



**CITY OF DOVER, DELAWARE
BOARD OF ADJUSTMENT MEETING
Wednesday, April 16, 2025 at 9:00 AM**

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

AGENDA

IN-PERSON & VIRTUAL MEETING

This Board of Adjustment Meeting for April 16, 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 April 16, 2025**

Join by Phone: Dial 1-650-479-3208
Access Code: 253 821 76664
Password for Phones: 36837262

Join Online: <https://bit.ly/BOA04162025>
Webinar Number: 2538 217 6664
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 Meeting Minutes of August 14, 2024
2. Adoption of Meeting Minutes of November 20, 2024

COMMUNICATIONS & REPORTS

Meeting Reminder: The next Board of Adjustment Meeting date is tentatively scheduled for Wednesday, May 21, 2025 at 9:00 AM.

OLD BUSINESS

NEW BUSINESS

The following Application was filed for Review and Public Hearing before the Board of Adjustment.

3. Application #V-25-01

Property at 2 Westover Drive. A Request has been made for a Variance from the requirements of *Zoning Ordinance*, Article 5 §1.114 as associated with a proposed above-ground swimming pool. The Variance Request seeks a reduction of the minimum setback from 15 feet to 12 feet from the side property line for the edge of the water containment portion of the swimming pool. The property is zoned RM-1 (Medium Density Residence Zone) and subject to the PND (Planned Neighborhood Design) as part of the Village of Westover PND. The owners of record are Jason and Page Bebout. Property Address: 2 Westover Drive, Dover DE. The Tax Parcel ID is ED-05-076.13-02-18.00-000.

ADJOURN

Posted Agenda: April 9, 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
August 14, 2024

A Regular/Hybrid Meeting of the City of Dover Board of Adjustment was held on Wednesday, August 14, 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. Wagner, Mr. Senato, and new member Mr. Christian Swalm. (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 and Mrs. Savage-Purnell.

Mrs. Melson-Williams mentioned as noted on the agenda, we have some membership details to report. First, we are welcoming Christian Joshua Swalm, a new Board of Adjustment member that was just appointed July 22, 2024, to complete a term that will expire in July 2025.

Also, we welcome returning Board of Adjustment member Richard D. Senato as reappointed on July 22, 2024, for a three-year term to expire in July of 2027.

Mr. Senato asked to add the Resolution for Mr. Keller to the agenda. The Resolution was already a part of the current agenda.

APPROVAL OF AGENDA

Mr. Senato moved for approval of the agenda with the request to add the Resolution that was already a part of the agenda. The motion was seconded by Mr. Wagner unanimously carried 4-0.

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

APPROVAL OF THE REGULAR BOARD OF ADJUSTMENT MEETING MINUTES OF JULY 17, 2024

Mr. Senato moved to approve the meeting minutes of July 17, 2024, with the necessary correction. The motion was seconded by Mr. Wagner 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 September 18, 2024, with a 9:00 am start time in the Council Chambers and with a virtual format. We have a filing deadline that occurs later this week, so we'll certainly confirm with you when that meeting has been formally scheduled. If we don't receive any applications, we will not be having that meeting.

Correspondence Received

There was a letter received shortly after your meeting in July from Mr. Glenn Mandalas who is serving as legal counsel for Staff as part of that July meeting. That letter dated July 17, 2024 was forwarded by email to all members of the Board.

SPECIAL RECOGNITION**Resolution honoring the service of Mr. James N. Keller to the Board of Adjustment.**

Mrs. Melson-Williams stated that Staff prepared a resolution, and I will read that into the record and then we'll seek a motion for its adoption. I did speak to Mr. Keller yesterday, and he was unsure if his schedule would allow for attendance today, and in any case, we'll move forward with this and certainly ensure that he gets the resolution.

(See attached Resolution)

Chairman Sheth asked if there were any questions or if anyone would like to make a statement?

Mr. Senato mentioned that he enjoyed working with Mr. Keller on the Board. He was diligent. He took care of the minutes very well and he was an outstanding member of the Board of Adjustment. I was very happy and honored to have worked with him during the years that he served. I wish him the best in his future endeavors. Thank you.

Chairman Sheth mentioned that he will definitely be missed. We miss him right now.

Mr. Senato moved to approve the Resolution honoring the services of James N. Keller to the Board of Adjustment, seconded by Mr. Wagner, and unanimously carried 4-0 of the members present.

OPENING REMARKS CONCERNING APPLICATION

Mrs. Dawn Melson-Williams, Principal Planner stated the meeting today will be conducted in accordance with the agenda. There is one Variance application on the agenda under New Business for consideration. The application file will be referenced by title, a summary will be presented by Planning Staff, an opportunity will be given for the Applicant to present, the floor will be opened for questions of the Applicant by the Board, and then the public hearing will be opened for public testimony. The Chair may set parameters on the length of time for each speaker giving public testimony in order to ensure an efficient meeting. The Chair will open the Public Hearing to proceed with public testimony on the item. If you are a member of the public and would like to address the Board please raise your hand, when the Chairman calls you, please step down to the podium and please sign in. For the record we will need your name and address, we also need to know if own property within 200 feet, in which case you would have received a mailed notice of the meeting. If you have joined us online, an opportunity will also be provided for you to speak. We ask that you be as brief as possible and that your statements be limited to the Application before the Board. *(In the interest of allowing for an opportunity for all members of the public to speak, it is suggested that the Chair direct that the public testimony of each speaker will be limited to three (3) minutes.)* The Board may consult with the City Solicitor to discuss legal matters. If the applicant or member of the public must leave, they can contact the Planning Office at 736-7196 to learn of

the Board's decision. A formal notice of the decision will be mailed to the applicants. Approved variances expire after one year if the approved project has not commenced. All public notice for the items on this agenda was completed in accordance with code requirements and will be noted specifically with the item. The meeting agenda was posted on August 7, 2024, in accordance with Freedom of Information Act requirements.

NEW BUSINESS

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.

Mrs. Melson-Williams stated that there is the Application Variance Request, a Report from Staff and a listing of Exhibits labeled A through F. The Legal Notice was published in the Daily State News, also previously known as the Delaware State News, on August 2, 2024, and the property owners within 200 feet of the subject site were notified by Letter sent by the Planning Office in accordance with the established procedures for the Public Notice on this Application

Mrs. Melson-Williams gave a brief overview of the Application V-24-04. Currently, there is a vacant restaurant on that site. Today, the request for a variance is related to *Zoning Ordinance*, Article 4 §4.15 regarding the future construction of a new restaurant building with drive-through and site improvements. The Report includes information, more specifically on the property and the adjacent properties. We find this along the Route 13 commercial corridor. The Report includes Code Citations from the C-4. The proposed use as a restaurant with a drive through are both uses permitted in the C-4 and the variance request is really related to the bulk standard for a side yard setback. The C-4 zone requires a side yard setback at 15 feet and they are seeking something other than that. The Source Water Protection Overlay Zone doesn't really affect the Variance Request that has been made. The Report continues giving a reminder to the Board that you are to look at the series of four items that make up the "exceptional practical difficulties test." The Report beginning on page 5 gives the applicant's responses to each of those four tests and the Staff response as well which in some cases is a little more detailed. Overall, the Staff is recommending approval of the variance for that side yard setback, feeling that the applicant has strived to demonstrate that exceptional practical difficulty in making the case. We have some notes regarding if you choose to approve the variance and what that may mean for the Applicant. This site in order to redevelop would be subject to other review processes beyond today's meeting. I will also reference the attachments which range from the actual Board of Adjustment application forms, several Zoning Exhibits for Application purposes provided by Staff, the applicant's written narrative, and then a Conceptual Site Plan that details their request as well as what's known as an ALTA title survey, which is a survey of the existing conditions on the property.

Chairman Sheth asked about the former Boston Market. Mrs. Melson-Williams responded by

stating that we'll hear a little more detail from the applicant. The Boston Market was developed a significant number of years ago, and with this project, they were looking to demolish that building and redevelop and reorganize the site by placing a building in a slightly different location with parking and drive-through. Under our current Code provisions for C-4, they're having to seek relief for a side yard setback.

Chairman Sheth said I understand that the Boston Market did not have a drive-through. Mrs. Melson-Williams replied, they had a minor one I believe on the north side of their building, but it did not include a canopy system similar to this.

Representative: Ms. Pamela Scott, Esquire, Saul Ewing LLP

Ms. Pamela Scott was sworn in by City Solicitor Mr. Rodriguez.

Presentation

Ms. Pamela Scott mentioned good morning to members of the Board. I'm here on behalf of the applicant Raising Cane's which is a fast-food restaurant relatively new to the Delaware area. I have with me as part of my team: my associate Mackenzie Peet, Esquire; also, David Kuklish, PE with the civil engineer for this project with Bohler Engineering; and Anna Weisel who's with the Raising Cane's project development team. If there are any additional questions beyond my presentation. They will be able to assist with that. For location purposes, here is the site along with Route 13. It's actually the parcel in the middle. As Mrs. Melson-Williams had indicated, the property along Route 13 in this area is zoned C-4 for commercial and our property is obviously within the C-4 Zone. Here are a few pictures of the existing Boston Market located on the property. There is a small drive-in window associated with the existing Boston Market that they never had any type of canopy over the area for people to come through the drive-through. There are a few more pictures of the existing site. Here's the picture of the surrounding uses; our site is designated with the red marker. To our immediate left is the Grotto's Pizza, to the right is the Chipotle and the Vitamin Shop, and then to the rear of us is the Dover Speedway along with the Bally's Dover Casino Resort. There are several other retail uses in the area. As Mrs. Melson-Williams mentioned, we are proposing a fast-food restaurant with a drive-through. This is an illustrative plan showing the basic layout of the proposed restaurant, the parking and circulation, and the proposed landscaping that will be added. As you can see from this photo on the right-hand side, the little area that sticks out is the canopy with the two drive-throughs (lanes). Basically, in terms of meeting the requirements of your Code, we meet or exceed all the requirements with respect to lot area, etc. As you can see in terms of the side yard setbacks, while the building that is proposed will exceed the requirement for 15 feet, the canopy itself over the drive-through will extend 8.5 feet into the side yard setback. There's another plan. This was what was submitted in connection with the Application showing our site and the adjoining two sites on either side of us. Here is a close up of our building with the proposed area of the canopy that is shown with the circle. That shows how it is extending into the side yard setback. This is a proposed elevation that shows what the building would look like if you were basically standing looking at the building itself. And as you can see, we're showing the canopy area and two-aisle drive-through. As Mrs. Melson-Williams indicated the Code does have several requirements that need to be met for purposes of seeking an Area Variance.

