



**CITY OF DOVER, DELAWARE
BOARD OF ADJUSTMENT MEETING
Wednesday, September 20, 2023 at 9:00 AM**

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

REVISED AGENDA

IN-PERSON & VIRTUAL MEETING

This Board of Adjustment Meeting will be held as an In-Person Meeting at City Hall in City Council Chambers. The Meeting will also be provided as a Virtual Meeting using WebEx, an audio/visual conferencing system as an electronic means of communication. See participation information below to join by phone or computer. Members of the public are welcome to attend the meeting in person or virtually via WebEx.

PUBLIC PARTICIPATION INFORMATION

To Attend City of Dover Board of Adjustment Meeting of September 20, 2023

Join By Phone Dial: +1-650-479-3208

Access Code: 2536 532 7564

Password from Phones: 36837262

Join Online

<https://bit.ly/BOA9202023>

Webinar Number: 2536 532 7564

Webinar Password: DoverBOA

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

ROLL CALL

APPROVAL OF REVISED AGENDA

***Appeal #V-23-03 is dismissed upon advice from Legal Counsel that the Board of Adjustment does not have jurisdiction.**

APPROVAL OF MINUTES

1. Adoption of Meeting Minutes of July 19, 2023

COMMUNICATIONS & REPORTS

Meeting Reminder: The next Board of Adjustment Meeting date is October 18, 2023 at 9:00am.

NEW BUSINESS

The following applications have been filed for Review and Public Hearing before the Board of Adjustment.

2. Application #V-23-04

101 North Queen Street (and 107 North Queen Street). A request has been made for a variance from the requirements of Article 3 §1.14(a)(v) of the *Zoning Ordinance*. The use of the subject properties is as a Place of Worship (Church), which is a conditionally allowed use in the RG-1 Zone (General Residence Zone). The Variance request is to increase in the maximum sum of all areas permitted to be covered by a principal building and accessory buildings from 20% to 56.89% in order to allow for a proposed building addition. Subject properties are zoned RG-1 (General Residence Zone). The Tax Parcel IDs are ED-05-076.08-03-37.00-000, and ED-05-076.08-03-38.00-000. The owner of record for both parcels is A.M.E. Church of Dover.

3. Appeal #V-23-03

**The following Appeal is dismissed upon advice from Legal Counsel that the Board of Adjustment does not have jurisdiction.*

Consideration of an application by Wilma Mishoe and the Apartments at Mishoe Cove, L.L.C. seeking an Appeal to the City of Dover Board of Adjustment from the decision of the City of Dover Planning Commission to approve Site Development Plan S-23-06 College Road Apartments at Railroad Avenue/Grove Street.

- S-23-06 College Road Apartments at Railroad Avenue/Grove Street – On June 20, 2023, the Planning Commission granted conditional approval of the Site Development Plan and Lot Consolidation Plan for construction of two 6-story mid-rise apartment buildings with a total of 385 units consisting of studio, 1 bedroom, and 2 bedroom units. The ground level of each apartment building is parking and the other site improvements include six 7-car garage buildings, parking lots, landscaping, and recreation areas. The Project also includes street construction/improvements to Raymond Street and Railroad Avenue. A Lot Consolidation Plan will combine the four parcels located east of Railroad Avenue for a total of 31.08 acres of land. These properties are zoned RG-5 (General Residence Zone for Mid-Rise Apartments). The subject area is located north of, but not adjacent to College Road, and east of the Railroad corridor in the vicinity of Raymond Street, Railroad Avenue, and Grove Street. Property Owners: Patel College Properties, LLC and Patel Excess College Road, LLC. Tax Parcels: ED-05-067.00-02-53.00-000, ED-05-067.00-02-54.00-000, ED-05-067.00-02-55.00-000, and ED-05-067.00-02-56.00-000. Council District 4.

ADJOURN

Posted Agenda: September 13, 2023

Revised: September 18, 2023

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 19, 2023

A Regular/Hybrid Meeting of the City of Dover Board of Adjustment was held on Wednesday, July 19, 2023, at 9:00 A.M. in person in the City Council Chambers and using the phone/videoconferencing system WebEx. Member's present were Chairman Sheth, Colonel Ericson, Mr. Keller, and Mr. Senato. Ms. Warren was absent.

Staff members present were Mrs. Mary Ellen Gray, Mr. Swierczek, City Solicitor Mr. Rodriguez, Ms. Oehmke and Mrs. Savage-Purnell.

APPROVAL OF AGENDA

Mr. Keller moved to approve the agenda as amended to accommodate the various recognitions. The motion was seconded by Mr. Senato and unanimously carried 4-0. Ms. Warren was absent.

APPROVAL OF THE REGULAR BOARD OF ADJUSTMENT MEETING MINUTES OF FEBRUARY 15, 2023

Mr. Keller moved to approve the meeting minutes of February 15, 2023. The motion was seconded by Mr. Senato and unanimously carried 4-0. Ms. Warren was absent.

Mrs. Gray offered the opening statement.

COMMUNICATIONS & REPORTS

Thank you for joining this meeting of the Board of Adjustment. This meeting is taking place both In Person in the City Council Chambers as the anchor location and virtually using the WebEx videoconferencing platform.

