of the Application, the applicant was asked to summarize how the requested Variance relates to the above criteria. The applicant's response (Exhibit D) along with a Staff assessment of the application in accordance with the required criteria is provided below.

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

Applicant Response: Parcel is zoned C-4 Highway Commercial which permits the proposed use, a Restaurant and Drive Through as a by right use.

Staff Response:

The subject property is zoned C-4 (Highway Commercial Zone). The C-4 zoning district is a commercial zoning district that allows for a variety of retail stores, restaurants, offices, and service establishments among other uses. The proposed use as a restaurant and drive-through are permitted uses. The C-4 zone has bulk standards related to setbacks for placement of buildings on a parcel. The property is also subject to the SWPOZ (Source Water Protection Overlay Zone: Tier 3 – Excellent Recharge Area) which has provisions related to prohibition of certain uses and limitations on impervious surface coverage to protect water resources.

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

Applicant Response: There is currently a Grotto's Restaurant to the west and a Chipotle and Vitamin Shoppe to the east of the site. Located to the rear is the Dover Downs Casino and along our frontage is Rt. 13 (DuPont Hwy). In addition, the site currently contains a former Boston Market restaurant which is now closed and vacant as a result of the Company's bankruptcy.

Staff Response:

The subject property at 1151 N. DuPont Highway current includes a vacant restaurant building. It is located along a major commercial corridor (DuPont Highway). The adjoining parcels include a restaurant (Grotto's) and a multi-tenant building with retail stores and a restaurant. To the east are the properties of Balley's Hotel and Casino and the Dover Motor Speedway. To the west, across DuPont Highway, is the main campus of Delaware State University.

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

Applicant Response: Our client's intention is to redevelop and revitalize the parcel to include replacing the existing aged and vacant building with a new 3,364± SF building and increasing landscaping around the site to be more visually appealing. The variance is being requested in order to construct a canopy over the permitted drive through lanes which will not negatively affect the adjacent commercial restaurant property. This is because the canopy encroachment is minimal and the nearest use has a grass and parking area, none of which would be impacted by the proposed canopy.

Staff Response:

Planning Staff notes that the placement of the new building complies with the setback requirements except for the canopy roof extension over the dual drive-through lanes on the south side of the building. The building is located on the parcel so that the dual drive-through lanes allow for stacking on-site of multiple vehicles in line leading up to the menu board/ordering location and the food pick-up area. The site circulation and parking lot area is separated from the drive-through lanes. This should avoid the stacking on vehicles into the shared entrance drive with the adjacent property to the north as other circulation options are available. Where the canopy roof would encroach into the 15-foot side yard setback of the south property line, it is next to a parking lot area on the adjacent property. The proposed side yard setback is 8.5 feet from the property line; it is 8.5 feet to canopy roof. The setback requirement does not apply to the location of the drive-through lane (pavement). Therefore, the requested Variance should not impact the use of neighboring lands.

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

Applicant Response: The proposed drive-through canopy is considered a structure (although not enclosed) and is within the 15' side setback. Canopies are essential to the fast-food business, preventing employees and customers from being exposed to the weather, such as rain, snow, UV rays, while waiting for their order to exchange hands and are considered a normal and essential improvement for the proposed use. Removing the proposed order point canopy will drastically decrease the customer experience, which puts the financial viability of the project at risk, but it also risks the customer's and employee's safety, and it is simply not possible to provide a canopy that will meet the setback requirement.

Staff Response:

The existing format of the property's circulation drive areas and location the existing entrance (from DuPont Highway and to Bally's Entrance drive) affects the proposed site design layout. The variance request is related to construction of a covered area in the form of a canopy over the dual drive-through lanes. While it appears that there is space to move the building the 6.5 feet to the north so that the canopy would comply with the side yard setback that option may not work with the needed widths and turning radii of the circulation drives of the parking lot and drive-through lanes. The size of the canopy roof could also be reduced to comply with the side yard back but that would functionally not cover both drive-through lanes. Covered drive-through lanes at the point of ordering and food pick-up are commonplace with restaurants with such operations. The Planning Staff Planning Staff finds that an exceptional practical difficulty may be determined to be present.

Variance Recommendations

Staff recommends approval of the Variance that would allow construction of the canopy over the dual drive-through lanes for the proposed new restaurant building at 1151 N. DuPont Highway. The granting of the Variance would allow the reduction of the side yard setback from 15 feet to 8.5 feet for the canopy. Planning Staff finds that the Applicant has strived to demonstrate an exceptional practical difficulty; they would incur by not having this Variance granted.

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

- The *Zoning Ordinance* permits development of restaurants and drive-throughs in the C-4 zoning district; however, any building would be subject to the requirements of the setbacks for the C-4 zoning district.
- The *Zoning Ordinance* does not include additional or alternative requirements related specifically to drive-throughs. The canopy is attached to the building and must follow the setbacks for the building. This size and configuration of the canopy encroaches into the side yard setback and would require a variance.
- The canopy is a roof only and the sides are open which will visually minimize how close it is to the property line.
- The granting of the Variance allows for improvements to the operations of the restaurant use allowing a covered area for the customer to receive their food order and to protect employees as well. This design allows for two drive-through lanes with the canopy roof coverage for two areas of customer service thus reducing potential vehicle stacking issues on the remainder of the property.
- For this redevelopment project of a new building and site improvements, a Site Development Plan application will be required subject to the provisions of the *Zoning Ordinance*.

Advisory Comments to the Applicant

- If granted, the variance becomes null and void if work has not commenced within one (1) year of the date the variance was granted. At present there is no provision for extension.
- If the requested variance is granted, the Applicant must still obtain the appropriate Site Development Plan and construction activity Permits approvals for construction of a Building on the property. A Site Development Plan for a building of this proposed use requires an application and review process. Depending on the size and scale of the project it may qualify for Administrative review or Planning Commission public hearing and review. Contact the Planning Office to discuss steps for application submission.
- The Applicant should be aware that whenever the Board of Adjustment denies an application for a variance, such application for a 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 (*Zoning Ordinance*, Article 9 §3.8).

GUIDE TO ATTACHMENTS

Exhibit	Description/Author	# Pages
A	BOA Application Form	1
B	Zoning Map Exhibit (Staff)	1
C	Planning & Inspections View Map – Aerial Map/Zoning Map Exhibit (Staff)	1
D	Applicant's Written Responses: Narrative	1
E	Conceptual Site Plan prepared for Raising Cane's Proposed Development (Dated 7/2/2024)	1
F	ALTA/NSPS Land Title Survey for Raising Cane's -Dover at 1151 North DuPont Highway (Dated 11/22/2023)	1