These standards were also qualified in what's known as the Kwik Check case, which is a several Delaware cases in terms of the standards for Area Variance. So just to repeat what those standards are, we are looking at the character of the area where the property is located. We're looking at these surrounding uses. We are looking at what the impact is of the Variance, if it is granted or what the impact is on neighboring properties and finally, we're looking at what the impact would be on the applicant if the Variance is not granted. Those are the four standards we review for the purposes of this Variance. In terms of the nature of the zone, we've already indicated that this is the Highway Commercial District (C-4) which permits the proposed use for the restaurant and drive through. This site is the site of the former Boston Market Restaurant which did have a small drive-through window area. The former site is closed and vacant due to bankruptcy; it has since closed all of its restaurants. Grotto's Pizza is located to the west of the site. Chipotle and Vitamin Shoppe are situated to the east of the site. Dover Speedway and Bally's Casino are located to the rear of the site. The site has frontage along Route 13 (DuPont Highway). In terms of the impact of the variance on the neighborhood properties, Raising Cane's is proposing to redevelop and revitalize this site. They would be taking down the existing building and replacing it with a 3,364 square feet building that would have two drive through aisles. We will be adding additional landscaping to the site as part of this project. We will be constructing the canopy over both drive aisles. We do not believe it will negatively impact the adjoining properties especially the most effective property to the east, which is the Chipotle and Vitamin Shoppe. Right next to that area basically is an open parking area, the building adjacent to that site is somewhat removed from the building.

We believe that the encroachment from this canopy is minimal and as such will not negatively impact the adjoining properties. In terms of the affect on the project if the variance was to be denied, while the canopy is identified as a structure it is not enclosed. It is an entirely open area. We are not able to reconstruct or reconfigure things on this site to avoid a Variance due to how the parking layout and the circulation works on this site. So, we don't really have any alternatives in terms of seeking a Variance for the canopy. As you were probably aware, canopies over drive isles have become basically requirements in the fast-food business. They protect customers and employees from the elements. They serve to enhance the customer experience, and we have found that basically this is what customers are expecting when it comes to a drive through facility. It is considered a normal and essential improvement for this type of a restaurant. If we were to remove the canopy from this project, it would significantly diminish the customer experience, jeopardize the financial viability of the project, and pose risks to the safety of both customers and employees. I would note that in the Staff Report, they have advised as well in reviewing the application that it recommends the needed requirement of seeking a variance for this particular application.

Chairman Sheth asked how many feet is the drive-through from the highway. Ms. Scott responded It is approximately 120 feet. We don't want any cars extending out into Route 13. I think the way the circulation pattern for the drive-through is set up on this site that will not happen. This concludes my presentation, and I will be happy to answer any questions.

Chairman Sheth asked what the restaurant was geared towards. Ms. Scott replied that Raising Cane's is basically known for their chicken fingers and that is what they offer in their restaurant. As I said, they are new to this area and recently opened the facility in Newark, Delaware. They've been one of the fastest expanding restaurants.

Chairman Sheth asked if there were any other questions?

Mr. Senato mentioned that he understands the variance, but looking at the aisle coming in he would presume that under the canopy there are two order taking or receiving areas. Ms. Scott replied correct.

Mr. Senato asked if one would be to the left and one would be closer to the road to the right. Ms. Scott replied yes.

Mr. Senato asked if anything was decreased then there would be a difficulty as far as keeping the customer driving in the drive-through.

Ms. Scott replied that it would certainly affect the efficiency of the drive through. Yes.

Mr. Senato asked the question about the canopy (south section) as he referred to a section of the material in his packet. He asked if the canopy was to the right.

Ms. Scott replied yes, correct. The canopy is on the right-hand side. I don't know how many people go to Chick-Fil-A but my experience is with Chick-Fil-A. In order to get people through the lines, they also have employees outside taking orders.

Mr. Senato asked if they would be operating similar to Chick-Fil-A. Ms. Scott replied yes.

Mr. Senato asked if there was a difference of 6.5 feet from the 15 feet. Ms. Scott replied yes.

Chairman Sheth opened the public hearing.

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

Mrs. Melson-Williams mentioned to Chairman Sheth that she needed to go to the folks that have joined online. Looking at the list, the folks that have joined us online this morning are all part of the project team. I'm going just identify them for the record, and none of them have indicated a need to speak. Those include Jena Cooper from Bohler Engineering; Melissa Brotschul, and I'm not sure what group she is with of the project team. But then there is also Spencer McNichols, who is, I believe part of the architecture group as well for this. So that is all that have joined us on the line. There are no members of the public wishing to speak in regard to your case this morning.

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

Chairman Sheth asked if there was any correspondence. There was none.

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

Mr. Senato moved to approve the requested variance for V-24-04 where the applicant is requesting a reduction of the side yard setback of 15 feet to 8.5 feet which is the difference of 6.5 feet. I believe that the applicant has proved exceptional difficulties in the fact that based on what the canopy is

used for. I believe it would be the best interest to have the motion approved. I would like to mention the fact that in motion that this would in no way set any kind of precedent for the future. That every type of the situation should be on a one-on-one basis. The Applicant has proved that this is a needed operation, and they approve it along with the Site Plan, photos, and the reasons provided by the Applicant at this meeting. The motion was seconded by Mr. Wagner unanimously carried 4-0.

Chairman Sheth asked if there were any other questions?

Chairman Sheth mentioned that in his absence Mr. Senato would chair the meeting.

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

The meeting was adjourned at 9:44 A.M.

Sincerely,
Maretta Savage-Purnell
Secretary

**CITY OF DOVER
BOARD OF ADJUSTMENT MINUTES
November 20, 2024**

A Regular/Hybrid Meeting of the City of Dover Board of Adjustment was held on Wednesday, November 20, 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. Wagner, Mr. Swalm, and new member Mr. Ronald Coburn. Mr. Senato was absent.

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

Mrs. Melson-Williams mentioned as noted on the agenda, we have some membership details to report. First, we are welcoming Ronald Coburn Jr., a new Board of Adjustment member that was appointed to a three-year term in August 2024, to complete a term that will expire in July 2027.

Roll Call

Mr. Wagner-present
Mr. Senato-absent
Mr. Swalm-present
Mr. Coburn-present
Chairman Sheth-present

APPROVAL OF AGENDA

Mr. Coburn moved for approval of the agenda with the order changes to hear Application V-24-06 prior to Application V-24-05. The motion was seconded by Chairman Sheth and unanimously carried 4-0. Mr. Senato was absent.

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

APPROVAL OF THE REGULAR BOARD OF ADJUSTMENT MEETING MINUTES OF AUGUST 14, 2024

The meeting minutes of August 14, 2024, are still being prepared. Adoption of the meeting minutes will be considered at the next Board of Adjustment meeting.

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 December 18, 2024, with a 9:00 am start time in the Council Chambers and with a virtual format. Currently, we have no Applications to bring before the Board. If we don't receive any Applications, we will not be having that meeting.

Schedule of Deadlines

2025 Schedules of Deadlines and Meetings for Board of Adjustment - DRAFT

Included in your packet is a Draft Schedule that's presented to you just so that our applicants know deadline dates and then meeting dates for 2025. Your meetings remain on the 3rd Wednesday of each month unless there happens to be a holiday and then we adjust the meeting time one day. Planning Staff will finalize that Agenda of Meeting Deadlines and Meeting Dates and officially post that for our applicants.

OPENING REMARKS CONCERNING APPLICATION

Mrs. Dawn Melson-Williams, Principal Planner, stated the meeting today will be conducted in accordance with the agenda. There are two Variance applications on the agenda under New Business for consideration. The application's file will be referenced by title, a summary will be presented by Planning Staff, an opportunity will be given for the Applicant to present, the floor will be opened for questions of the Applicant by the Board, and then the Public Hearing will be opened for public testimony. The Chair may set parameters on the length of time for each speaker giving public testimony in order to ensure an efficient meeting. The Chair will open the Public Hearing to proceed with public testimony on the item. If you are a member of the public and would like to address the Board please raise your hand, when the Chairman calls you, please step down to the podium and please sign in. For the record, we will need your name and address. We also need to know if you own property within 200 feet, in which case you would have received a mailed notice of the meeting. If you have joined us online, an opportunity will also be provided for you to speak. We ask that you be as brief as possible and that your statements be limited to the Application before the Board. *(In the interest of allowing for an opportunity for all members of the public to speak, it is suggested that the Chair direct that the public testimony of each speaker will be limited to three (3) minutes.)* The Board may consult with the City Solicitor to discuss legal matters. If the applicant or member of the public must leave, they can contact the Planning Office at 736-7196 to learn of the Board's decision. A formal notice of the decision will be mailed to the applicants. Approved variances expire after one year if the approved project has not commenced. All public notice for the items on this agenda was completed in accordance with code requirements and will be noted specifically with the item. The Meeting Agenda was posted on November 13, 2024, in accordance with Freedom of Information Act requirements.

NEW BUSINESS

Application V-24-06

Property at 207 N. West Street. A Request has been made for Variances from the requirements of *Zoning Ordinance*, Article 4 §4.2 as associated with a proposal to subdivide the existing 12,168 SF parcel located at the northeast corner of N. West Street and Cecil Street into four (4) townhouse lots (Cecil Street Townhomes). Variance Request 1 seeks a reduction of the minimum lot depth to 84.5 feet from 100 feet. Variance Request 2 seeks to allow a minimum lot area of 2,366 SF reduced from the required minimum lot area of 3,000 SF for two (2) of the townhouse lots. The property is zoned RG-1 (General Residence Zone). The owner of record is 4BL, LLC. Property Address: 207 N. West Street, Dover DE. The Tax Parcel ID is ED-05-076.08-02-01.00-000.

Mrs. Melson-Williams gave a brief overview of the Application V-24-06 referencing the Staff Review Report and the attached exhibits.