The login information to join the meeting Virtually has been added to the Agenda which is posted to the website at www.cityofdover.com under Meetings/Agendas on the home screen. If you are having any difficulty joining the meeting please call the Planning Office at 302-736-7196. For those of you logged into the meeting using your computer, please use the hand icon to raise your hand to be called upon to ask your question. If you are unable to use a microphone you can use the chat window to ask your questions and a staff person will read them into the record. If you are calling by phone you will be muted until the Secretary asks for comment from anyone who is calling into the meeting.

The next Board of Adjustment regular meeting is scheduled for August 16, 2023, at 9:00am in the City Council Chambers and with a virtual format.

SPECIAL RECOGNITION

Resolution honoring the service of Colonel Ericson to the Board of Adjustment.

Mrs. Gray read the Resolution on service of Colonel Ericson into the record. (See attachment)

(The following discussion occurred earlier in the meeting and is placed here with appropriate agenda item for clarity).

Chairman Sheth mentioned that he would like to request to the Board the opportunity to say goodbye as he (Colonel Ericson) has retired from the Board of Adjustment Committee. Mr. Hufnal served on the Board of Adjustment for 17 years. We also want to recognize Colonel Ericson for 19 years of service on the Board of Adjustment. Colonel Ericson could stay on board until a new member is appointed for a total of 5 members. He thanked them both Mr. Hufnal and Colonel Ericson for their outstanding services with the City of Dover.

Mr. Keller mentioned that with respect to the honoring of Colonel Ericson, the prepared resolution is very noteworthy. I wish Colonel Ericson my personal very best in the future. He also thanked him for his commendable service to the City of Dover Board of Adjustment.

Mr. Keller mentioned that he did express with Mr. Hufnal in our presence that we did read into the record a Resolution (for Mr. Hufnal's service). Mr. Hufnal is also a longtime friend and neighbor and served this City Board of Adjustment in an exceptional manner for many years.

Mr. Senato mentioned that it's been an honor and pleasure in serving with two distinguished members (Colonel Ericson and Mr. Hufnal). We have done a lot over the years; so, I'm honored and at the same time saddened.

Chairman Sheth mentioned that he has really enjoyed serving with Mr. Hufnal and Colonel Ericson.

Colonel Ericson thanked everyone and mentioned his number of years and commitment to the Board since October 2004 and working with the other members for a long period of time. He mentioned the professional atmosphere of working with everyone. Members did a thorough investigation of the issues related to the Applications. I know the staff does an excellent job of writing up their opinion on the cases and the very few times that we disagree with them it is because of information produced and that information that we didn't have before. Mr. Rodriguez, your legal advice has been very important to us; thank you. Chairman Sheth has shown leadership and he appreciates that; thank you.

OPENING REMARKS CONCERNING APPLICATION

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

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

NEW BUSINESS**Applicant #V-23-02**

59 Sherwood Court. A request has been made for a variance from the requirements of Article 3 §1.15 (e)(i) of the *Zoning Ordinance* pertaining to the minimum lot area required for the keeping of chickens for domestic purposes. Specifically, to allow for a reduction in the minimum lot area required in order to allow for the keeping of chickens from 10,890 SF to 10,018 SF. Subject property is zoned R-8 (One-Family Residence Zone). The Tax Parcel is ED-05-076.20-01-24.00-000. The owner of record is Jason M. & Joanna L. Francis.

Mr. Swierczek gave a summary presentation of the Application Request for a variance from the requirements of Article 3 §1.15 (e)(i) of the *Zoning Ordinance* pertaining to the minimum lot area required for the keeping of chickens for domestic purposes. Specifically, to allow for a reduction in the minimum lot area required in order to allow for the keeping of chickens from 10,890 SF to 10,018 SF. Subject property is zoned R-8 (One-Family Residence Zone). The Tax Parcel is ED-05-076.20-01-24.00-000. The owner of record is Jason M. & Joanna L. Francis.

Mr. Swierczek stated that the square footage of the property was a little bit difficult to determine. There is no definitive record of it because it was developed prior to 1961. The records are not in our possession for the development of the property at that time. The information provided by Kent County/City of Dover Recorder of Deeds mentions 10,585 SF, but the request is for 10,018 SF. A letter from a neighboring resident at 49 Sherwood Court was submitted. That neighbor had expressed support for keeping chickens on that property. I will note that there was an item in submitting their exhibits. The letter was withheld based on our concerns of privacy and is in our possession. Planning Staff have received a series of communications. We were sort of scrambling to get that ready for you prior to the meeting. The packet was left for you on your desk. We did receive a letter of objection for the Area Variance request that was addressed to the Board of Adjustment. The Letter of Objection was received by Code Enforcement on Monday, July 17, 2023, and then relayed to Planning Staff to be the first item on the agenda. That one letter basically just went into discussions probably over their objections to the Area Variance being approved. However, that letter does state that they wish to be anonymous. They do not provide a name or an address, so we cannot verify whether it is indeed a neighbor. Yesterday evening, we received an e-mail from Jillian Watkins, a resident at 65 Sherwood Court. While speaking again objecting to the Variance Request Application that is before the Board today. It was emailed to Planning Staff on July 18, 2023. She submitted a long series of photos via email on July 18, 2023, to argue for impressions of other property and why she does not feel that the Area Variance should be approved. Lastly, on the morning of July 19, 2023, the Planning Staff received an email from Gary and Nancy Kennett of 70 Sherwood Court objecting to the Variance Request Application for 59 Sherwood Court. There were no details of why they objected to the Variance Request.