Board of Adjustment Application

Application Information

Property Address: 1151 N Dupont Hwy

Tax Parcel Number: 2 05 05700 01 3001 000

Owner Name: Tung Ching Lin

Property Zoning: C-4 Highway Commercial

Variance (s) Requested: Side yard setback

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

Area Variance

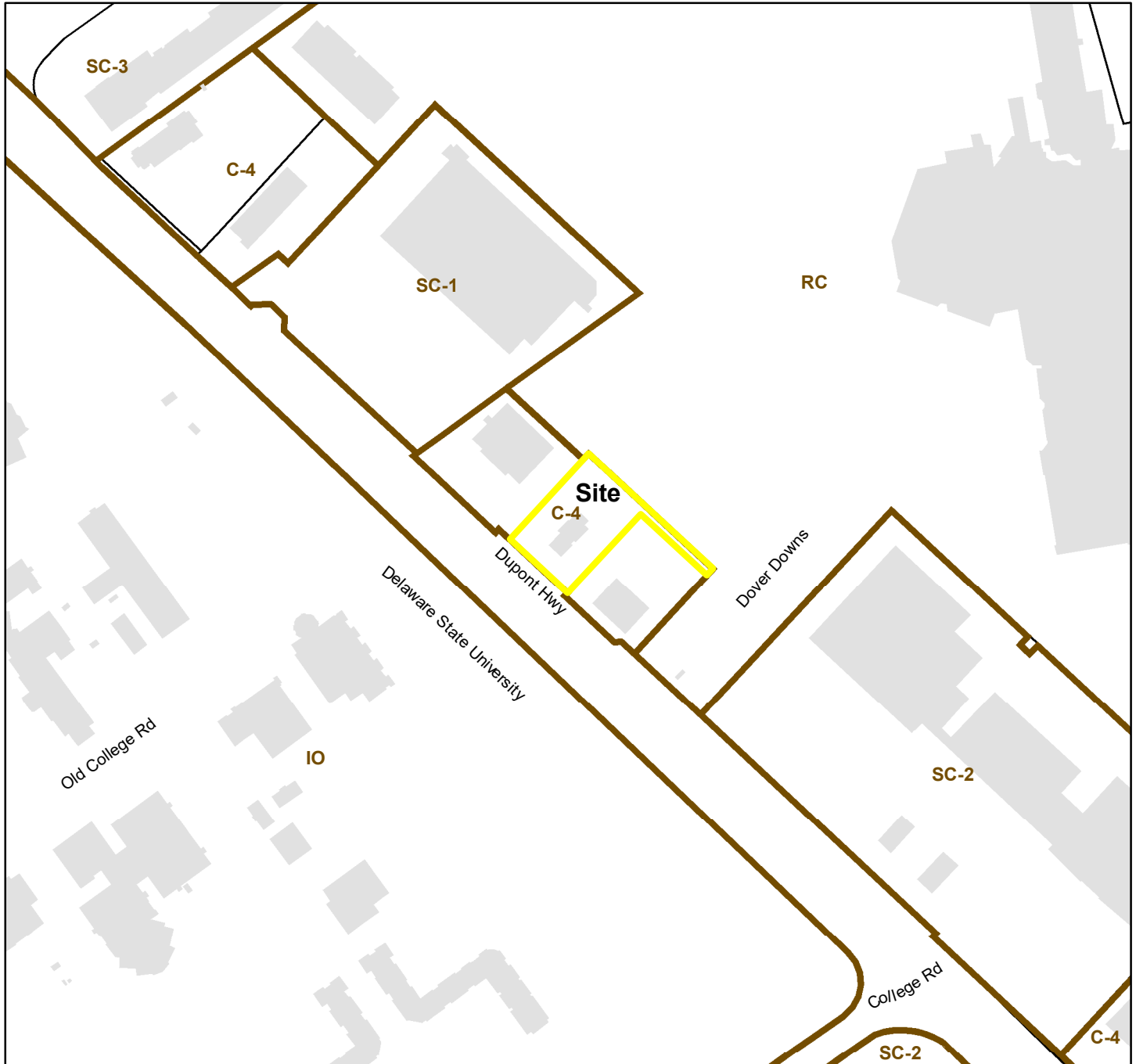
An area variance shall be evaluated on the following criteria: **Please state how your request meets each of these four (4) criteria.**

1. The nature of the zone in which the property lies;
2. The character of the immediate vicinity and the contained uses therein;
3. Whether, if the restriction upon the applicant's property were removed, such removal would seriously affect neighboring properties and uses; and
4. Whether, if the restriction is not removed, the restriction would create unnecessary hardship or exceptional practical difficulty for the owner in his efforts to make normal improvements in the character of that use of the property that is permitted uses under the provisions of the zoning ordinance.

Signature

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

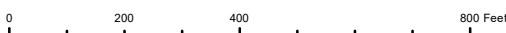
<u>Tung Ching Lin</u>	<u>owner</u>	<u>7/12/24</u>
Signature	Title	Date



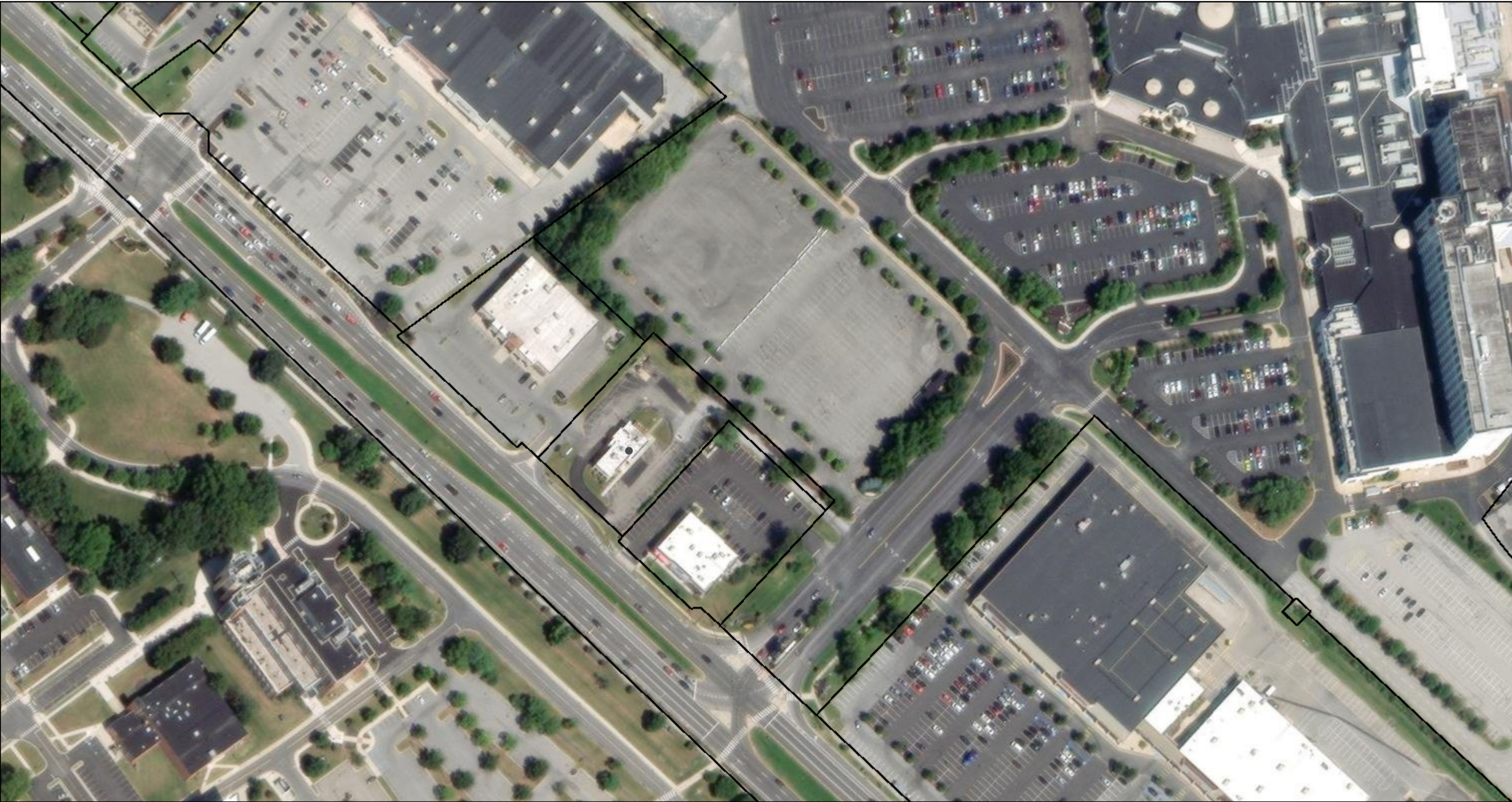
Title: Property at 1151 N DuPont Hwy. - Application for Variances
Addresses: 1151 N. DuPont Hwy
Parcel ID: ED-05-057.00-01-30.01-000
Zoning: C-4 (Highway Commercial Zone)
 SWPOZ (Source Water Protection Overlay Zone: Tier 3 – Excellent Recharge Area Zone)
Owner: Tung Ching Lin
Date: 07/31/2024