Mrs. Melson-Williams stated that it is currently a vacant lot with the previous structure having been demolished in recent times. The applicant is asking for two variances as they hope to subdivide the property into four townhouse lots. That subdivision process is not under review today. That is a separate application to the Planning Commission in the future.

Mrs. Melson-Williams noted that in the Staff response, we recognized that the parcel here at 207 N. West Street is larger than several of the others within the block. With the proposal, they're looking to reorient the lots which causes some of these bulk standards to be difficult in meeting those. That reconfiguration or repositioning of what would be the front of the lots is probably more applicable to this area as it creates a more similar lot size. It does also provide the Applicant an opportunity to develop a subdivision of multiple lots rather than just developing the single lot.

Representatives: Mr. Cameron Llewellyn; Owner and Mr. Doug Liberman with Larson Engineering Group Inc.

Mr. Cameron Llewellyn was sworn in by City Solicitor Mr. Rodriguez.

Variance Request 1: A variance from the required lot depth of 100 feet (Article 4, Section 4.2) for four (4) townhome lots. The proposed configuration orients the new lots/homes with a lot depth of 84.5 feet. Accordingly, a lot depth variance of 15.5 feet is needed for each of the 4 townhome lots.

Mr. Llewellyn stated that this property became vacant as we noticed it when we were building the Beer Garden across the street. We attempted to contact the person that inherited the property, and she was not really interested in having that conversation. Fortunately, the City condemned the property, boarded it up, got rid of the squatters, and then demolished it. When it came on the market, we were able to secure it. It's an exceptionally sizable lot for the area and to build a large single-family home would be out of character with that neighborhood and very almost imposing, if you will. So, we looked at it, and I have here with me Doug Liberman who is a Civil Engineer. He will speak a little further about that. We consulted the City of Dover *2019 Comprehensive Plan* when we started this process, and we sat with Mrs. Melson-Williams. The *2019 Comprehensive Plan* is encouraging infill projects, compact and diverse housing, affordable housing, housing near multi-modal routes and plenty of others. We fit that mold very well with this if we are granted these two different variances. We also consulted with Mr. Grimes from Restoring Central Dover. I'll let him speak to this if necessary and their initiatives here in Dover. And then we consulted Mr. Glenn Mandalas Esq. His letter as Exhibit E is here. Ironically, he had jury duty this morning, so he couldn't be here. Mr. Glenn Mandalas applied an analysis of what is known as the Kwik Check factors and that's outlined in his letter. Because we satisfied those factors, we demonstrated that we have what is called an Exceptional Practical Difficulty. We asked the Board of Adjustment for a variance as mentioned by Mrs. Melson-Williams on the lot depth on all four lots and then lot square footage for the center two lots (Parcels 2 and 3) that you see out there.

Mr. Doug Liberman was sworn in by City Solicitor Mr. Rodriguez.

Variance Request 1: Lot Depth Variance

Mr. Liberman stated that he wanted to go over how we got to where we are with the subdivision to set this at four lots. As Cameron had mentioned and Mrs. Melson-Williams in her briefing, this parcel is fairly oversized for the area. You can see the parcels to the east where there are actually three single family home lots that are the same size as the one lot that we are showing as the original overall parcel. Cameron had an idea of doing townhouses on here. We tried to fit what we could on the plan given the RG-1 (General Residence Zone) with a 20-foot-wide minimum lot width. We could fit five lots on here. After consulting with Mrs. Melson-Williams, it seemed like four (4) would be better and not being too greedy in trying to move forward with the Application. In doing so, we ended up with four (4) townhouse lots that are really oversized for townhouses. The lot width that we end up with for each unit is 28 feet. That is really what dictated a Lot Area Variance for Lots 2 and 3.

We tried to make everything fit and tried to give an economical project for this. I think if we're trying to tailor everything towards the first variance, which is the lot depth variance, we had to turn our development towards Cecil Street with the frontage on Cecil Street for all four (4) lots. Given our existing lot depth of 84 ½ feet that doesn't provide us with the opportunity to get to a hundred feet for the minimum lot depth to make this work. Our Exceptional Practical Difficulty with this is the existing physical feature of the parcel and to try to make all four of these fit.

Chairman Sheth asked that at first you said you can do up to five but now you have decided to do four? Mr. Liberman replied yes sir, that kind of leads to the lot Area Variance. He will discuss it more when they talk about Lot Areas.

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

Variance Request 2: Lot Area Variance

Mr. Liberman stated that stated that the existing parcel is 12,168 SF. So, with the minimum lot area for a townhouse within the RG-1 Zone being 3,000 SF. When we tried to get the lots as large as we could with everything being equal for the townhouse units themselves, that ended up being again these 28-foot wide units, but that puts us short on the Lot Area for the middle two units. What I wanted to point out was that given 12,168 SF, our average Lot Area for all four lots exceeds the minimal Lot Area. I think that kind of purports to what we are trying to do with going from five townhouse lots to four. We ask as minimally as we can get by going to these larger townhouse lots but again maintaining an average Lot Area that exceeds the minimal Lot Area of the RG-1 District.

Chairman Sheth asked how many people of a family can live in one townhouse? Mr. Liberman replied that the intention is it is a single-family townhouse. Chairman Sheth asked, but you can have seven children? He asked if we are counting people for the variance and would it create a congested area by not limiting people as we don't know how many family members there will be. Secondly, what is the difficulty. Mr. Liberman replied to the first question about whether this was townhouse or single-family home or whether it is here in town

or just a residential subdivision somewhere else. You can't really restrict, or you can't really report to know how many residents will be in these houses. Even if it is a single-family home in the subdivision and you have a four bedroom, three bath house or something like that, you could have numerous kids and/or adults. Chairman Sheth mentioned that if somebody else has the same lot somewhere, this Board does not want to establish a precedent. What is the difference between the other guy versus you? Mr. Liberman replied he was not sure how to answer that question.

Mrs. Melson-Williams stated that the Chair is asking about potential precedent. When something comes before the Board of Adjustment, you are looking at the individual characteristics of that particular property. In this case, a townhouse unit is a dwelling unit for a single family. The definition of "family" would be up to five unrelated individuals. They are looking to propose four (4) dwelling units; so that is one dwelling unit on each lot. Today you are looking at, as I said, this particular lot and its characteristics. You can certainly see that this is a corner lot which typically results in some challenges when it comes to bulk standards. They are addressing how they have focused on dividing this into a series of four lots that are comfortable and achieve as close as possible those bulk standards.

Chairman Sheth said to Mr. Liberman that he was going to say something because he was telling him about the engineering point of view. Mr. Liberman replied, yeah. He wanted to point out Mr. Glenn Mandalas' Esq. letter that was in your packet. It goes through the Kwik Check factors as far as establishing the Exceptional Practical Difficulty for this.

Chairman Sheth mentioned that Mr. Rodriquez has legally explained it to him regarding the two questions. Many times, in the absence of Mr. Rodriquez, Mr. Mandalas represents the City. A similar case has come where Mr. Mandalas had to face at this end of the Board. This is a definitely a plus for the City and the Downtown area. He just did not want to face the same issue again whether it is objective or subjective.

Mr. Liberman stated that I think what we can say is that as far as the Lot Area Variance is, we have gone as far as we could by eliminating a unit to decrease our density and in turn that increases our minimum Lot Area. Our request is to ask the Board for relief for the Lot Area Variance.

Chairman Sheth mentioned, if you look at the two issues which I ask you, but Mr. Rodriquez supported. Mrs. Melson-Williams and the Planning Commission are the ones who have to deal with it. The Board has to deal with it in the future. He is trying to make sure on his end he covers all the points.

Mr. Liberman stated that he did not think that they were setting a precedent, but I think we are decreasing our density or a lot yield to get closer to the number for the minimum lot area as we can. I think that's showing that we are not trying to create the absolute minimum that we could possibly do. We are trying to create the maximum lot area that we can to satisfy the Ordinance.

Chairman Sheth asked is that the reason you are doing four townhouses instead of five? Mr. Liberman replied correct.

Chairman Sheth asked if there were any questions.

Mr. Swalm said that obviously this is profit driven. He mentioned that his issue is precedent. Normally, when we have a parcel, ideally, we want to put in the most amount of units. His issue is the next project manager or investor that comes along, and he has a parcel that is slightly weird on the way it is laid out, is he going to ask the same thing?

Mr. Liberman mentioned if you look at the goals of the *2019 Comprehensive Plan* for the area of housing and community development is to encourage balanced and economic housing opportunities for all residents in the city. The Comprehensive Plan objectives in support of that goal include promoting adequate safe and affordable housing for all residents of the city; continuing to establish compact and diverse residential developments throughout the city; and reevaluating all the residential zone development requirements and housing types in the city.

We could be standing here asking for five, I think your argument about cost and maximizing profit would hold more weight in this case. We went to four and actually are providing larger townhouse units. So, when you look at a per square foot cost to build, these are more expensive to build than if we were to build five 20-foot houses. I think we have taken a little bit of a hit on the economic development and profit side to still provide affordable housing for future residents of the City.

Mr. Swalm stated that he agreed, and he gets the project, and he understands. He thinks it is good for the town but once again he thinks it is going to set a precedent where there is going to be a lot of people that want to come into Downtown Dover and buy different lots and different homes and put in townhouses, right? They are not going to be the first ones. So, the next time this comes along, will the new precedent be four townhomes lots on every single building lot?

Chairman Sheth stated that each case presents their own way. So, when somebody else comes next time we have to review it on the same basis, no comparison. We cannot compare. We look at individual cases.

Mr. Llewellyn noted that if you look at that entire block, sixteen of the properties on that block do not meet today's bulk standards because they are predated. We kind of looked at it and said, "You know, it won't be out of character to have some non-conforming lots because there's only a handful that actually do conform to what today's bulk standards are."

Chairman Sheth mentioned that the Board cannot answer any hypothetical questions.

Chairman Sheth asked if there were any additional questions? There were none.

Chairman Sheth asked Mr. Liberman if he had covered both cases. He replied yes.

Chairman Sheth asked if anyone had a conflict of interest?

Chairman Sheth opened the public hearing.