Mr. Swierczek mentioned that he would be happy to answer any questions that you may have for Planning Staff.

Chairman Sheth mentioned that he did depend on the Staff member's information that is provided to the Board. He asked if this variance was denied about 9 or 10 years ago.

Colonel Ericson mentioned that as he recalled it was brought up before and the Board approved it. It was a long time ago.

Colonel Ericson asked how often you have to resubmit once the variance is approved? Mr. Swierczek replied that once a variance is approved and as long as the conditions are maintained, and ownership has not changed, it can be maintained. The reason why this application came before us today I believe was because of a Code Enforcement case that was opened on it. A neighboring property had objections to the chickens being present there, which had prompted a Code Enforcement case which brought it to the attention of Planning Staff and before us here today.

Chairman Sheth asked about the keeping of animals for therapeutic purposes. Mr. Swierczek replied regarding his previous statement in which he mentioned that the *Zoning Ordinance* does not have any provisions on keeping animals for therapeutic reasons.

Colonel Ericson mentioned that he understood the objections with these letters was based on that they didn't think the neighbor should have chickens in the yard, but it's in the Code. So, it's not really up to us to look into this issue but only whether we should give a waiver for the amount of space there, is that correct? Mr. Swierczek replied based on my hurried assessment of the two later communications that were received this morning, yes you are right. They are objecting to the presence of chickens on the property in general. As you correctly stated Colonel Ericson, they are technically a permitted use in the zone just with the provisions of this square footage which this property does not meet.

Colonel Ericson asked Mr. Swierczek if he was aware that we had cases very similar to this if not the same case many years ago. Did you have a chance to read our conclusions? Mr. Swierczek replied, "I believe I heard a comment that it was perhaps 10 years ago." I was not aware of that earlier case. I do not believe it was for the same property, but I'm not familiar with that.

Mr. Keller mentioned that he would like to make a note of clarification. It is simply not a matter of allowing chickens to be on a property, but there are a number of restrictions in addition to simply allowing the chicken on the property. Under the *Zoning Ordinance*, Article 3 Section 1.15 Accessory Uses as it is noted with some of the information provided to the Board for consideration, the keeping of chicken for individual domestic purposes is subject to the following restrictions: keeping of chicken shall not be permitted on lot smaller than 10,890 square feet in lot area; no more than 5 chickens shall be permitted on a residential lot; chickens shall be registered with the Delaware Department of Agriculture; chicken shall be penned in a coop that shall at least 4 square feet per chicken; all chicken coops shall be located in the rear yard and shall be a minimum of 20 feet from side and rear property lines; any odor associated with the chickens shall not be discernable from property lines; keeping the roosters shall be prohibited; any lot with the chicken shall either comply with these requirements by June 1, 2016, or remove the chickens.

Mr. Keller stated regarding the existing lot size what exists today, he is somewhat amazed that we cannot find a document such as a Deed which would declare the square footage of the lot

described. Have you investigated any deed conveyance which would give a lot size?

Mr. Swierczek replied unfortunately this is something that we actually encounter quite a bit within the city. The city does not keep Deeds. If there is a Deed associated with the property that is not maintained by the City, rather it is the Kent County Recorder of Deeds. They maintain the Deeds.

With properties such as this, it was built from what we can see between 1954 and 1961. We don't have permits from that time, so we don't have Deeds on file. We wouldn't have floor plans. They just did not keep those records at that time. So, we don't have any of that information available.

Mr. Keller asked when you say we, do you mean your office? Mr. Swierczek replied the City. Mr. Keller mentioned the City is not responsible for the recordation of the deeds. Mr. Swierczek replied correct.

Mr. Keller mentioned that there is an organization, the Kent County Levy Court that has a Register of Wills and Recorder of deeds. Any Deed transfers is duly recorded with the Recorder of Deeds Office. You did not investigate as to whether or not there was a Deed.

Mr. Swierczek stated that he did not make that statement. What he said was that Kent County does record the Deeds. They have that information. We do not have copies of those Deeds. I said what we can best determine is that the area of the property is 10,585 square feet because that's what the information states per Kent County Levy Court on their website where they post the property information.

Mr. Keller mentioned that his experience has been that cited areas such as that sometimes do in fact differ from the actual recorded deed area cited. He asked Mr. Swierczek if he had investigated a Record Plan for this development. Is there a recorded Record Plan for the subdivision of Sherwood? Mr. Swierczek replied that there is a similar situation because of the age of the subdivision, we do not have anything like that on file with the City of Dover.

Mr. Keller asked Mr. Swierczek if he thought it behooves us in your investigated matters when there's a variance required to investigate such matters. Mr. Swierczek replied that again, he did not state that it was not investigated; I said it was investigated. The information is just not available to the City. We do not have that information. We investigated it. The information was not found because we do not have it.