Legend

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

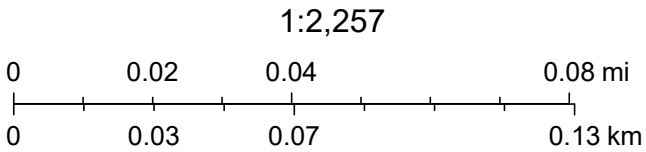


Planning & Inspections View Map



8/8/2024, 7:37:15 AM

-  Dover_Boundary
-  Parcels Outside Dover
-  Dover Parcels



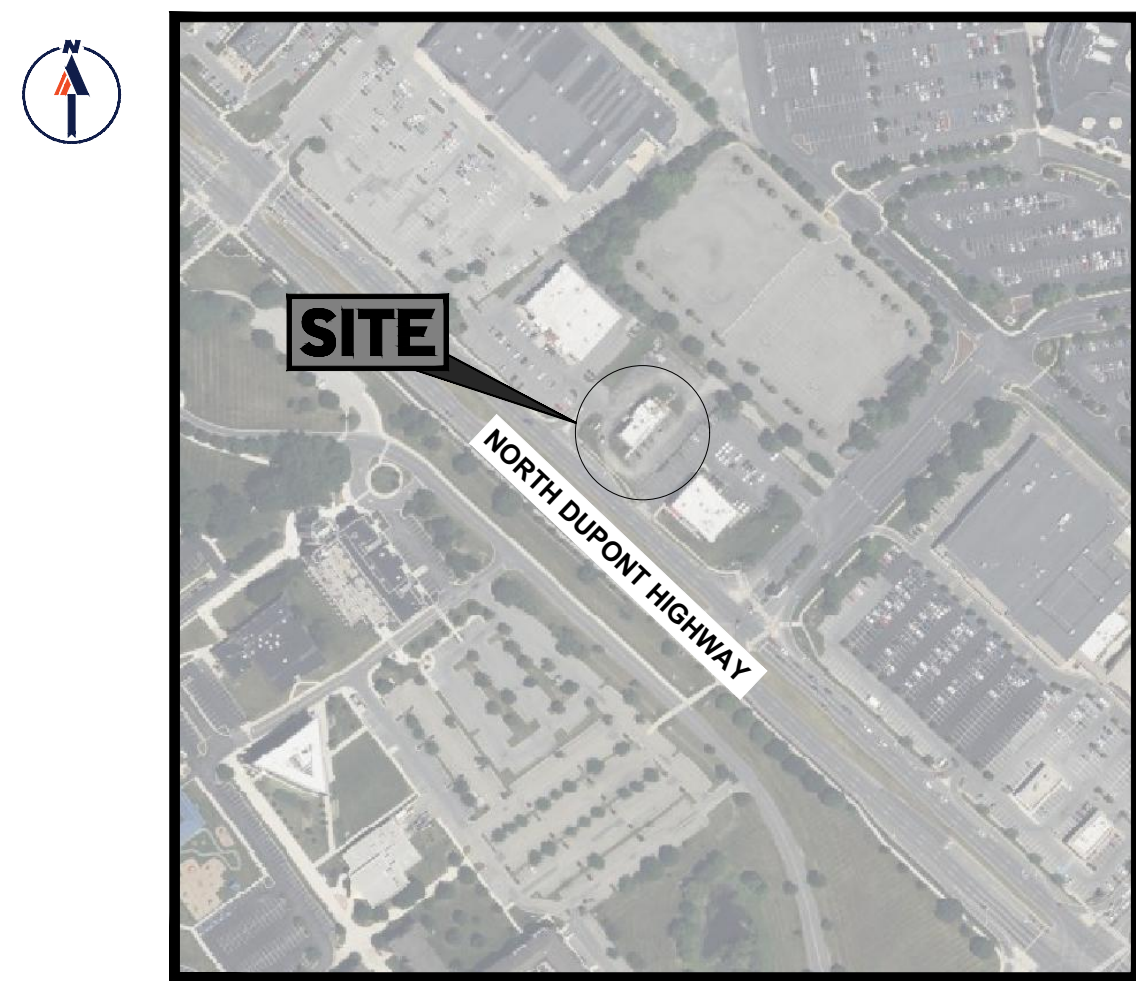
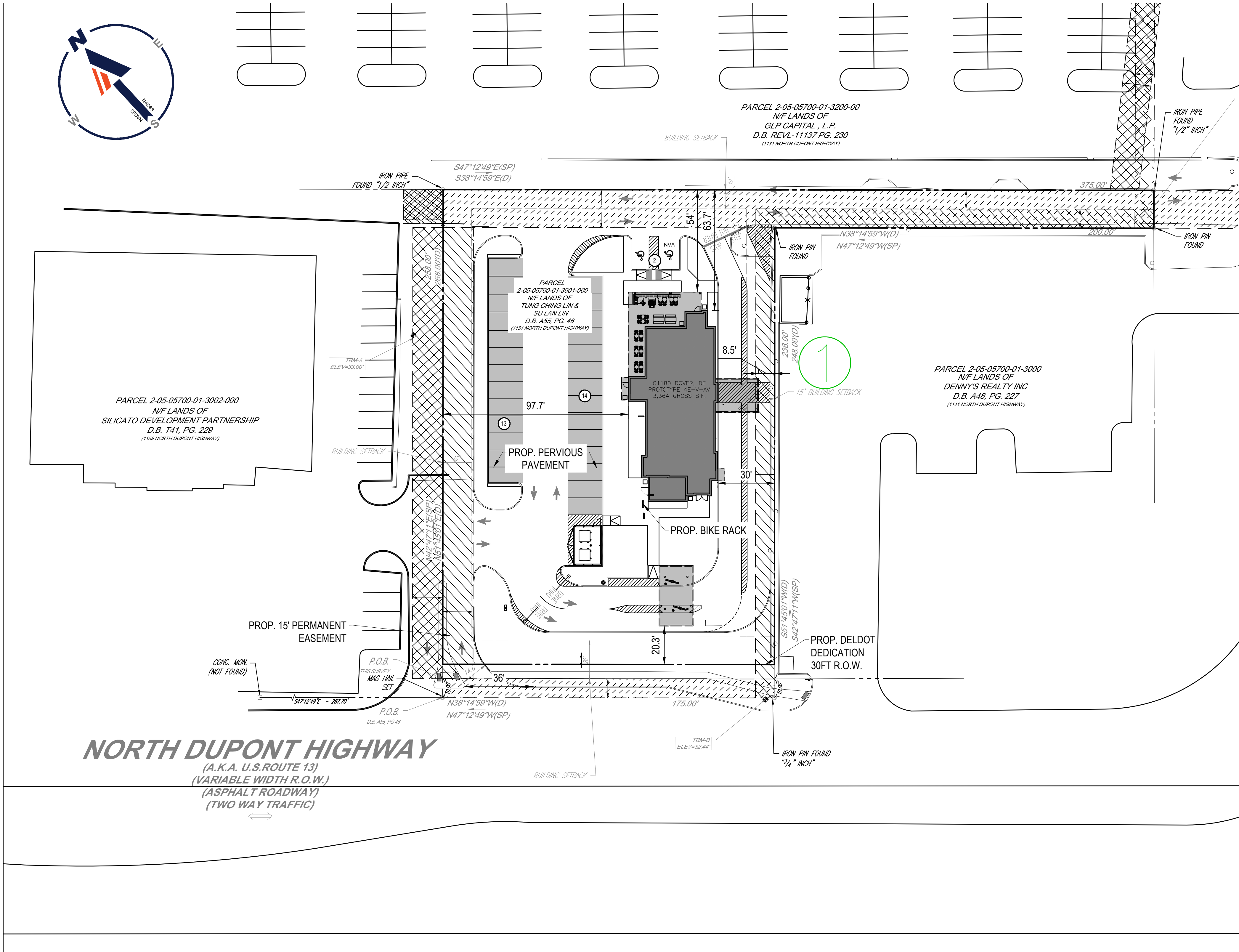
Maxar, Microsoft