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

Mr. Todd Stonesifer stated that he resides at 115 N. State Street in the city limits of Dover. I'm also the current chair of an organization known as the Downtown Dover Partnership. I have the unique perspective of being in the real estate industry. I have a real estate practice called the Moving Experience. So, when we look at this particular case, we look at the, as mentioned before in the presentation, we look at the Comprehensive Plan. I want to point out to everybody that the Planning Staff is very short-handed. I believe that if they were fully staffed, the Comprehensive Plan would have moved forward, and these rules and new standards would have been applied. The idea behind the Master Plan is affordable housing. Across the nation, we have a shortage of affordable housing and therefore we have people that are unable to put a roof over their head. The idea behind the Comprehensive Plan is to increase density thereby decreasing the cost of living in these homes. So, while it might be profit driven, I would suggest to you that it also has another motive. And that motive is to allow somebody that can't afford a single-family home on a lot such as this an opportunity to spend less. The Downtown Dover Partnership has also engaged in a Plan called *Transforming Dover 2030*. Many of you can see the current state of the Downtown at which this property is located in. It is challenged with lots of vacancies in the commercial district and lots of people taking refuge in those vacant properties. And so, the answer in the Master Plan that we created for the transformation of the City of Dover, is that it further emphasizes the need for greater density and affordable housing. We have to have places for people to live that they can afford. And so, the answer to all our problems Downtown is creating more dense housing. And so, in our Plan, we plan to create a parking solution as well as a one hundred and eighty (180) unit apartment complex. In the Master Plan for transforming Dover, when we do our work, the idea is that the domino will start to fall. And the private sector will start to invest their money to further the efforts of the Master Plan and the Comprehensive Plan. So, this falls in line with both the *Comprehensive Plan*, which hopefully will be implemented sooner than later when Staff is able to have more support. It also supports the *Transforming Dover 2030 Plan* with increased density. There were a couple of questions regarding congestion regarding four townhouse units. I would suggest to you that congestion is a good thing, okay. The more people we have on the streets, the more eyes we have on the streets, the less chance we have of people committing crimes for fear of being caught. We want walkable communities. There are plenty of opportunities for them to walk to places of worship, to walk to places to get lunch, and to walk Downtown, and to frequent whoever might be willing to risk and put their business Downtown. So, for all these reasons, its mainly affordable housing. I need places, we need places that we can put families that are less fortunate. And furthermore, I would also like to speak about the fact that I do have the unique perspective of working with NeighborGood Partners. Having been in Dover for 50 years, I can tell you that we were not allowed to walk up and down the street, Kirkwood Street, New Street, or Queen Street. The work that NeighborGood Partners has done by putting homeowners in these places and taking them away from renters has had a tremendous effect on the overall makeup of the neighborhood that is now much safer. I appreciate the opportunity to speak to all of you and share my comments. If anyone has any questions, I'm happy to answer them.

Good morning. My name is Will Grimes, and I am the pastor of Solid Rock Baptist Church located at 113 North West Street. Mr. Grimes stated that he agrees with Mr. Stonesifer's statement, and he is in full support of anyone who is putting forth effort to revitalize our neighborhood and expand our housing inventory.

Good morning. My name is Michael Weeks. I previously served as the Director of Development for Central Delaware Habitat for Humanity. I agreed with both the previous gentleman's statements. My addition would be that I believe that Mr. Llewellyn's project is a natural extension of what Habitat for Humanity and NeighborGood Partners have already been doing. It's great to have organizations like that who raise the money and go out and provide these affordable housing solutions. The problem with that is it becomes increasingly difficult for them to operate. It becomes increasingly difficult if they are successful to continue purchasing those lots. So, it is a natural transition for profit businesses to come in and say, hey we would like to do affordable housing. Yes, he is going to make some money from it. That's awesome. That is the natural progression in how things should work if organizations like NeighborGood and Habitat for Humanity had success in their area. Thank you.

Mr. Swalm mentioned that he has been in real estate for a little over a decade so I'm well aware of the natural progression of private industry. I think there's a couple issues. I do think it is good for Dover; I'm not going to say that it's not. I think there's a lot of support for it obviously. I do think it's a good plan and I know it is a good plan because of my experience. I think to mask some of it as an altruism might be a little disingenuous.

Chairman Sheth asked if there was anyone else who would like to speak in favor of the project. There was no one else wishing to speak.

Chairman Sheth asked if there was anyone who would like to speak against the project.

Ms. Bonnie Pennington, 200 N. Kirkwood Street. I am on the corner of the lot that these gentlemen would like to build a house. I have no problem with people making money, fine and dandy. My problem is you got the restaurant out there. You have two churches out there. Where is everyone going to park? Are they going to put a driveway in for each one of these houses or not? Because right behind my house is a paper alley. That is not a driveway. And I've had people park in my spot when the club is open and when the church is open. I've had to call the cops to have the vehicles removed out of my yard. I have no problem with them building houses out there where are they going to put all these people and all their cars? That street is not that big.

Chairman Sheth said excuse me ma'am. This is not the Planning Commission; this is just the phase as to whether the applicant will get the variance or not.

Ms. Pennington stated that she disagreed because she lives there.

Chairman Sheth mentioned to Ms. Pennington that she will have all the chances because the Planning Commission will address every issue you raise. So, you can attend the Planning Commission to raise that question. In the next phase, the Applicant has to go to the Planning Commission and get the approval.

Ms. Pennington stated that she disagreed because when y'all planned to put the restaurant there, they were talking about putting parking out there and there's no parking. That's my issue. I live on the corner and I'm getting tired of not being able to come home in my yard and park. I own that property.

Chairman Sheth stated that he agreed with Ms. Pennington. I'm not against it.

Ms. Pennington stated again, no, that's my issue. They can build all they want, but I hope they have land because if I catch them in my yard, I don't care who it is. I'm calling the cops. I'm going to have you removed.

Mrs. Melson-Williams noted the proposal would have a driveway for each of these units and include a garage parking space. So, there's going to be some space on the individual properties as part of their development plan that will be addressed. For the alley that's behind there, if it's a paper alley, then they would have to improve that with a paved surface so that it's an alley that would be accessible to multiple properties including yourself.

Ms. Pennington asked, well, how can you do that? How are you planning on doing that? I've been in this house for 20 years. I'm a Habitat owner. I am a former Habitat owner. I have no problem with Habitat building houses out there. That is a good thing. The thing about it is people that are putting up all these houses; and they are putting them in those spots. You can't tell people they can and cannot park on the road because you don't own that road.

Chairman Sheth asked Mrs. Melson-Williams what she had previously mentioned and what Ms. Pennington is mentioning as it relates to the Planning Commission. Mrs. Melson-Williams replied as part of the Subdivision process, they would be required to provide a minimum number of parking spaces on each Lot and that will be looked at more closely with the Planning Commission. You are certainly correct that there are a number of houses that have been built that don't have that off-street parking in the area which may present challenges to other property owners in parking their own vehicles on their property if their driveway gets blocked. That's certainly something we can look at through that process.

Ms. Pennington said OKAY, my question is you y'all want to build four townhouses on that property, correct? So, if you're planning on building and so you'd come up and tell me if you would like, if you're planning on building a long house on that driveway or land. How can you put a driveway when the land is right at the end of my driveway?

Chairman Sheth suggested that Ms. Pennington attend the Planning Commission meeting.

My name is James Mahal from Little Creek Delaware, but I am a native of Dover, Delaware at 401 N. Governors Avenue. I rode across the little railroad tracks going to William Henry since I've been a kid. I remembered the Southern States being right there.

Chairman Sheth asked Mr. Mahal what was his address? Mr. Mahal replied his address is 228 Ann Avenue. All right, so you asked, what is the difference between this gentleman and everyone else who did that here? Well, I'm getting ready to ask the same question. When you asked what the difference was between him and the other people that made file this Application, sir, it was stated that he does business, correct; and he seen that there was an opportunity there, correct? Chairman Sheth said, I don't answer anything. Mr. Mahal said okay, well you just listen because I'll say what he said. So, then he said, "so we asked the lady to sell it, right? She didn't want to sell. So, what

happened was you failed to bargain, and you took the land. That's the difference. This is why we're having this meeting. He has little political influence, apparently.

That's the difference between him and somebody else. He can make a little bit of difference, a little pool. Dude, I'm all for it. I applaud him. Thank you for helping our neighborhood. I'm not allowed to look back at him (the applicant). That's fine dude. He's (the Applicant) is doing a great job.

Again, I cannot look back at the Applicant, but I'm going to tell you that you cannot walk down New Street if you are a white boy. You can't walk down Kirkwood if you are a white boy. You don't think it's true? It's true.

Chairman Sheth asked if there was anything else, please?

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

Chairman Sheth asked if there was any correspondence. There was none.

Mr. Wagner moved to approve the two requested variances for V-24-06 where the applicant is requesting a proposal to subdivide four townhouse lots and seek a reduction of the minimum lot depth to 84.5 feet from 100 feet and to allow a minimum lot area of 2,366 SF reduced from the required minimum lot area of 3,000 SF for two (2) of the townhouse lots. The motion was seconded by Mr. Coburn unanimously carried 4-0.

Roll Call Vote

Mr. Wagner – Yes

Mr. Swalm – Yes

Mr. Coburn – Yes

Chairman Sheth – Yes

Chairman Sheth asked all Board members in the future to specify the reason for their vote.

Application #V-24-05

Property at 1151 N. DuPont Highway. A Request has been made for a Variance from the requirements of *Zoning Ordinance*, Article 5 §4.7 associated with signage for a new restaurant building with drive-through and site improvements. The Variance Request seeks to increase the number of permitted wall signs from two (2) wall signs to five (5) wall signs. 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.

Mrs. Melson-Williams gave a brief overview of the Application V-24-05 referencing the Staff Review Report and the attached Exhibits labeled A through F1-F2. Those include a form, Zoning Map, images that reflect the location of the Site, and the wall signs proposed. There are other signs

proposed at the location, but they are more directional in nature and fall under other provisions of our Sign Regulations. Additionally, there are details of the types of wall signs that they are proposing. The Application notice was published in the Daily State News on November 10, 2025 and the mail notice to adjacent property owners within 200 feet completed by the Planning Office to meet the public notice requirements for the hearing you will need to conduct today. The submission includes the applicant's responses to the four criteria which focus on the zoning, the character of the area, and whether or not the variance would be an impact to the neighbors and to the property itself.