Mr. Keller mentioned that he was disappointed to hear that there is not a more elaborate investigation into such matters as the deed for area or as to a Record Plan.

Representative: Council President Hare (assisting) the owner Mrs. Joanna L. Francis

Council President Hare and Mrs. Joanna L. Francis were sworn in by City Solicitor Mr. Rodriguez.

Mr. Keller stated that it was his understanding that you acquired your property in 2017, is that

correct? Mrs. Francis replied that was correct.

Mr. Keller asked the owner at what point was the chickens first placed on your property? Mrs. Francis replied in December 2022.

Mr. Keller asked so for approximately 6-7 months? Mrs. Francis replied that was correct.

Mr. Keller asked if there had been any initiative taken to comply with the various aspects of having chickens placed on your property, such as those enumerated under the City Code. Mrs. Francis replied that I believe that we meet the requirements, yes.

Mr. Keller asked if she had chicken coops? Mrs. Francis replied yes.

Mr. Keller asked if they were maintained. Mrs. Francis replied yes, they are penned in, and they have an enclosure on the top. They cannot get out. We meet the size requirements also.

Mr. Keller asked if it had been undertaken since the Code Enforcement Office noted that those requirements were not in fact accomplished. Mrs. Francis replied we have that; we meet the requirements. There were never any questions about any of that.

Council President Hare stated that just to follow up on Mr. Keller's question. All the requirements that were mentioned by Mr. Keller have been met. She registered the chickens and the sizes when she got them. The only question is the variance. The Kent County records informed her that the lot size was 10,500 square feet.

Chairman Sheth mentioned that we are discussing the same reason and Mr. Keller may need more time or information from Mr. Swierczek. We don't keep a copy of the deed and Mr. Swierczek did not get a chance to investigate or ask questions as you requested. According to Council President Hare, he mentioned that the Kent County informed the owner that the lot size was 10,500 square feet. He stated that information was submitted in the BOA Packet.

Mr. Swierczek stated for clarification the applicant did submit that document that we referenced from the Kent County Levy Court that references the property square footage being 10,585 square feet; that was included in the exhibits. That's why the Planning Staff believes that is the most accurate description of that, but we just went with the 10,018 square feet to be safe, I guess you could say. The applicant also submitted a copy of the Letter of Approval. I believe it is from the Department of Agriculture from the State of Delaware as well as the license to keep poultry. That was in the exhibit package as well.

Mr. Keller mentioned that he did recall seeing that letter, but it was not addressed to a particular party. The information provided that there has apparently been a registration with the Department of Agricultural. As he referred to Staff Response Item #3 under consideration "if the restriction upon the applicant's property were removed, such removal would seriously affect neighboring properties and uses." The Staff Response stated: "While the other provisions of the *Zoning Ordinance*, Article 3 Section 1.15 (e) appear to have been met, it is unclear as to whether these three provisions are also being met. There is no permit submission on file for the

construction of a coop on the property, and the Applicant has not submitted information attesting to any details of a coop.”

Mr. Keller asked is that your position when you submitted this information? Mr. Swierczek replied correct. Looking at those provisions that you pointed out earlier regarding the licensing and everything, we did not have anything on file for a coop. So, that's information that we do not possess.

Mr. Keller asked is that also a matter of Code Enforcement in their imposition of a violation? They probably did not have any such information either.

Mr. Swierczek replied that I'm not aware of. In the initial Code citation, which was provided in the package, I believe there's no reference to a coop, rather they are only referencing the square footage of the property. Because they did not make reference of that, I cannot attest to that.

Council President Hare stated that if it was not in the initial complaint, it must not have been a problem.

Mr. Keller mentioned that he was not sure he understood that statement from Council President Hare.

Council President Hare stated that if you are going to file a complaint, they said it was because the lot was too small. They didn't file a complaint to say that the lot was too small, and the coop doesn't meet its requirements or whatever else. They only filed one complaint. Everything else must be in compliance.

Mr. Keller mentioned perhaps it was overlooked or not noted in the information you are referring to.

Council President Hare asked are you're saying that Code Enforcement didn't do their job? Mr. Keller replied I'm not saying that.

Mrs. Francis mentioned that she would like to refer to you all to the letter that was included in the packet, please read it. Council President Hare stated that Mrs. Francis is giving permission to read the letter. It does not need to be private.

Mr. Swierczek and Chairman Sheth wanted to know if they were referring to the letter from the Doctor. Council President Hare replied yes.

Chairman Sheth was concerned about the responsibilities of confidentiality. Council President Hare replied that the owner is waiving it and the letter can be read into the record at today's meeting. Chairman Sheth consulted with City Solicitor Mr. Rodriguez, and he stated that it was okay to read the letter into the record. The letter from a licensed doctor in reference to a medical opinion was read into the record by Mr. Swierczek. The Board members will be given a copy of the letter per Chairman Sheth as evidence if they would like a copy.

Mr. Chairman asked Mr. Swierczek if the basic issue that is being discussed is the 405 square feet less than what is required. Mr. Swierczek replied correct, this Area Variance is not necessarily regarding the use, again that that is a permitted use in the zone. So, it would only be pertaining to the difference in square footage from what is existing to what the minimum is which is 10,890 square feet.