Area Variance:

1. The nature of the zone in which the property lies; Parcel is zoned C-4 Highway Commercial which permits the proposed use, a Restaurant and Drive Through as a by right use.
2. The character of the immediate vicinity and the contained uses therein; There is currently a Grotto's Restaurant to the west and a Chipotle and Vitamin Shoppe to the east of the site. Located to the rear is the Dover Downs Casino and along our frontage is Rt. 13 (DuPont Hwy). In addition, the site currently contains a former Boston Market restaurant which is now closed and vacant as a result of the Company's bankruptcy.
3. Whether, if the restriction upon the applicant's property were removed, such removal would seriously affect neighboring properties and uses; Our client's intention is to redevelop and revitalize the parcel to include replacing the existing aged and vacant building with a new 3,364± SF building and increasing landscaping around the site to be more visually appealing. The variance is being requested in order to construct a canopy over the permitted drive through lanes which will not negatively affect the adjacent commercial restaurant property. This is because the canopy encroachment is minimal and the nearest use has a grass and parking area, none of which would be impacted by the proposed canopy.
4. Whether, if the restriction is not removed, the restriction would create unnecessary hardship or exceptional practical difficulty for the owner in his efforts to make normal improvements in the character of that use of the property that is permitted uses under the provisions of the zoning ordinance. The proposed drive-through canopy is considered a structure (although not enclosed) and is within the 15' side setback. Canopies are essential to the fast-food business, preventing employees and customers from being exposed to the weather, such as rain, snow, UV rays, while waiting for their order to exchange hands and are considered a normal and essential improvement for the proposed use. Removing the proposed order point canopy will drastically decrease the customer experience, which puts the financial viability of the project at risk, but it also risks the customer's and employee's safety, and it is simply not possible to provide a canopy that will meet the setback requirement.

PLAN TO ACCOMPANY BOARD OF ADJUSTMENT APPLICATION

FOR RAISING CANE'S RESTAURANT, LLC



LOCATION MAP
SCALE: 1"=350'
PLAN REFERENCE: Copyright 2024, NEARMAP

THE FOLLOWING VARIANCE IS REQUESTED WITHIN THE APPLICATION

1 A VARIANCE FROM ARTICLE 4-015 OF THE CITY OF DOVER CODE OF ORDINANCES TO PERMIT A 8.5' SIDE LOT LINE SETBACK (15' REQUIRED)

ZONING TABLE			
TOTAL AREA: 1.15A AC			
APPLICANT/ OWNER INFORMATION			
APPLICANT: RAISING CANE'S RESTAURANTS, LLC			
PROPERTY OWNER: TUNG CHING LIN & SU LAN LIN			
BULK REQUIREMENTS			
ITEM	CODE	REQUIRED	PROPOSED
MIN. LOT AREA	\$ 4-015	20,000 SF (0.32 AC)	48,000 SF (1.13 AC)
MIN. LOT WIDTH	\$ 4-015	150.0'	175.0'
MIN. LOT DEPTH	\$ 4-015	150.0'	250.0'
MIN. YARD SETBACKS	\$ 4-015	20.0' FROM STREET R.O.W.	50.0'
FRONT YARD	\$ 4-015	10.0' FROM SIDE LOT LINE	61.0'
SIDE YARD	\$ 4-015	10.0' FROM REAR LOT LINE	105.0'
REAR YARD	\$ 4-015	10.0' FROM REAR LOT LINE	105.0'

PARKING TABLE			
ITEM	CODE	REQUIRED	PROPOSED
STANDARD PARKING SPACES	\$ 4-015	1 SPACE PER 300 SF GFA 5,384 SF = 1,795 SPACES (REQ.)	27 SPACES
ADA PARKING SPACES	\$ 4-015	1 SPACE PER 50 SPACES (2 SPACES: 1 VAN ACCESSIBLE)	2 SPACES (1 VAN ACCESSIBLE)
BIKE PARKING SPACES	\$ 5-600-010	1 SPACE PER 20 PARKING SPACES (2 SPACES REQ.)	10 SPACES

BOHLER

SITE CIVIL AND CONSULTING ENGINEERING
PROGRAM MANAGEMENT
LANDSCAPE ARCHITECTURE
SUSTAINABLE DESIGN
PERMITTING SERVICES
TRANSPORTATION SERVICES

REVISIONS			
REV	DATE	COMMENT	DRAWN BY / CHECKED BY

811

Know what's below.
Call before you dig.
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FOR CONCEPT PURPOSES ONLY

THIS DRAWING IS INTENDED FOR MUNICIPAL AND/OR AGENCY REVIEW AND APPROVAL. IT IS NOT INTENDED AS A CONSTRUCTION DOCUMENT UNLESS INDICATED OTHERWISE.