Representatives: Ms. Pamela Scott, Esquire of Saul Ewing LLP on behalf of Raising Cane's

Ms. Scott was sworn in by City Solicitor Mr. Rodriguez.

Ms. Scott stated that she was an attorney with the law firm Saul Ewing, located at 1201 North Martin Street, Wilmington, Delaware.

Chairman Sheth mentioned that he had a question before Ms. Scott starts her presentation. He wanted the members of this Board to know that a very similar signage issue came before the Board regarding Grotto's Pizza. He was not present at the meeting. You have the picture where you can see it. I'm not going to hold it against them because I was absent from that meeting, but the Board denied it. If I was present at the meeting, I would have said yes. Grotto Pizza has been in the area for roughly ten years. He is not comparing but wanted to make the Board aware of a similar situation regarding signage.

Ms. Scott stated that she was present on behalf of Raising Cane's, which is a drive-thru restaurant. It's totally new to Delaware. There is currently one location in Newark, Delaware, but this will be totally new to the Dover market. Today I have with me my associate Mackenzie Peet, Esquire and Anna Weisel, representative of Raising Cane's.

Chairman Sheth asked what the name of the restaurant was. Ms. Scott replied Raising Cane's. He asked what do they do? Ms. Scott replied, it's a fast-food restaurant and they are known for their chicken fingers.

Presentation

Ms. Scott stated that the property is located at 1151 North DuPont Highway, basically just in front of Bally's Casino and Dover Motor Speedway. Raising Cane's will be leasing this site. The zoning for the property is C-4 Highway Commercial. As previously mentioned, we are proposing a restaurant with a drive-thru. As Mrs. Melson-Williams indicated, we were here in August of this year to obtain a variance for the drive-thru portion of the restaurant. We needed a variance from the side yard setback to be able to provide a canopy over both of the drive-thru lanes. Here is an orientation of the property. Our property is the site located in the middle as she referred to the slide. As Dawn also indicated, many of you may know this is the Boston Market site. The Boston Market restaurant on that site had somewhat of a drive-thru as well and that restaurant has been vacant and closed for about the past two years. As previously mentioned, the property is zoned C-4 and it's basically surrounded by other uses of the C-4 Zoning District as represented by the green. This is

few photographs of what is currently sitting on the Site, which is the Boston Market. There are a couple more photos of the Boston Market with the parking areas. This is what surrounds us. As the Chairman referenced, immediately to our north is Grotto's Pizza restaurant. Also, immediately to the south of us we have the Vitamin Shoppe, T-Mobile and Chipotle. Dover Motor Speedway and Bally's Casino are immediately to the rear of our site. Obviously, we are in an area surrounded by pretty much the same uses as what we are proposing here. There is a photo of the site immediately to our north of Grotto's Pizza site. The next slide is showing the T-Mobile and the other shops immediately to the south of us on Route 13. There is also a photo showing Bally's Casino site to the rear. Here's a rendering of what the site will look like once it is approved and developed. So, the orientation of the restaurant is perpendicular to Route 13. As I said, it will have two drive-thru lanes with a canopy over it with landscaping and associated parking. I would like to also point out on this slide that immediately to the right of our site, is the shopping center of the T-Mobile, Vitamin Shoppe, and Chipotle. You will notice that the building is very close to Route 13 to the point of blocking the view of our site and our building as you are heading north on Route 13. This is another reason why signage is very important for our site to identify to the people who we are and where we are located. We are asking for a variance to provide three additional wall signs on the building. We are proposing to have wall signs on all four faces of the building, and in addition to wall signs, we also have a painted mural sign that will be on the drive-thru on the right-hand side of the building. The painted mural is something that is unique to Raising Cane's. This is something they do for each of their sites, and it is actually a mural that is painted on the building. This is what the wall signs will look like. These are approximately 24 SF in size and basically have the name of the restaurant and as I indicated they are known for their chicken fingers, so that is part of the signage as well. The painted mural sign would go on the drive-thru side of the restaurant, and this is approximately 139 SF in size. Here we are just showing some of the nearby signage so you can kind of see what's in and around the area for the different retail uses. This is signage to the north of us, and then I believe the next slide is showing some of the signage to the south of our site. As indicated, we are here asking for an Area Variance in order to have three additional wall signs. The standard that Delaware law requires that the Board review as part of that is referred to as the Kwik Check standards which are based on the seminal case in Delaware that established these standards. So, what you need to take into consideration is the nature of the zone in which the property is located; the character of the immediate and surrounding vicinity; whether the restriction upon our property is removed, will seriously affect neighboring properties and uses; and lastly, whether the restriction is not removed it would have a tendency to create exceptional and practical difficulty for the applicant in making normal and permitted uses of its property. I'm going to go through each of those standards separately and talk about how we believe we have met these standards. So, the nature of the zone, as I said, the property is zoned C-4 Highway Commercial and C-4 zoning permits this use in particular and as I think we have seen already that we are basically surrounded by C-4 uses. We are very consistent with the nature of the zone. For the character of the immediate vicinity, as I have said, this Site is a former Boston Market restaurant with a drive-thru, which has been closed and vacant for some period of time. We have another restaurant immediately to the north of us and we have other retail uses immediately to our south. To our rear, we have the casino and the speedway. We front on Route 13 which is a major principal arterial or roadway through the City of Dover. We would submit that argument so that what we are proposing here is consistent with everything else that is in the areas surrounding us. As to whether the variance would seriously affect neighboring properties, as I said at the beginning, Raising Cane's intends to redevelop and

revitalize this site. They are new to Delaware; they are new to the market. So, for their purposes, branding will be extremely important so that customers know where they are located and know how to get to their location. This is a busy corridor, so it's going to be important to direct people to the right location. We believe that what we're proposing is not inconsistent with what surrounds us. We also have limited frontage on Route 13 compared to other uses in this area. We only have 175 feet. We have somewhat of a narrow site, and we also have a building located on the site that is going to be perpendicular to the roadway rather than parallel, also creating some additional issues in terms of being able to see exactly what is on the site when you're driving by it. So, from our perspective, it's very important to have the right signage on this site, not only to identify this use, but to give people driving on this road sufficient time to make the right decision about whether they want to turn off and access our property and then to access our property safely. The last of the standards of the Kwik Check case is what would be the impact of denying the variance. As I said, for us, brand recognition is going to be extremely important because we are new to this market. Visibility is also going to be important. We're located on a highway where the speed limit is 45, but I would suggest that the problem would be that most people drive faster than the speed limit. So, it's going to be very important that people can identify whether or not they want to make the appropriate turns to enter our site and once they enter our site to be able to maneuver themselves around our site. As I said, the site was previously a Boston Market. We also want people to be aware that the old use is now going away and Raising Cane's is coming to the area. And because of how we are located on the site, having signage on all four walls of our building we believe is very important. And as I indicated before, we do have the issue with the one building immediately to our south that is somewhat blocking our vision, our view shed if you want to refer to it that way as you are heading north on Route 13. So, for all those reasons, we believe that we have met the standards that the Board would need to review for purposes of this Application. I'm certainly happy to answer any questions that you might have.

Chairman Sheth said thank you very much. I understand because you are across from Chick-Fil-A. I don't know what's going on in Dover, but there are a lot of chicken places coming.

Chairman Sheth said south of your location, (Dave's) Hot Chicken is coming which will also be new to the area. He mentioned that they are in the middle of the overcrowded neon signs in that area.

Chairman Sheth said I wanted to address all of you regarding a very similar sign for the future if it comes, so we may not put them in a bad position but that will be dependent upon the Planning Commission. They had the same argument as what you had. We are in the middle of all heavy advertising and to recognize it. As I told you, there are four chicken places in a mile or less than a mile from each other.

Ms. Scott stated even more reasons to distinguish ourselves. Chairman Sheth agreed.

We are in the middle of our discussion. In case Mr. Rodriguez must go, I don't think we need any legal advice from him (in case he has to leave early).

Chairman Sheth asked if there were any conflicts of interest.

Chairman Sheth asked if there was any correspondence related to this Application. Mrs. Melson-Williams replied that there was no correspondence related to this Application, but I think you've got some questions from board members and then we can move into the formal public hearing.

Mr. Wagner asked Ms. Scott if she was aware that there were “for lease” signs in front of the restaurant. Ms. Scott replied that she was not aware.

Chairman Sheth asked if there were any other questions?

Mr. Swalm asked Ms. Scott if they had secured the lease. Ms. Scott replied, let me check as she was not involved in that part: yes, it is currently leased to Raising Cane's. For some reason, the owner hasn't taken down the lease signs yet.

Chairman Sheth opened the public hearing.

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

Chairman Sheth asked if there was anyone who would like to speak against the project.

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

Mr. Coburn moved to approve of the requested variance for V-24-05 as submitted for the five wall signs. The motion was seconded by Mr. Swalm and unanimously carried 4-0. Mr. Senato was absent.

Roll Call Vote

Mr. Wagner – Yes, because it has met all of the City requirements.

Mr. Swalm – Yes, it is fine and has met all of the City requirements. It is good for the area.

Mr. Coburn – Yes, it's not going to have a negative impact on the neighboring properties.

Chairman Sheth – Yes, I'm voting for the motion because all the reasons they suggested is satisfied for the variance.

Mrs. Melson-Williams stated to Chairman Sheth, the result of the vote is four in favor of and one opposed to the motion to approve the variance to allow for five wall signs at this location as part of Variance Application V-24-05.

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

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

Sincerely,
Maretta Savage-Purnell
Secretary



City of Dover
Board of Adjustment
April 16, 2025
V-25-01

Title: Property at 2 Westover Drive - Application for a Variance

Location: Northwest corner of Westover Drive and Northdown Drive

Address: 2 Westover Drive, Dover, DE

Owner: Jason and Page Bebout

Tax Parcel: ED-05-076.13-02.18.00-000

Application Date: March 14, 2025

Present Zoning: RM-1 (Medium Density Residence Zone)
Planned Neighborhood Design (PND)

Present Use: Single-family detached house

Proposed Use: Single-family detached house with above-ground swimming pool

Reviewed By: Ann Marie Townshend, AICP, Planning Consultant (Rossi Group)
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 5 §1.114 to allow for the edge of the water containment portion of the pool to be 12 feet (less than the 15 feet required) from the side property line.