Chairman Sheth mentioned that the Board's issue is how the difference of 405 square feet is smaller than 10,890. We do not know how to judge. He asked City Solicitor Mr. Rodriguez if that was right.

Chairman Sheth asked the Board if they agreed that the basic issue was the Area Variance. If the property was 10,890 square feet would they have applied for a Variance for the chickens and would it have come before the Board of Adjustment? He asked City Solicitor Mr. Rodriguez if that was correct. City Solicitor Mr. Rodriguez replied that is correct.

Chairman Sheth stated that the Board now needs to decide the impact on the neighbors medically or allergies which he is not able to judge. He needs the help of the City Solicitor Mr. Rodriguez and the Board.

Colonel Ericson stated that he believed that the other issue is if removing this or not allowing it would cause a hardship. He would like to address that. Also, in the Staff Report it mentioned that maybe we could find an alternative to accomplish it may be giving another animal perhaps a dog or cat versus the chickens that would be more acceptable to the neighborhood, and it would still meet the therapeutic needs for the children.

Mrs. Francis mentioned that the chickens are not going to scratch or bite anyone. They haven't and they are a very friendly breed. If you approach them, they are going to want to get away from you. They are non-predatory animals. They are not aggressive at all. I have two neighbors right next door. One has written a letter in approval of keeping the chickens. The other one has never spoken to me or never addressed anything. I believe most of my neighbors didn't even know the chickens were there in my yard until something was submitted to them.

Chairman Sheth mentioned that we do not go into the personal issue. The question is the complaint and if there were any suggestions. He is not asking you to do anything. We are just asking as a good neighbor. If you have any suggestions is what Colonel Ericson mentioned.

Council President Hare said she's not sure what to say. The chickens don't make noise. They don't smell. The neighbor next door has written a letter saying how she enjoys watching them while sitting outside. The chickens are very important to Mrs. Francis's daughter who is here now if you want to hear from her. Because of the daughter's situation, there is no option to get rid of the chickens and get a dog, that is not an option.

Colonel Ericson asked why that was. The question is that you show a hardship and need to have the chickens for a certain and important need. A dog or cat comforts many people. I am unfamiliar with chickens, but could you explain why this would be a hardship for you.

Ms. Caillean Grace Francis was sworn in by City Solicitor Mr. Rodriguez.

Ms. Caillean Francis stated that she could not have a dog because her dad will not let her. He is allergic to dogs. Chicken means a lot to me because they are my friends, and I don't have a lot of friends. The chickens help my anxiety. I take care of them because I have nothing to do all day. I love them and it's my life goal to take care of livestock.

Chairman Sheth mentioned that Mrs. Francis was unaware of the neighbor complaint until now.

Colonel Ericson stated that one of the letters received has a picture of a house. Can you verify that this is your house. The reason I ask is because the person who wrote the letter did not identify themselves.

Mr. Swierczek apologized and stated that those photos were sent by the same sender of the second communication, Ms. Jillian Watkins.

Mr. Keller mentioned for clarification we have three letters now that have been submitted in opposition. Is that correct? Mr. Swierczek replied that is correct. I apologize that we could not do more to organize that because we got several of them this morning. In the packet, the first sheet will be the cover letter and the second sheet will be the letter that was sent in the mail, and we received it on Monday. The third paper is the e-mail we received from Ms. Watkins late yesterday and then immediately following that is a series of photos submitted by Ms. Watkins. The last sheet there is an e-mail that was sent by Mr. & Mrs. Kennett of 70 Sherwood Court. All the photos were sent by Ms. Watkins.

Mr. Keller stated that as is required of the Board for any issue requesting the granting of the variance, the Board is obligated to undertake (criteria) as you are aware. Four items basically centered around whether there is an Exceptional Practical Difficulty. One is the nature of the zone in which the property lies; the property is noted as residential. There is not an issue in my estimation. The zone is residential and that's not an issue and that's not disputed. Whether if the restriction upon the applicant's property were removed such removable would seriously affect neighboring properties and uses. The applicant's response was that the existence of the chickens does not burden or negatively affect neighboring properties. Naturally that's the applicant's judgment on that.

With the submission of objections, we really must question is that really the case. Property values, care, clean up, odor, and those types of issues that possibly develop with the presence of the foul chicken.

Colonel Ericson stated that there is nothing in the reports or testimony that states that the chickens smell. It seems to me that neighbors didn't really realize the chickens were there.

Mr. Keller stated with the submissions, and I only scanned these Colonel Ericson, I was not able to fully read all the objections. I scanned and noted a couple of comments within those letters. As he referenced # 3; he stated that we progress through the matter of whether or not the restriction

would create an unnecessary hardship or Exceptional Practical Difficulty for the owner. What is the Exceptional Practical Difficulty for the owner and her efforts to make normal improvements in the character of the use of the property that is a permitted use under the provision of the Ordinance. I'm wondering what normal improvements would the owner contemplate not being able to make any use of the property, otherwise that is a permitted use.