PROJECT No.: DEA240021.00-0A

DRAWN BY: RY

CHECKED BY: DMK

DATE: 07/02/2024

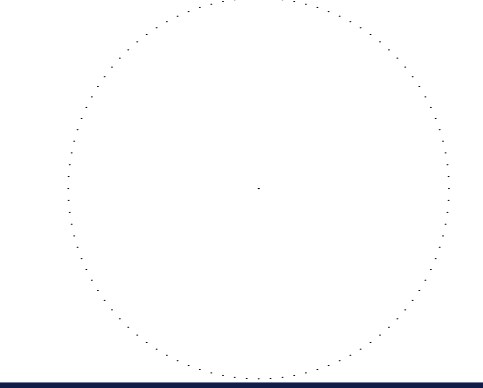
CAD ID: P-SITE-BOA-

PLAN TO ACCOMPANY BOARD OF ADJUSTMENT APPLICATION FOR

PROPOSED DEVELOPMENT
1151 N DUPONT HIGHWAY
CITY OF DOVER
DOVER, DELAWARE 19901
2-05-05700-01-3001-000

BOHLER

18958 COASTAL HWY, SUITE D
REHOBOTH BEACH, DE 19971
Phone: (302) 644-1155
Fax: (302) 703-3173
www.BohlerEngineering.com

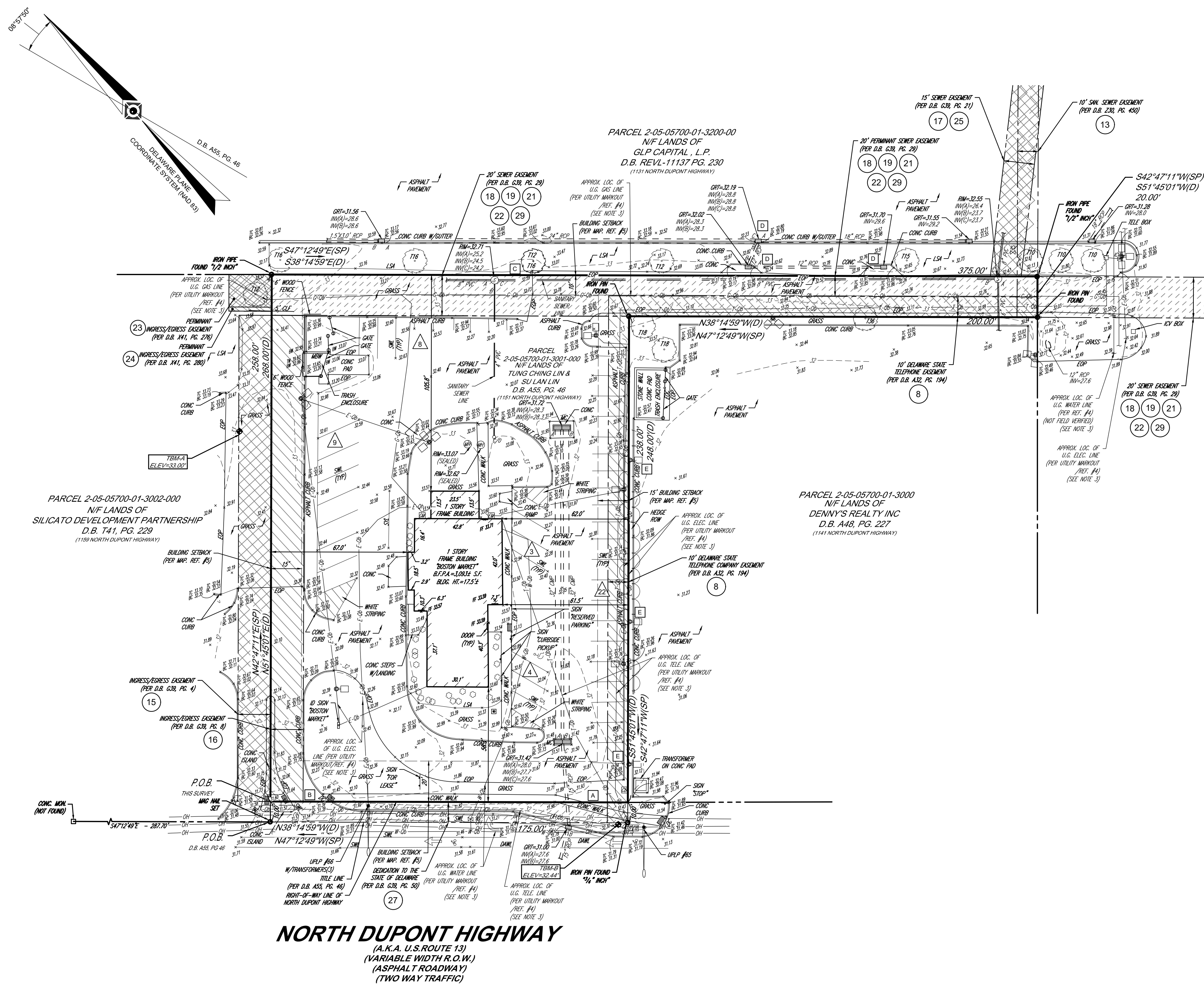


PLAN TO ACCOMPANY BOARD OF ADJUSTMENT APPLICATION

SHEET NUMBER:

1

ORG. DATE - 07/02/2024



NORTH DUPONT HIGHWAY
(A.K.A. U.S. ROUTE 13)
(VARIABLE WIDTH R.O.W.)
(ASPHALT ROADWAY)
(TWO WAY TRAFFIC)

LEGEND

1/24	EXISTING CONTOUR	②	SANITARY/SEWER MANHOLE	BLOC	BUILDING
1/25	EXISTING SPOT ELEVATION	③	CATCH BASINS	CLF	CHAIN LINK FENCE
* 123.45	EXIST. TOP OF CURB ELEVATION	④	CLEAN OUT	DASH	DASHED WHITE LINE
* 123.45	EXIST. BOTTOM OF CURB ELEVATION	⑤	GUY WIRE	EDC	EDGE OF CONC.
* 123.45	EXIST. TOP OF WALL ELEVATION	⑥	UTILITY POLE	EDP	EDGE OF PAVEMENT
* 123.45	EXIST. BOTTOM OF WALL ELEVATION	⑦	UTILITY POLE/LIGHT POLE/SOLAR PANEL	HT	HEIGHT
* 123.45	EXIST. FINISHED FLOOR ELEVATION	⑧	PAINTED BIKE LANE	LSA	LANDSCAPED AREA
OH	OVERHEAD WIRES	⑨	PAINTED HANDICAPPED	MHW	MASONRY BLOCK WALL
OH	DEPRESSED CURB	⑩	PAINTED ARROWS	MC	METAL COVER
WV	WATER VALVE	⑪	DETECTABLE WARNING PAD	TRP	TYPICAL
CB	CABLE BOX	⑫	METAL COVERS	UNK	UNKNOWN TERMINUS
EB	ELECTRIC BOX	⑬	SIGN	TR	TITLE REPORT EXCEPTION
EM	ELECTRIC METER	⑭	GATE POST	(SP)	STATE PLANE
GM	GAS METER	⑮	FLAG POLE	(D)	DEED DIMENSION
TB	TELEPHONE BOX	⑯	AREA LIGHT		
UB	UNKNOWN BOX	⑰	DECIDUOUS TREE & TRUNK SIZE		
GV	GAS VALVE	⑱	SHRUBS		
IV	IRRIGATION VALVE	⑲	PARKING SPACE COUNT		
UM	UNKNOWN MANHOLE	⑳	BUILDING FOOTPRINT AREA		

EXHIBIT "A":

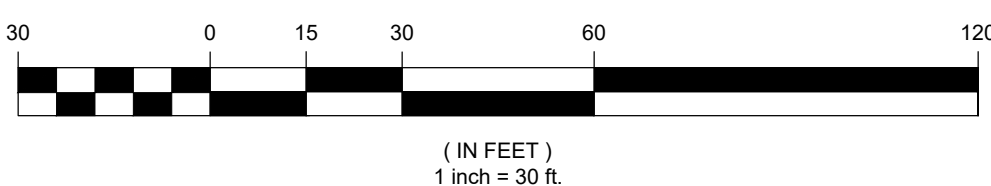
LEGAL DESCRIPTION FOR THE LEASEHOLD INTEREST TO BE PROVIDED.

BEING THE SAME LANDS AND PREMISES THAT RESTAURANT REALTY COMPANY, AN OHIO GENERAL PARTNERSHIP, BY DEED DATED 07/25/1994 AND RECORDED ON 07/27/1994 OFFICE OF THE RECORDER OF DEEDS IN AND FOR KENT COUNTY, STATE OF KENT IN DEED RECORD A, VOLUME 55, PAGE 46, DID GRANT AND CONVEY UNTO TUNG CHING LIN AND SU LAN LIN, HUSBAND AND WIFE, IN FEE.