Note: This Review Report was initially prepared by staff of the Rossi Group (under a Planning Services contract with the City of Dover). The Report was completed with additional review and editing by the City's Planning Office.

Project Description

The property is located at 2 Westover Drive. A Request has been made for a Variance from the requirements of *Zoning Ordinance*, Article 5 §1.114 associated with a proposed above-ground swimming pool. The Variance Request seeks a reduction of the minimum setback from 15 feet to 12 feet from the side property line for the edge of the water containment portion of the swimming pool. The walkway surrounding the pool that is integrated with the pool structure is two-feet wide and will comply with the minimum setback of five feet required for associated

structures. The property is zoned RM-1 (Medium Density Residence Zone) and subject to the PND (Planned Neighborhood Design) as part of the Village of Westover PND. The owners of record are Jason and Page Bebout. Property Address: 2 Westover Drive, Dover DE. The Tax Parcel ID is ED-05-076.13-02-18.00-000

Property and Adjacent Properties: Zoning and Land Use

The property is zoned RM-1 (Medium Density Residence Zone) and subject to the PND (Planned Neighborhood Design) as part of the Village of Westover PND. The property survey (Exhibit F) lists the property as 11,043 SF+/- but the Applicant describes the property as a 10,018 SF Lot in the Exhibit D – Narrative. The property contains a single-family detached dwelling with attached garage. The adjacent properties on Westover Drive and Northdown Drive are zoned RM-1 and are lots with single-family detached houses. There are common open space areas to the northwest of the subject property, across Northdown Drive to the southeast, and across Westover Drive to the northeast. Townhouses on Trafalgar Drive are also located across Westover Drive from the subject property, adjacent to the common open space.

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

RM-1 (Medium Density Residence Zone)

The subject project area is zoned RM-1 (Medium Density Residence Zone). *Zoning Ordinance*, Article 3 §6 lists the permitted uses, conditional uses, and other provisions of the RM-1 zone. This section references that permitted uses include all uses permitted in the one-family residences zones as described in Article 3 §1. *Zoning Ordinance*, Article 3 §1.15 (b) allows for a pool that is incidental to the residential use and not operated for personal gain.

The property was developed as part of the Village of Westover Planned Neighborhood Design (PND). In the RM-1 zone for PND developments, the bulk standards for development are outlined in *Zoning Ordinance*, Article 4 §4.10. The subject lot complies with the requirements of this section.

Swimming Pools

Requirements for swimming pools are addressed in *Zoning Ordinance*, Article 5 §1.11.

Article 5, Section 1. - Supplementary regulations applying to residence zones

1.11 Swimming pools.

1.111 *Definition.* For the purposes of this section, swimming pools shall be defined as any pool, tank, depression, or excavation in or above ground, or other structure which shall cause retaining of water over a greater depth than 24 inches.

1.112 *Safety.* All swimming pools as defined in this section must conform to the requirements of Dover Code, Chapter 22—Buildings and Building Regulations.

1.113 *Placement.* Swimming pools shall be permitted to be established in the side and rear yard, but shall be prohibited from placement between the principal structure and the street.

1.114 *Setback.* The edge of the swimming pool, specifically referring to the edge of the water containment portion of the pool, shall be no less than 15 feet away

from all property lines. All associated structures, buildings, and pavement related to the swimming pool shall be no less than five feet away from all property lines.

Applicant's Proposed Project and Variances Requested

The Applicant has submitted a plot plan (Exhibit F) that shows the lot, location of the house and other improvements on the lot, and the proposed pool with the approximate dimensions and proposed setback from the property line. The Exhibit shows a 10-foot setback between the pool and the side property line. The pool is surrounded by a two-foot-wide walkway, leaving the water containment portion of the pool 12 feet from the side property line.

The Applicant described the project as follows (See Exhibit D for full text of narrative):

Project Background Information: My name is Jason Bebout and I'm writing this in hopes of getting a variance for the Zoning Ordinance in article 5- Supplementary Regulations of 1.114 setback for my Kayak Brand 12'x24' above ground pool with 6' end deck and 2' walk around deck. The 2100 square foot single family home is located at 2 Westover Drive on a 10,018 square foot corner lot in the subdivision of Village of Westover.

The pool is an all aluminum reinforced above ground pool that is being professionally installed; this will be freshly installed by licensed contractors from Leisure King pools and spas based out of Naples, Florida. It comes with its own fenced in attached non-slip aluminum decking and walkaround surface. The pool also comes with a Lifetime warranty and retractable ladder for easy access while pool is in use and can be stored/locked when pool is not in use and is guaranteed to last at least 30 years. The pool will also need to be bonded and grounded by an electrician to prevent any injuries.

The Applicant also provided a series of annotated Photographs; See Exhibit G.

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 responses are provided in Exhibit D – Written Narrative and Exhibit E – Email from Applicant Dated 3/28/2025 and listed below. The 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: *(The Applicant does not mention the zoning of the property in the Narrative other than the property being a corner lot in the subdivision of Village of Westover.)*

Staff Response:

The subject property is zoned RM-1 (Medium Density Residence Zone) and developed as a residential lot. It is located in the Village of Westover PND that was developed under the Planned Residential Development (PRD) provisions which are now codified as the Planned Neighborhood Design (PND) in the *Zoning Ordinance*, Article 3 §24. The accessory use of a swimming pool is permitted within residential zones.

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

Applicant Response: The front of the house faces North towards Westover Drive, while the East side faces Northdown Drive, and the other is located to the West of the property at 4 Westover Drive.

Staff Response: The Village of Westover PND Neighborhood consists of single-family residences including single family detached dwellings, duplex units, and townhouse uses and there are also multi-family units in an apartment complex located further northeast in the neighborhood. Many of the dwellings include fenced yards with several including swimming pools. The accessory use of a swimming pool in a residential yard is compatible with the character of the immediate vicinity and the surrounding residential uses.

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

Applicant Response: There is a 6' vinyl fence surrounding my backyard, removal of restriction would not affect to the neighbor to the South of the property nor would it affect the neighbor at 4 Westover Drive.

Staff Response: As stated by the applicant, the above-ground pool will be located behind a six-foot-tall privacy fence that exists on the side property line. Based on an email from the applicant (Exhibit E) the total height of the above-ground pool, including the fence surrounding the pool deck, is seven feet. If the variance is granted, the pool deck fence which surrounds the pool deck would be ten feet from the property line and behind where

the vinyl privacy six-foot-tall fence is located. Therefore, it would not seriously affect the neighboring property at 4 Westover Drive. The location of the pool on the north side of the house at 2 Westover Drive is blocked by a privacy fence and a shed placement along the property line shared with the lot at 203 Northdown Drive.

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: Per article 9, Board of Adjustment section 2.11 area variance; there is a 3.5' wide paver walkway that is located 4' from my house along the West side of the yard that leads to the patio in the backyard. The total width of the side yard from the West property line to the chimney is 33'. The total width from the West property line to the paver walkway is 26'. There is also an air conditioning unit that sits 31' from the West property line. If I were to have the pool installed at the current water wall mark of 15', this would make the pool itself sit one foot onto the walkway resulting in the 2' walkaround deck on the East side of the pool 3' onto the paver walkway leaving me with a 4' clearance between the pool and the chimney and only 2' from the air conditioner unit. I am currently requesting a 3' variance for the water wall. That would make the walkaround deck 10' from the West property line. The water wall would start at 12', the ending water wall would be at 24', and the other side of the walkaround deck would end at exactly 26' leaving the full width of the paver walkway as a fully usable surface. If the restriction is not removed, this would result in the removal of the paver walkway and would reduce distance between house and pool decking.

Staff Response:

The *Zoning Ordinance* allows for swimming pools as an accessory use on residential lots. Article 5 §1.11 provides specific requirements for the placement of swimming pools on residential lots. The proposed swimming pool meets all of these criteria except for the required 15-foot distance for the water containment area from property lines. As proposed, the water containment would be 12 feet from the property line. In reviewing the applicant's submission, in particular Exhibit F, it is clear that the proposed pool location on the property is where it would provide the maximum distance from the property line. The existing features of a paver walkway and air conditioning unit adjacent to dwelling limit the ability to adjust the placement of the pool. If the Variance is not granted, the property owners likely would not be able to place the swimming pool on the property, creating a practical difficulty that could be identified as exceptional.

Variance Recommendations

Staff recommends approval of the Variance that would allow for the water containment portion of the swimming pool to be located 12 feet from the property line.

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

- The *Zoning Ordinance* permits swimming pools accessory to residential uses within the residential zones. Therefore, the placement of the swimming pool is consistent with the zone and the surrounding residential neighborhood.

- The proposed placement of the swimming pool is in a location that requires a variance of only three feet, which is less than would be required if placed elsewhere on the lot. No other location on the lot could accommodate the required setback due to the corner lot configuration on the dwelling placement on the lot.
- The location of the swimming pool will not seriously affect neighboring properties and uses.
 - The swimming pool will be placed behind a solid (privacy) fence that is six feet in height. Additional, the above ground pool structure includes a fence around the pool deck area.
 - The adjacent structure (pool deck and fence) exceeds the minimum setback of five feet from the property line.
- If the variance is not granted, the property owner would likely be unable to place a swimming pool on the lot, creating the potential for an exceptional practical difficulty.

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 variance is granted, a Building Permit is required prior to the commencement of the construction/installation of the swimming pool. All other code requirements for the placement of the swimming pool must be met.
- 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 Exhibit (Staff)	1
D	Applicant's Written Responses: Narrative	1
E	Email from Applicant Dated 3/28/2025	1
F	Plot Plan (Survey)	1
G	Photographs	8



Board of Adjustment Application

Application Information

Property Address: 2 Westover Drive, Dover DE 19904
Tax Parcel Number: ED-05-076.13-02-18.00-000
Owner Name: Jason and Page Bebout
Property Zoning: RM-1 PND
Variance (s) Requested: Article 9 Section 2
2.11 Area variance

Article 5 - Supplementary Regulations Section 1, 1.114 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.