Council President Hare asked Mr. Keller if he could explain what he was asking because the owner was having trouble understanding what he was asking. Mr. Keller replied if the variance is denied the question arises as to whether or not the owner would be prohibited from making normal improvements in the character of the use of that property that is a permitted use. There are a number of permitted uses of the property under the residential zoning. If the application for a variance to allow the chickens is prohibited, then how would that restrict or prohibit other normal improvements that you may make to the property, tomorrow, next week or through the years.

Council President Hare asked Mr. Keller if he could give an example of what you're talking about or what other normal improvements you mean. Mr. Keller asked what are normal property improvements? Mr. Keller mentioned examples such as roofing, siding, addition to the porch, a screened-in porch, variation, and a walkway approach to the house.

Council President Hare mentioned with all respect Mr. Keller we are not here about improvements that could be done by any property owner in the City of Dover with a permit. We are here about a variance for a need for a special needs child. He's been around that neighborhood and talked to many of the neighbors including three families who did not even know the chickens were there. The lady next door wrote a letter saying she doesn't have a problem; she enjoys watching the chickens. Then at the last minute, you get two letters from somebody that has never said anything to Mrs. Francis, never said a word to her. So, the issue is the variance of the property not if they're going to build a new deck, or a new roof, add a porch or anything like that. They have to come back to Planning and get a permit to do those things which would be permitted in that use.

Chairman Sheth stated that he agreed with Council President Hare, but the problem is since somebody questioned it, this Board has the responsibility to respond to the complaint and if it is valid or not valid. We make sure Staff member and attorney request us and they make that decision. I understand that Mr. Keller if I have to define normal, I let the Staff member define the normal personable reason, because we always ask for their guidance, right? The other thing is, am I right that chickens are allowed? Anybody can raise chickens in Dover?

Colonel Ericson replied that it is permitted by Code. The key issue is if we would not allow this would it create an unnecessary hardship for them. They have laid the foundation for that position. Chairman Sheth stated that he agreed. He was just saying that it looks like the City allows chickens anyway. It looks like you fulfill whatever the law says are the requirements.

Colonel Ericson stated that in two of these letters their biggest complaint is they didn't think that any chicken(s) should be allowed on residential property. That is beyond our jurisdiction to rule on that. That's based upon the Code and the Code says you can. What the Board must look at is

will it cause hardship and if it is a reasonable request or if it is an unreasonable request to make the variance in this case.

Chairman Sheth stated that he agreed with Colonel Ericson that is the reason. That is what he was trying to explain to Council President Hare. This is the reason why we are raising this question because of the letter(s). Before you vote each person must justify their own consciousness as to why they are voting yes or no. Am I right? That is what we are doing. So, if you think you have enough information then it is okay.

Mr. Senato stated that he understood Mr. Chairman that the primary request here is the variance of square footage. The rules that we work by are, will it or will it not prevent hardship, etc. There have been several really defining letters in opposition to the chicken coops although they are legal within the City. Now the chickens, I presume are out there all year long in the cold and rain, winter, etc. I see animals out in the weather like dogs and cats or whatever and a lot of them die and I don't know about the stability of the chickens. I do know that as living in the neighborhood with other people the consideration should be taken with the number of comments that are here in front of me to keep harmony within the neighborhood. An alternative could be had because you are dealing with your child. The chickens are outside all the time in the cold weather, etc. Through proven university studies and other meetings that there are other animals that work better other than chickens such as dogs, cats, rabbits, birds, hamsters, and guinea pigs. I would hope that we could have an alternative in keeping in harmony with the neighborhood based on what I see here. I understand that we are dealing with square footage. There are also other alternatives and in my mind is there a hardship according to the Code.

Chairman Sheth stated that we strictly try to stick to the interpretation of the Ordinance and each member is doing that. The question is what are the choices that you have. Because we have no control over the Ordinance, we are strictly making the interpretation of the Ordinance. When we are not sure, that is why we ask the advice of Staff members and the attorney so that we are not violating any legal or permit issue as previously mentioned. The applicant needs to understand what we are asking. If the applicant understands what you are saying, then I don't have a problem.

Mr. Senato asked the applicant if she understood his comments about alternatives. Mrs. Francis replied she did not believe so.

Colonel Ericson noted they have shown a very strong connection of the daughter to the chickens. I have had animals my entire life (cats and dogs) and he understands. To ask them to go from chickens to another animal is asking a lot; so, we should take that into consideration.

Ms. Caillean Francis (daughter) stated that she takes care of their bedding. I do it every day. I do it in the morning. I make sure that it is all clean and that we don't have a problem. I'm willing to wear heavy clothing or clothing that will keep me warm during the winter months. I know I have to take care of them, and I want to take care of them.

Mr. Senato stated that I will just stick to the square footage. I have an autistic grandchild, that's why I am very interested in this. This does not prejudice me at all. I believe that this child as well

as my grandson, they need certain things. I am not in disapproval of that. I am confused with all of the figures of the square footage. Can we openly make a decision since there are so many different variations of the square footage and whether or not it is a hardship?