SUBSEQUENTLY, SU LAN LIN DEPARTED THIS LIFE ON 11/18/2003, LEAVING HER HUSBAND, TUNG CHING LIN, AS SURVIVING TENANT BY THE ENTIRETY.



GRAPHIC SCALE



SCHEDULE B, PART II EXCEPTIONS:

- UTILITY AGREEMENT BETWEEN DAVID P. BUCKSON AND THE DIAMOND STATE TELEPHONE COMPANY, DATED 1/26/1988, AS RECORDED IN DEED RECORD Z, VOLUME 24, PAGE 495, KENT COUNTY RECORDS - INCLUDES SURVEYED PROPERTY. NOT PLOTTABLE PER RECORD DOCUMENT
- UTILITY AGREEMENT BETWEEN JEFFERIC ENTERPRISES, INC. AND THE DIAMOND STATE TELEPHONE COMPANY, DATED 10/20/1977, AS RECORDED IN DEED RECORD A, VOLUME 32, PAGE 194, KENT COUNTY RECORDS - 10' TELEPHONE EASEMENT SHOWN
- EASEMENT AGREEMENT BETWEEN DAVID P. BUCKSON AND PATRICIA H. BUCKSON, JEFFERIC ENTERPRISES, INC. AND THE CITY OF DOVER, DATED 10/15/1986, AS RECORDED IN DEED RECORD 1, VOLUME 25, PAGE 327, KENT COUNTY RECORDS - LOCATION CANNOT BE DETERMINED FROM RECORD DOCUMENT, EXISTING SEWER LINES SHOWN
- EASEMENT AGREEMENT BETWEEN DOVER DOWNS, INC. AND THE CITY OF DOVER, DATED 10/15/1988, AS RECORDED IN DEED RECORD L, VOLUME 25, PAGE 54, KENT COUNTY RECORDS - LOCATION CANNOT BE DETERMINED FROM RECORD DOCUMENT, EXISTING SEWER LINES SHOWN
- EASEMENT AGREEMENT BETWEEN DOVER DOWNS, INC. AND THE CITY OF DOVER, DATED 10/15/1988, AS RECORDED IN DEED RECORD L, VOLUME 25, PAGE 56, KENT COUNTY RECORDS - LOCATION CANNOT BE DETERMINED FROM RECORD DOCUMENT, EXISTING SEWER LINES SHOWN
- EASEMENT AGREEMENT BETWEEN DOVER DOWNS, INC. AND THE STATE OF DELAWARE, DATED 8/5/1970, AS RECORDED IN DEED RECORD X, VOLUME 26, PAGE 280, KENT COUNTY RECORDS - NOT LOCATED ON SURVEYED PROPERTY
- EASEMENT AGREEMENT BETWEEN JEFFERIC ENTERPRISES, INC., CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO, DOVER DOWNS, INC. AND FIRST PENNSYLVANIA BANK N.A., FORMERLY THE FIRST PENNSYLVANIA BANKING AND TRUST COMPANY, DATED 9/28/1976, AS RECORDED IN DEED RECORD Z, VOLUME 30, PAGE 450, KENT COUNTY RECORDS - SANITARY SEWER EASEMENT SHOWN
- EASEMENT AGREEMENT BETWEEN DOVER DOWNS, INC. AND SAMBO'S OF DELAWARE, INC., FORMERLY THE FIRST PENNSYLVANIA BANKING AND TRUST COMPANY, DATED 9/28/1976, AS RECORDED IN DEED RECORD Z, VOLUME 30, PAGE 162, KENT COUNTY RECORDS - NOT LOCATED ON SURVEYED PROPERTY
- EASEMENT AGREEMENT BETWEEN JEFFERIC ENTERPRISES, INC., AND RESTAURANT REALTY COMPANY, DATED 4/11/1984, AS RECORDED IN DEED RECORD G, VOLUME 39, PAGE 4, KENT COUNTY RECORDS - INGRESS/EGRESS EASEMENT SHOWN
- EASEMENT AGREEMENT BETWEEN RESTAURANT REALTY COMPANY AND JEFFERIC ENTERPRISES, INC., DATED 4/11/1984, AS RECORDED IN DEED RECORD G, VOLUME 39, PAGE 8, KENT COUNTY RECORDS - INGRESS/EGRESS EASEMENT SHOWN
- EASEMENT AGREEMENT BETWEEN JEFFERIC ENTERPRISES, INC. AND RESTAURANT REALTY COMPANY, DATED 4/11/1984, AS RECORDED IN DEED RECORD G, VOLUME 39, PAGE 21, KENT COUNTY RECORDS - 15' WIDE SEWER EASEMENT SHOWN
- EASEMENT AGREEMENT BETWEEN RESTAURANT REALTY COMPANY, JEFFERIC ENTERPRISES, INC., DOVER DOWNS, INC. AND DENNY'S INC., DATED 4/17/1984, AS RECORDED IN DEED RECORD G, VOLUME 39, PAGE 27, KENT COUNTY RECORDS - 20' WIDE SEWER EASEMENT SHOWN
- EASEMENT AGREEMENT BETWEEN DOVER DOWNS, INC., FIRST PENNSYLVANIA BANK N.A., FORMERLY THE FIRST PENNSYLVANIA BANKING AND TRUST COMPANY AND SAMBO'S OF DELAWARE, INC., DATED 9/28/1976, AS RECORDED IN DEED RECORD Z, VOLUME 30, PAGE 35, KENT COUNTY RECORDS - 20' WIDE SEWER EASEMENT SHOWN
- EASEMENT AGREEMENT BETWEEN DOVER DOWNS, INC., FIRST PENNSYLVANIA BANK N.A., FORMERLY THE FIRST PENNSYLVANIA BANKING AND TRUST COMPANY AND RESTAURANT REALTY COMPANY, DATED 3/1/1984, AS RECORDED IN DEED RECORD G, VOLUME 39, PAGE 35, KENT COUNTY RECORDS - 20' WIDE SEWER EASEMENT SHOWN
- EASEMENT AGREEMENT BETWEEN DOVER DOWNS, INC., FIRST PENNSYLVANIA BANK N.A., FORMERLY THE FIRST PENNSYLVANIA BANKING AND TRUST COMPANY AND RESTAURANT REALTY COMPANY, DATED 3/1/1984, AS RECORDED IN DEED RECORD G, VOLUME 39, PAGE 45, KENT COUNTY RECORDS - SEWER EASEMENT SHOWN
- EASEMENT AGREEMENT BETWEEN RESTAURANT REALTY COMPANY AND JEFFERIC ENTERPRISES, INC., DATED 3/21/1986, AS RECORDED IN DEED RECORD X, VOLUME 41, PAGE 271, KENT COUNTY RECORDS - EASEMENTS AND CONDITIONS ACROSS SURVEYED PROPERTY ARE SHOWN - 20' WIDE SEWER EASEMENT SHOWN
- EASEMENT AGREEMENT BETWEEN JEFFERIC ENTERPRISES, INC. AND RESTAURANT REALTY COMPANY, DATED 3/31/1986, AS RECORDED IN DEED RECORD X, VOLUME 41, PAGE 276, KENT COUNTY RECORDS - NOT LOCATED ON SURVEYED PROPERTY
- EASEMENT AGREEMENT BETWEEN JEFFERIC ENTERPRISES, INC. AND RESTAURANT REALTY COMPANY, DATED 3/31/1986, AS RECORDED IN DEED RECORD X, VOLUME 41, PAGE 280, KENT COUNTY RECORDS - NOT LOCATED ON SURVEYED PROPERTY
- SEWER AGREEMENT BETWEEN DOVER DOWNS, INC., THE FIRST PENNSYLVANIA BANK N.A., FORMERLY THE FIRST PENNSYLVANIA BANKING AND TRUST COMPANY AND RESTAURANT REALTY COMPANY, DATED 3/1/1984, AS RECORDED IN DEED RECORD G, VOLUME 39, PAGE 12, KENT COUNTY RECORDS - NOT LOCATED ON SURVEYED PROPERTY
- AFFIDAVIT OF AUTOMATIC TERMINATION OF CONDITIONAL SALES CONTRACT BY RESTAURANT REALTY COMPANY, DATED 7/15/1994, AS RECORDED IN DEED RECORD A, VOLUME 55, PAGE 50, KENT COUNTY RECORDS - NOT SURVEY RELATED
- EXCEPTING OUT DEED TO THE STATE OF DELAWARE, DATED 4/16/1984, AS RECORDED IN DEED RECORD G, VOLUME 39, PAGE 50, KENT COUNTY RECORDS - AREA OF DEDICATION SHOWN
- MEMORANDUM OF LEASE BETWEEN TUNG CHING LIN AND SU LAN LIN AND MID-ATLANTIC RESTAURANT SYSTEMS, L.P., AS RECORDED IN DEED BOOK 116, PAGE 333, KENT COUNTY RECORDS - NOT SURVEY RELATED
- SUBJECT TO COVENANTS, EXCEPTIONS AND ALL OTHER MATTERS CONTAINED IN DEED TO RESTAURANT REALTY COMPANY, DATED 03/28/1984 AND RECORDED 04/18/1984 IN DEED RECORD G, VOLUME 39, PAGE 1, KENT COUNTY RECORDS - 20' WIDE SEWER EASEMENT SHOWN