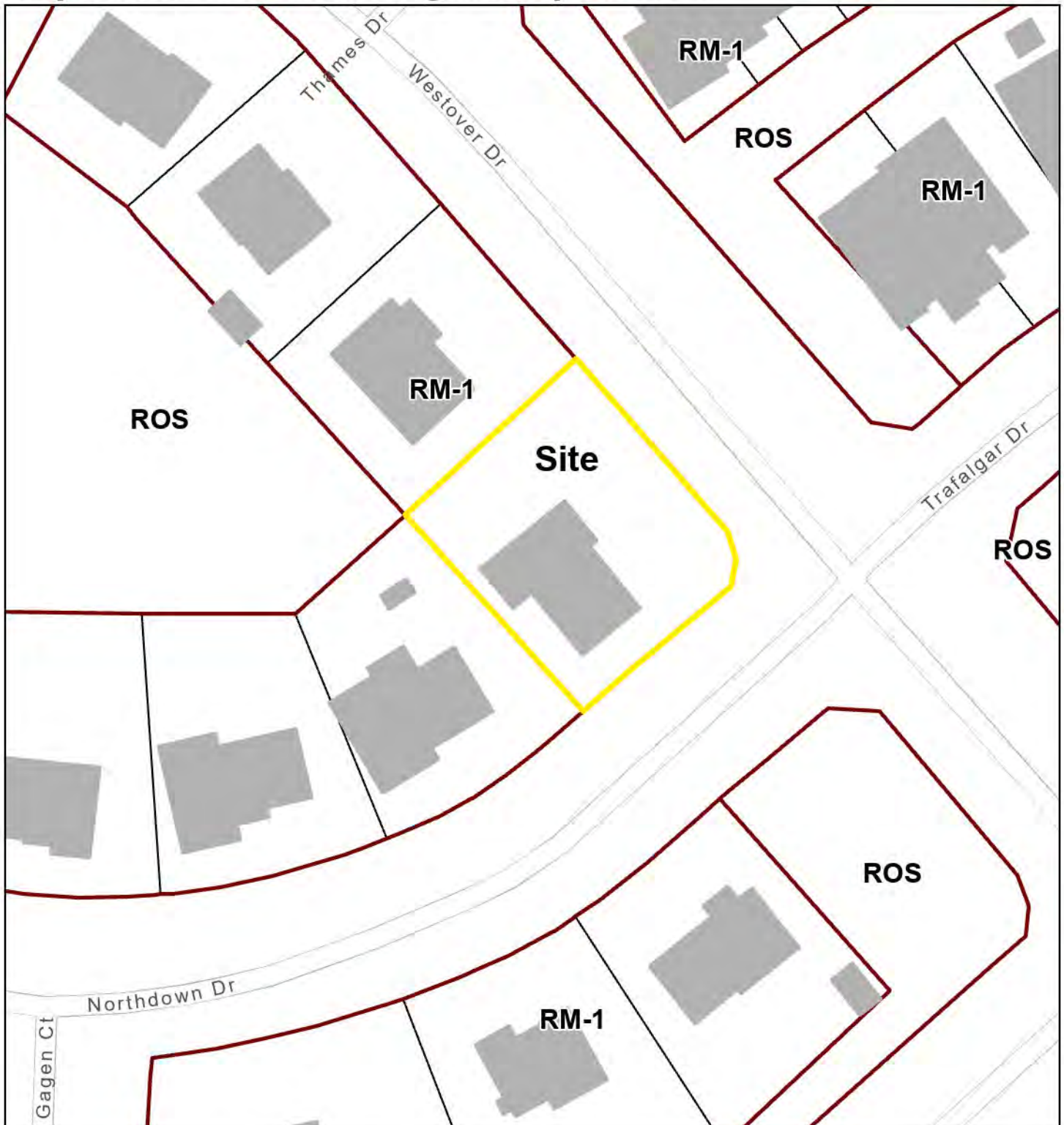
Signature

I Jason Bebout 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.

[Signature]
Signature

OWNER
Title

3/14/25
Date



Title: Property at 2 Westover Drive - Application for Variance
Addresses: 2 Westover Drive
Parcel ID: 2-05-07613-02-1800-00001
Zoning: RM-1 (Medium Density Residence)
Owner: Bebout Page and Bebout Jason
Date: 03/31/2025

Legend

- Subject Property
- Building Footprints
- Zoning Boundary Line
- State Parcels



0 100 200 Feet

City of Dover

Department of Planning & Inspections



Exhibit Item 3.

Application No.: V-25-01



State of Delaware, Maxar, Microsoft, Sources: Esri, TomTom, Garmin, FAO, NOAA, USGS, (c) OpenStreetMap contributors, and the GIS User Community

Title: Property at 2 Westover Drive - Application for Variance
Addresses: 2 Westover Drive
Parcel ID: 2-05-07613-02-1800-00001
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Owner: Bebout Page and Bebout Jason
Date: 03/31/2025

Legend

- Subject Property
- State Parcels



0 100 200 Feet

Dear Board Member(s),

My name is Jason Bebout and I'm writing this in hopes of getting a variance for the Zoning Ordinance in article 5- Supplementary Regulations of 1.114 setback for my Kayak Brand 12'x24' above ground pool with 6' end deck and 2' walk around deck. The 2100 square foot single family home is located at 2 Westover Drive on a 10,018 square foot corner lot in the subdivision of Village of Westover. The front of the house faces North towards Westover Drive, while the East side faces Northdown Drive, and the other is located to the West of the property at 4 Westover Drive. There is a 6' vinyl fence surrounding my backyard, removal of restriction would not apply to the neighbor to the South of the property nor would it affect the neighbor at 4 Westover Drive.

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I have included pictures of the yard, the area where the pool would be placed, as shown by the blue and brown tarps. I have also included pictures of the property dimensions as well as pictures of what the Kayak pool looks like.



Re: Variance Application - 2 Westover Drive

From Jason Bebout <jus_me1@yahoo.com>

Date Fri 3/28/2025 10:16 PM

To Ann Marie Townshend <annmarie.townshend@rossitg.com>

cc: Dawn Melson-Williams

In response to the inquiry about the pool height from finished grade as well as the pool fence height, the pool walls will sit a total of 48 inches (4 ft) from finished grade and the attached surrounding fence will stand another 36 inches (3 ft) from the attached surrounding pool decking. The total height from the base of the pool to the top of the attached fence will be 84 inches (7 ft). There is currently a 6 ft tall vinyl fence surrounding the entire back/side yards of the property.

Please feel free to reach out to me with anymore questions/concerns.

Thank You,
Jason Bebout
715-338-6740

[Yahoo Mail: Search, Organize, Conquer](#)

On Fri, Mar 28, 2025 at 14:50, Ann Marie Townshend <annmarie.townshend@rossitg.com> wrote:

Mr. & Mrs. Bebout,

I work with the City of Dover as a planning consultant, and I am reviewing the application you submitted to the Board of Adjustment to install a swimming pool in your yard 12 feet from the side property line.

Would you please be able to provide the height of the pool structure from finished grade to the top of the fence structure?

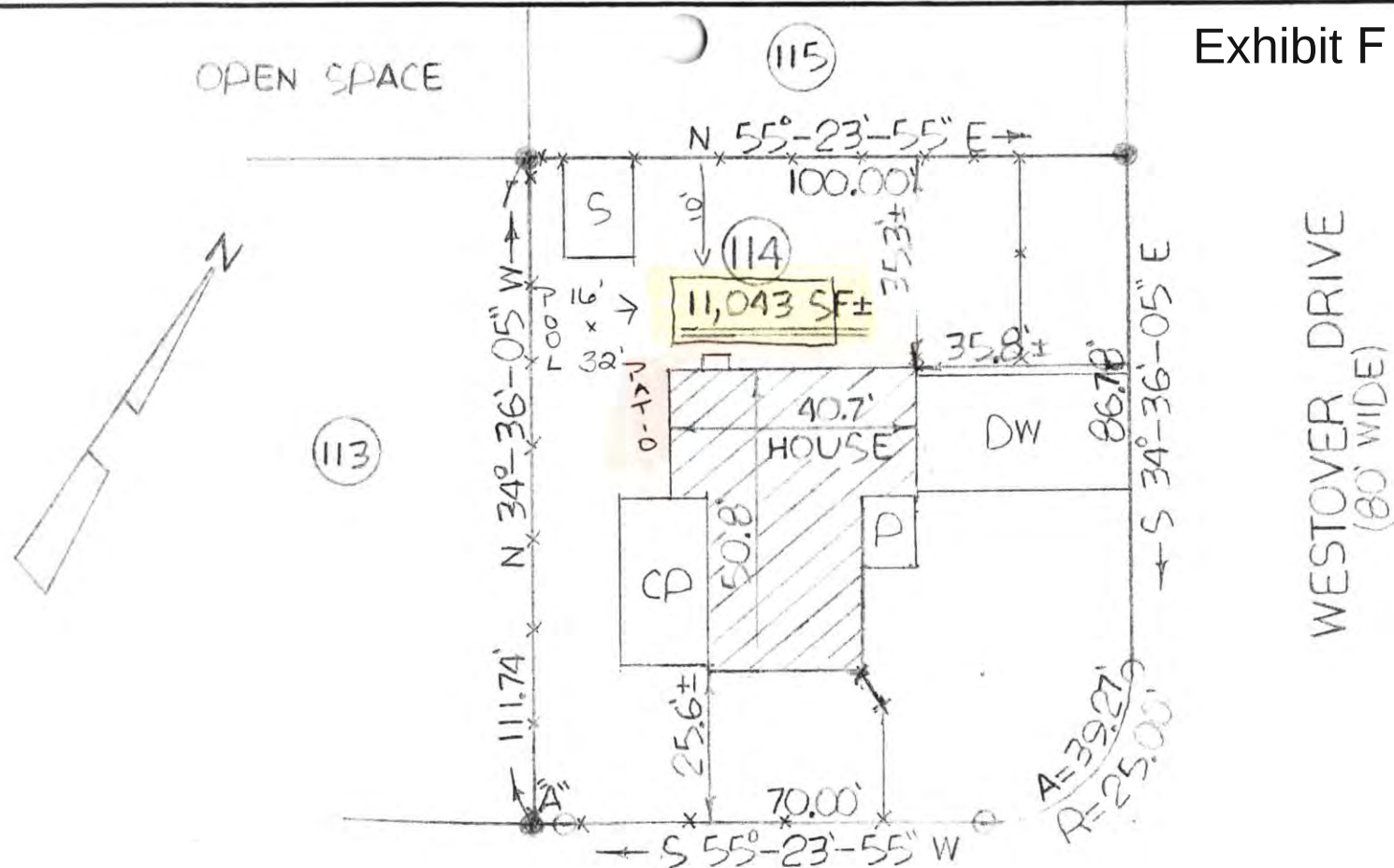
Please include Dawn Melson-Williams, the City's Principal Planner, on your response. Thank you.