Mr. Keller mentioned that approximately 5 years ago in a matter December 19, 2018, our City Solicitor Mr. Rodriguez he mentioned as he read from records of the minutes of that meeting “Mr. Rodriguez commented that in accordance with the Chairman 's comments and Mr. Hufnal's comments Mayfair a platted subdivision in the City of Dover.” My comment is to the best of my knowledge Sherwood is platted subdivision in the City of Dover. Plotted in accordance with the Zoning Code, Planning Commission approval, etc. This Board has never granted a variance for any development that has been plotted in accordance with the Zoning Code. We have turned down any number in the past. The problem is really that it is plotted in accordance with the Zoning Code and the Board used to have numerable applications for garages and things of that nature. The Board thought that it should be kept in accordance with the Zoning Code no variances should be granted. Mr. Chairman referred to one that was built in violation of the setbacks and the Board decided against it and they had to demolish the building. Mr. Rodriguez stated that he was not speaking against the applicant. He was sure the applicant needed what they were asking for and all of that. It opens a precedent for all the developments to ask for the same thing for the property owners to do. I was a member of the Board in 2018 and still am, but not sure for how long. To the best of my knowledge, Mr. Rodriguez is absolutely correct that we've never granted a variance for a platted subdivision parcel within the City of Dover especially with noting the history of the progress of submitting an application, going through the planning review process, approval of Planning Commission, and ultimately the Mayor and Council for all the Code provisions. The primary question seems to revolve around not the area of the existing property and the difference. I think that it is Colonel Ericson that I agree with that we cannot determine exactly what square footage because we have not found for certain a deed area or a plotted lot area by virtue of a Record Plan of the subdivision. Invariably, we go back to the question as to whether or not a denial of the variance application would create an Exceptional Practical Difficulty for the owner to make normal improvements. The addition which is a permitted one in accordance with the provisions of the Code and subdivision (Sherwood) restrictions.

Chairman Sheth mentioned that the only choice different is that the Board has turned down a variance for Walker Road at Mike Harrington's property. They came for a variance after one year of approval by the Planning Commission and then they wanted a variance to build something on the Lot. They were informed that it was just approved by the Planning Commission a year or two ago. They applied to the City about the development and it's barely a violation of the area variance. But now in this case they're not building anything, the child or one of the family members has an issue and that is why they want to have chickens. I agree with you and that is the reason for the questions. He mentioned the square footage and the differences. The Board has to decide if we are working on an Area Variance regarding raising the chickens.

Council President Hare mentioned that a question was asked by the Board what would happen or the affect it would have if the variance was not granted. Ms. Caillean Francis replied that it would be very tragic for me and I'm definitely not happy about my chickens. I take care of them every day and pick up their waste. It would start my career in working with animals. Since they

are therapeutic, it would help me find a job. It would help me find a job with animals because I have had trouble finding a job because I would always cry because I would not be able to keep the job because I would have too much anxiety. So, working with animals would be really helpful.

Chairman Sheth stated that young lady I assure you this Board is not to come on as opposed. The Board will try to cooperate as much as it can to satisfy their requirement as long as they're not violating any rules and regulations.

Colonel Ericson asked Mr. Rodriguez about a legal point that was mentioned by Mr. Keller of a case that was done many years ago. He wanted to know if it had any relevance on what is being done today. City Solicitor Mr. Rodriguez replied that did not pertain to an Area of Variance. The restrictions on that type of variance are very strict. This is not that type of variance. This is an Area Variance; so, those restrictions would not apply to this application.

Colonel Ericson asked so we should make a decision on this. City Solicitor Mr. Rodriguez replied yes. He pointed out that Staff indicated that it is a very small area of variance. In legal terms you could call it dominus's. It's not very much that they are asking for. Of course, you had prior use there for long period of time. Those restrictions that Mr. Keller referred to are absolutely accurate, but they do not apply to this case.

Mr. Senato mentioned that he just wanted to comment on the young lady as she was answering the questions and understanding; she did a good job. I appreciate her integrity and honesty in answering the questions of the Board. Thank you everybody.

Council President Hare mentioned that there were roughly 8 properties whereas he knocked on the doors in the neighborhood and spoke to the people. Two neighbors were not even aware of the chickens and one neighbor next door wrote a letter. He thinks two letters were sent in. One of the neighbors did not have a problem with the chickens being on the property.

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

Chairman Sheth opened the public hearing.

Online caller: My name is Ms. Jillian Watkins and I live at 65 Sherwood Court right next door to the applicant. I sent in the pictures and letter via email. I want to follow up on the email because I don't think it was read. My parents bought my house a year before I was born. I grew up in that house. I bought it from my mother about 16-17 years ago. I love my neighborhood. I love my town and I am a business owner. My mother was a business owner as well as my grandparents who owned a shoe store Downtown for over 40 years. We are Dover natives. The state of the house and what they have done to that house in the last few years they have owned it, it is just a disgrace. Now they want to add chickens, but they didn't even check before they got the chickens. Now they want to add chaos to their home. I'm sorry. If you saw the house and the yard you would understand if you look at the pictures. I do sympathize when they say about their daughter when they say she's autistic and you know the chickens help her. They do have multiple