TABLE OF SIGNIFICANT OBSERVATIONS

- | | |
|---|--|
| A | CONC. WALK EXTENDING ONTO SURVEYED PROPERTY FROM RIGHT OF WAY OF NORTH DUPONT HIGHWAY. |
| B | CONC. CURB EXTENDING ONTO SURVEYED PROPERTY FROM RIGHT OF WAY OF NORTH DUPONT HIGHWAY. |
| C | EDGE OF PAVEMENT EXTENDING FROM SURVEYED PROPERTY ONTO PROPERTY ADJACENT TO THE NORTHEAST. |
| D | DRAINAGE STRUCTURES SERVING SURVEYED PROPERTY LOCATED ON AND FLOW THROUGH STRUCTURES LOCATED ON ADJACENT PROPERTY TO NORTH EAST. NO EASEMENT DOCUMENTATION PROVIDED IN TITLE COMMITMENT. |
| E | LIGHT POLES (x3) ON AND ACROSS SOUTHEASTERLY PROPERTY LINE |

NOTE: THESE ARE THE SIGNIFICANT OBSERVATIONS NOTED DURING THE PROCESS OF CONDUCTING THE FIELD WORK. THERE MAY BE OTHERS NOT RECOGNIZED BY THE SURVEYOR.

THIS SURVEY IS CERTIFIED TO:
RAISING CANE'S RESTAURANTS, L.L.C., A LOUISIANA LIMITED LIABILITY COMPANY
STEWART TITLE GUARANTY COMPANY

I, JAMES D. SENS, REGISTERED AS A PROFESSIONAL LAND SURVEYOR IN THE STATE OF DELAWARE, HEREBY STATE THAT THE INFORMATION SHOWN ON THIS PLAN HAS BEEN PREPARED UNDER MY SUPERVISION AND MEETS THE STANDARDS OF PRACTICE AS ESTABLISHED BY THE STATE OF DELAWARE BOARD OF PROFESSIONAL LAND SURVEYORS. ANY CHANGES TO THE PROPERTY CONDITIONS, IMPROVEMENTS, BOUNDARY OR PROPERTY CORNERS AFTER THE DATE SHOWN HEREON SHALL NECESSITATE A NEW REVIEW AND CERTIFICATION FOR ANY OFFICIAL OR LEGAL USE. THIS IS TO CERTIFY THAT THIS MAP OR PLAN AND THE SURVEY ON WHICH IT WAS BASED WERE MADE IN ACCORDANCE WITH THE 2021 MINIMUM STANDARD DETAIL REQUIREMENTS FOR ALTA/NSPS LAND TITLE SURVEYS, JOINTLY ESTABLISHED AND ADOPTED BY ALTA AND NSPS, AND INCLUDES ITEMS 2, 3, 4, 5, 6(a), 7(a), 7(b), 7(c), 8, 9, 11(a) & 13 OF TABLE A THEREOF. THE FIELD WORK WAS COMPLETED ON 10-24-2023.

VALID DOCUMENT
Digitally signed by James Sens
Date: 2024.01.03 10:54:36
-05'00'

JAMES D. SENS
DELAWARE PROFESSIONAL LAND SURVEYOR #0000785

VICINITY MAP
NOT TO SCALE

NOTES:

- PROPERTY KNOWN AS PARCEL 2-05-05700-01-3001-000 AS IDENTIFIED ON THE OFFICIAL TAX MAP OF KENT COUNTY, STATE OF DELAWARE.
- AREA = 49,149 SQUARE FEET OR 1.128 ACRES.
- LOCATION OF UNDERGROUND UTILITIES ARE APPROXIMATE. LOCATIONS AND SIZES ARE BASED ON UTILITY MARK-OUTS, ABOVE GROUND STRUCTURES THAT WERE VISIBLE & ACCESSIBLE IN THE FIELD, AND THE MAPS AS LISTED IN THE REFERENCES AVAILABLE AT THE TIME OF THE SURVEY. AVAILABLE ASBLUT PLANS AND UTILITY MARKOUT DOES NOT ENSURE MAPPING OF ALL UNDERGROUND UTILITIES AND STRUCTURES. BEFORE ANY EXCAVATION IS TO BEGIN, ALL UNDERGROUND UTILITIES SHOULD BE VERIFIED AS TO THEIR LOCATION, SIZE AND TYPE BY THE PROPER UTILITY COMPANIES. CONTROL POINT ASSOCIATES, INC. DOES NOT GUARANTEE THE UTILITIES SHOWN COMPRISE ALL SUCH UTILITIES IN THE AREA EITHER IN SERVICE OR ABANDONED.