Regards,

Ann Marie Townshend, AICP, CC-P
Senior Project Manager

(c) 302.242.0381 (o) 302.672.0093
AnnMarie.Townshend@Rossitg.com

Rossi Group
WBE/DBE/SBE Certified



VILLAGE OF WESTOVER

PLOT BOOK 32, PAGE 50

NORTHDOWN DRIVE
(60' WIDE)

- ⊙ ——— CAPPED IRON BAR/PIPE FOUND
- CP ——— 14.2' x 28.6' CONCRETE PATIO
- DW ——— CONCRETE DRIVEWAY
- P ——— 9.1' x 11.7' PORCH
- S ——— 11.7' x 16.3' SHED
- x — x ——— PVC FENCE

SUBURBAN SURVEY "A"—R=300.00' A=5.00'

2 WESTOVER DRIVE DOVER, DE 19904

TAX PARCEL: ED-05-076.13-02-18.00-000

PAGE & JASON BEBOUT

SCALE: 1" = 30'

APPROVED BY:

DRAWN BY:

DATE: 17 Jul 21

Michael L. Adkins

MLA

CITY OF DOVER

KENT COUNTY, DELAWARE

MICHAEL L. ADKINS, P.E. 7529

PO BOX 325, CAMDEN, DE 19934

DRAWING NUMBER

4091

36

Planning & Inspections View Map

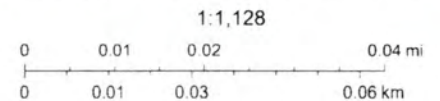


2 Westover Drive

Zoning: RM-1 (Medium Density Residence Zone)

PND (Planned Neighborhood Design)

↳ Village of Westover

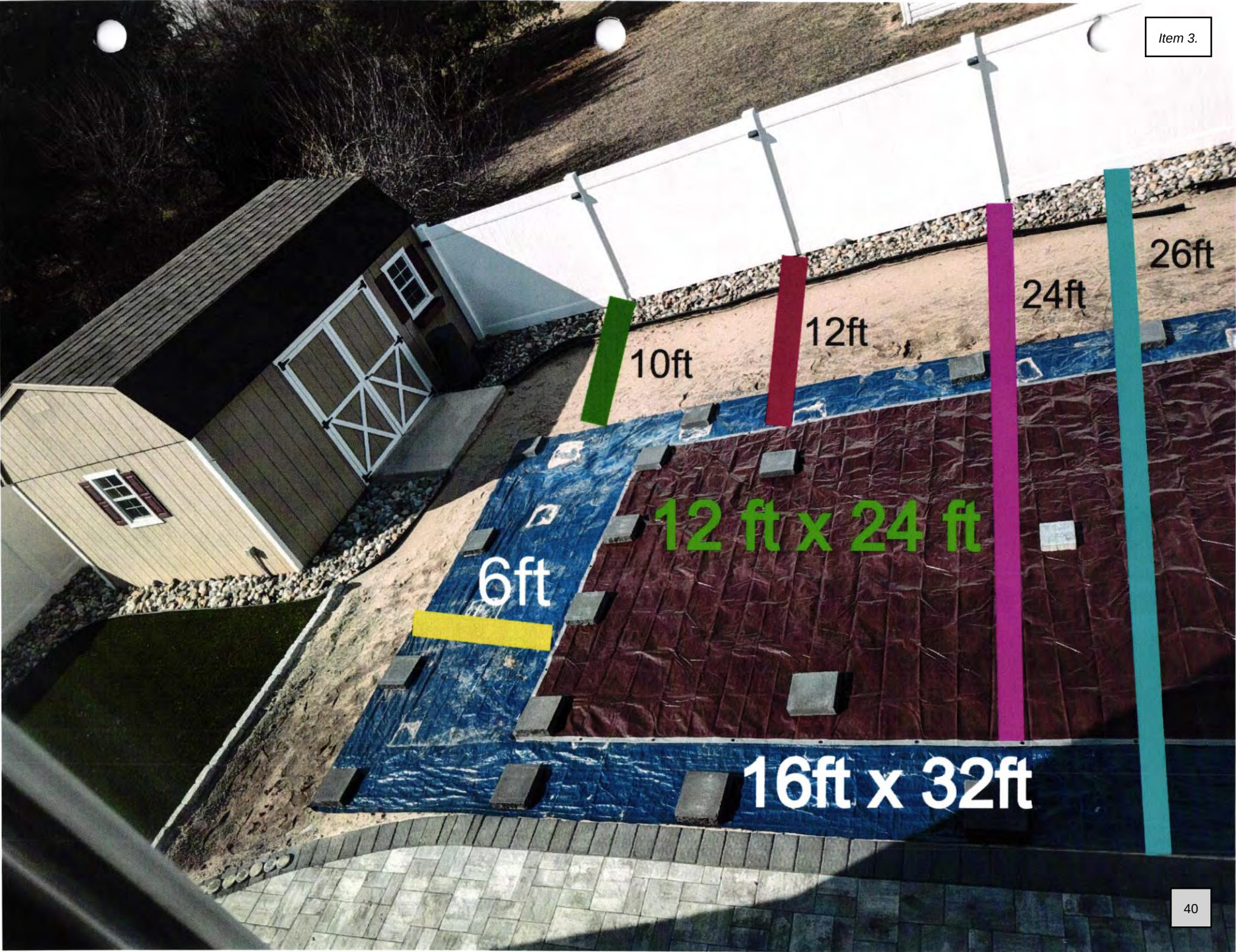


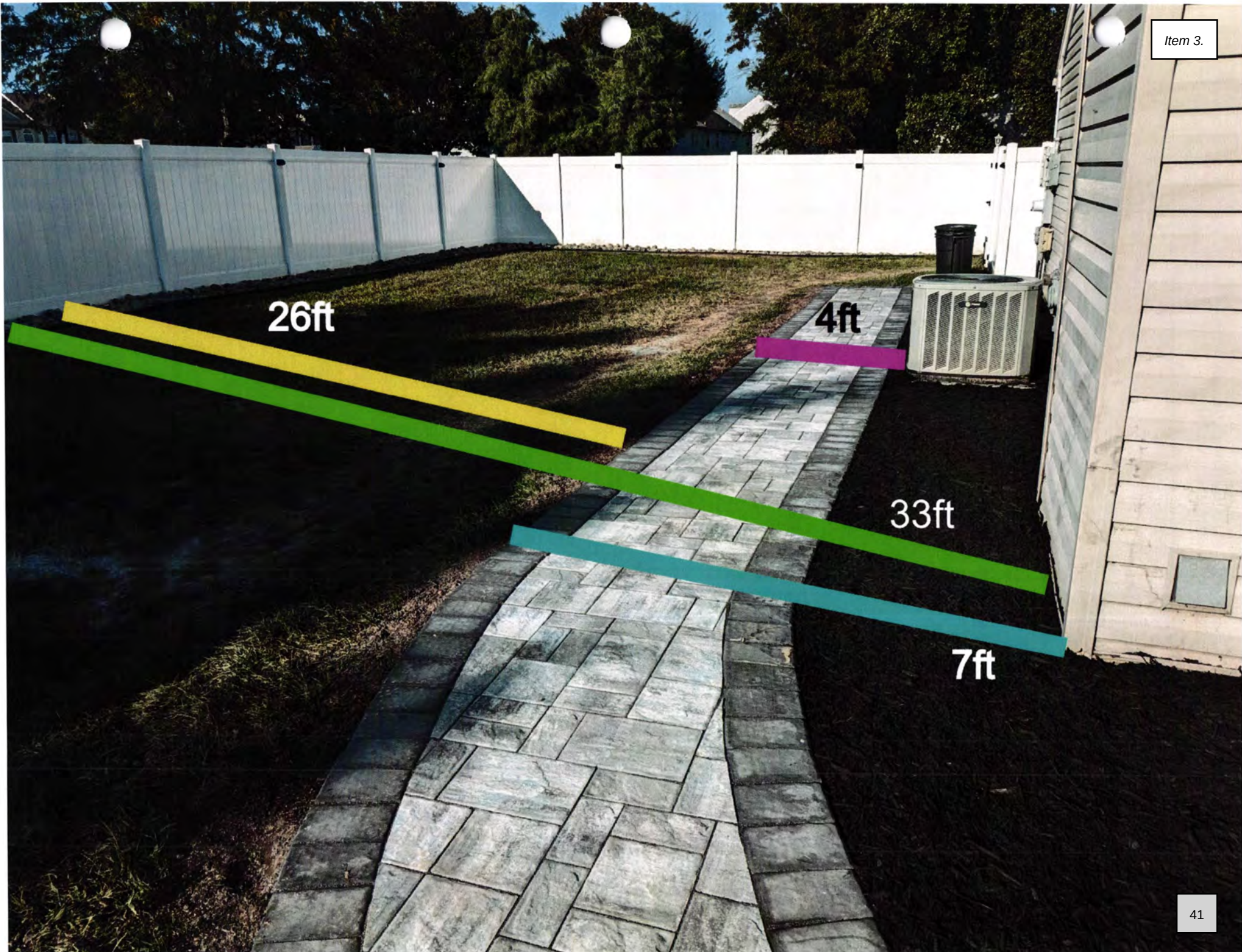
Maxar, Microsoft

City of Dover, Delaware - Planning Department
 ation Service | EarthData/PhotoScience Inc. | State of Delaware Department of Transportation and EarthData | EarthData International of Maryland | Sanborn Mapping Company | Digital Aerial Solutions, LLC | Surdex Corp | DelDOT | Maxar, Microsoft |













Item 3.



Item 3.