A QUALITY LEVEL SYSTEM IS UTILIZED TO IDENTIFY THE SOURCE OF THE UNDERGROUND UTILITY INFORMATION. THE METHOD OF DETERMINATION IS BASED ON CONTRACTUAL AGREEMENT WITH THE CLIENT AND IS DEPICTED ON THE SURVEY BY THE LINE TYPES SHOWN IN THE DRAWING LEGEND. FOR REFERENCE, THE QUALITY LEVELS ARE AS FOLLOWS:

- | |
|--|
| QUALITY LEVEL D - UTILITIES SHOWN BASED UPON REFERENCE MAPPING OR ORAL HISTORY. NOT FIELD VERIFIED. |
| QUALITY LEVEL C - LOCATION OF UTILITY SURFACE FEATURES SUPPLEMENTS REFERENCE MAPPING. INCLUDES MARKOUT BY OTHERS. |
| QUALITY LEVEL B - UTILITY LOCATION DATA IS COLLECTED THROUGH GEOPHYSICAL SENSING TECHNOLOGY TO SUPPLEMENT SURFACE FEATURES AND OR REFERENCE MAPPING. INCLUDES MARKOUT BY CONTROL POINT ASSOCIATES, INC. |
| QUALITY LEVEL A - HORIZONTAL AND VERTICAL LOCATION OF UTILITIES ARE OBTAINED USING VACUUM EQUIPMENT EXCAVATION OR OTHER METHODS TO EXPOSE THE UTILITY. LOCATION SHOWN AT SINGLE POINT WHERE EXCAVATION OCCURRED UNLESS UTILITY WAS LOCATED PRIOR TO FILLING. |

ALL FOUR TYPES MAY NOT BE PRESENT ON THIS SURVEY.

- THIS PLAN IS BASED ON INFORMATION PROVIDED BY THE CLIENT, A SURVEY PREPARED IN THE FIELD BY CONTROL POINT ASSOCIATES, INC., AND OTHER REFERENCE MATERIAL AS LISTED HEREON.
- THIS SURVEY IS PREPARED WITH REFERENCE TO A COMMITMENT FOR TITLE INSURANCE PREPARED BY STEWART TITLE GUARANTY COMPANY FILE NO. 12285, WITH AN EFFECTIVE DATE OF 09-25-2023. SEE EXCEPTIONS LIST FOR SURVEY RELATED EXCEPTIONS THAT APPEAR IN SCHEDULE B, PART II.
- EXISTING FIRM: BY GRAPHIC PLOTTING ONLY PROPERTY IS LOCATED IN FLOOD HAZARD ZONE X (AREAS DETERMINED TO BE OUTSIDE THE 0.2% CHANCE FLOODPLAIN) PER MAP REF #2.
- THE EXISTENCE OF UNDERGROUND STORAGE TANKS, IF ANY, WAS NOT KNOWN AT THE TIME OF THE FIELD SURVEY.
- ELEVATIONS REFER TO THE NORTH AMERICAN VERTICAL DATUM OF 1988 (NAVD88), BASED ON GPS OBSERVATIONS UTILIZING THE KEYSTONE VRS NETWORK (KEYNETGPS).
- TEMPORARY BENCH MARKS SET:
TBM-A: CAPPED REBAR SET IN GRASS, ELEVATION= 33.00'
TBM-B: CAPPED REBAR SET IN GRASS, ELEVATION= 32.44'

PRIOR TO CONSTRUCTION IT IS THE CONTRACTOR'S RESPONSIBILITY TO VERIFY THAT THE BENCHMARKS ILLUSTRATED ON THIS SKETCH HAVE NOT BEEN DISTURBED AND THEIR ELEVATIONS HAVE BEEN CONFIRMED. ANY CONFLICTS MUST BE REPORTED PRIOR TO CONSTRUCTION

- THE OFFSETS SHOWN ARE NOT TO BE USED FOR THE CONSTRUCTION OF ANY STRUCTURE, FENCE, PERMANENT ADDITION, ETC.
- THERE ARE A TOTAL OF 46 DESIGNATED PARKING SPACES, INCLUDING 1 HANDICAP SPACES.
- BUILDING DIMENSIONS SHOWN HEREON ARE MEASURED AT GROUND LEVEL OF BUILDING EXTERIOR.
- ZONING INFORMATION IS SHOWN PER REFERENCE #5 AS SUPPLIED BY THE CLIENT. CONTROL POINT ASSOCIATES, INC. DOES NOT ACCEPT LIABILITY FOR ANY ERRORS OR OMISSIONS THAT MAY EXIST IN THIS REPORT.
- THERE IS NO EVIDENCE OF RECENT EARTH MOVING WORK, BUILDING CONSTRUCTION OR BUILDING ADDITIONS OBSERVED IN THE PROCESS OF CONDUCTING THE FIELD WORK.
- THERE WAS NO OBSERVED EVIDENCE OF SITE USE AS A SOLID WASTE DUMP, SUMP OR SANITARY LANDFILL AT THE TIME OF SURVEY.
- THERE IS NO EVIDENCE OF RECENT STREET OR SIDEWALK CONSTRUCTION OR REPAIRS OBSERVED IN THE PROCESS OF CONDUCTING THE FIELD WORK.

REFERENCES:

- THE OFFICIAL TAX ASSESSOR'S MAP OF KENT COUNTY, STATE OF DELAWARE, MAP #57.
- MAP ENTITLED "NATIONAL FLOOD INSURANCE PROGRAM, FIRM, FLOOD INSURANCE RATE MAP, KENT COUNTY, DELAWARE, AND INCORPORATED AREAS, PANEL 166 OF 435", MAP NUMBER 10001C0166H, EFFECTIVE DATE: MAY 5, 2003.
- MAP ENTITLED "STRIPING PLANS FOR: PAVEMENT & REHABILITATION SOUTH I-1, 2010" DATED 6/30/2011 SHEET 10 OF 29, AS PROVIDED BY THE STATE OF DELAWARE DEPARTMENT OF TRANSPORTATION.
- MAPS ENTITLED "1151 NORTH DUPONT HWY-DOVER-DE" SUE NUMBER 08-230802-00 DATED 11/10/2023 PREPARED BY CONTROL POINT ASSOCIATES, INC. AND "ALTANSPS LAND TITLE SURVEY RAISING CANE'S-DOVER PARCEL 2-05-05700-01-3001-000 1151 NORTH DUPONT HIGHWAY CITY OF DOVER, COUNTY OF KENT STATE OF DELAWARE" DATED 11-09-2023 PREPARED BY CONTROL POINT ASSOCIATES, INC.
- REPORT ENTITLED "PRE-DEVELOPMENT REPORT" DATED 11-10-2023, CDS Job #: 23-0847, PREPARED BY CDS - CONSOLIDATED DEVELOPMENT SERVICES.

1	CLIENT COMMENTS	2	3	4	5
No.	DESCRIPTION OF REVISION	FIELD CREW	DRAWN	APPROVED	DATE

FIELD DATE 10-24-2023	ALTA/NSPS LAND TITLE SURVEY
FIELD BOOK NO. 11-06	RAISING CANE'S-DOVER
FIELD BOOK PG. 69	PARCEL 2-05-05700-01-3001-000
FIELD CREW A.B.	CITY OF DOVER, COUNTY OF KENT
DRAWN: K.S.	STATE OF DELAWARE
REVIEWED: K.W.	
APPROVED: B.A.R./J.D.S.	
DATE 11-22-2023	
SCALE 1" = 30'	
FILE NO. 11-230150-00	
DWG. NO. 1 OF 1	

CONTROL POINT ASSOCIATES, INC.
21133 STERLING AVE, SUITE 7
GEORGETOWN, DE 19447
302.295.1010
WWW.CPASURVEY.COM

WARREN, NJ 08060-0000
CHAMBERS, NJ 08022-0000
MT. LAUREL, NJ 08054-0000
MANASSAS, VA 20108-0001
LONG ISLAND, NY 11550-0000
SOUTH BRIDGEFORD, MA 01462-0000
ALBANY, NY 12212-0000
ALBANY, NY 12212-0000
ROCHESTER, NY 14620-0000
HILTON VALLEY, NY 10485-0000
771 LAUREL AVE., EL PASO, TEXAS