cats. They have dogs. I know they definitely have one dog. I would think if it was that much of an issue that they were so concerned about the therapy aspect of the chickens, then they would have checked with the city before even placing the chickens and/or the coop in their backyard. Now you know it looks like if it's denied, you're ripping it from out of the hands of the child. That's not really a fair valid statement honestly. Like I said, they do have cats. They have animals. I'm not sure how or why the chickens had to come into play as far as the therapeutic aspect of it. I will say that someone, I don't know if it was my neighbor or the man standing next to the applicant as I'm not sure who that is, but he said that I've never talked to them and we never acknowledged them. When they first moved in, I was very nice to them. They homeschooled their children and I homeschooled for a couple of years. I gave them so many of my home schoolbooks and everything. I let her in my house. I showed her my furniture one day that I had just got and where I got it from. So, I'm sorry, she can't say that I've never talked to her and was never nice to her. It's just that I started to lose some type of neighborly feeling and if they care about the house or the neighborhood as the house started to go down let's say. I try to take care of my home. I'm a divorced mother of 4. I know I guess I was able to put a new roof on and do my double driveway and siding. I'm not asking them to be able to do all of that. I just want them to take care of their home and their property. The backyard looks I mean if you can just throw anything in think of anything and everything to throw in a backyard, that's what their backyard is and now there are chickens. If you look at the pictures you will see. I love my home and like I've said I have lived here almost my whole life. It's just very sad what they have done to the property. Of course, me and my neighbors all worry about property values and curb appeal. Now you know with the chickens it's not adding, it's taking away from what already exists. A lot has been taken away from that home from what it used to look like. As I said I do sympathize with the therapeutic part of it, but I think the daughter is 19 or 20 and they do have other animals. I love my City and I have been a homeowner since the age of 18. I am a business owner and care about my neighborhood and my street staying a certain way. A lot of my neighbors have done a great job keeping the street in the neighborhood up and I'd like to see the same from them.

Chairman Sheth asked if she was in favor or against the variance application. Ms. Watkins replied she was in opposition to the chickens.

Mr. Swierczek reiterated to the Board that Ms. Watkins submitted the email and photos that were included in your packet this morning. That is the same person.

Chairman Sheth mentioned that the letter was read and discussed by the Board. I really appreciate your help, okay.

Ms. Watkins, yes, thank you so much. Thank you. I appreciate it, thank you for your time and have a great day.

Chairman Sheth, thank you for participating.

Chairman Sheth asked if there were any other callers online. Mr. Swierczek replied that the only other caller online was the owner Mr. Jason Francis. Other than that, I do not believe we have any other members of the public wishing to speak on this application online.

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

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

Colonel Ericson moved to approve variance application V-23-02 based upon the Staff Reports and the testimony given. The motion was seconded by Mr. Senato. The motion unanimously carried 3-1. Mr. Keller voted unfavorably.

Chairman Sheth asked if there were any questions or comments.

Mr. Chairman and fellow board members we've heard a lot this morning.

Mr. Keller stated that this issue in my estimation comes down to the matter regarding whether or not if this Area Variance was approved whether or not there is a creation of unnecessary hardship or Exceptional Practical Difficulty for the owner in various aspects, one which is 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*. Under the provisions of the current *Zoning Ordinance*, any number of things could be done to the property which are permitted uses. I remain unconvinced that there is an Exceptional Practical Difficulty. The burden of proof in these matter rests with the owner and the applicant. The applicant has the burden of proof before the Board in the matters submitted to the Board. Within my estimation, it's the failure of showing an Exceptional Practical Difficulty as well as with the noted community objection by at least 3 submissions to the Board. Approval of this variance not only just opens up the matter of the allowance of chickens or not, but it opens up the pathway to other matters which could be brought to recorded subdivisions which I think would be in detriment to the Planning Commission's activities and approvals, etc. With regard to those various matters, I'm expressing opposition to approval of that variance request.

Mr. Senato mentioned that there was a lot of good information and input in this hearing this morning. The key issue in my mind of course is one whether there is a hardship or not. The request was for the square footage to be allowed. It's evident in my mind that the chickens and the coop have already been approved. It doesn't make a difference when, but they are in legal compliance according to the Planning Commission. So based on that information, that's my feeling why I feel they should be given the square footage variance approval because everything is in operation with both the families and the chickens at the current time.

Roll Call Vote

Mr. Keller – no – For the reasons I've stated in my summary statement previously on my estimation of the matters regarding the Exceptional Practical Difficulty as well as matters regarding the granting of variances within the recorded subdivision plat and the extension of that into problems which could pursue forever in a day for a variance request. I'm in opposition to the approval of this request and hereby vote no.

Colonel Ericson – yes

Mr. Senato – yes – reason stated above.

Chairman Sheth - yes

The meeting was adjourned by Colonel Ericson and seconded by Mr. Senato at 11:03 A.M.

Sincerely,

Maretta Savage-Purnell
Secretary



City of Dover

Board of Adjustment

September 20, 2023

V-23-04

Location: 101 & 107 N. Queen Street, Dover DE

Owner: Mt. Zion Church A.M.E. Church

Tax Parcels: ED-05-076.08-03-37.00-000
ED-05-076.08-03-38.00-000

Application Date: August 18, 2023

Present Zoning: RG-1 (General Residence Zone)

Present Use: Place of Worship (Church)

Reviewed By: Katherine Oehmke, Planner I
Dawn Melson-Williams, AICP, Principal Planner

Variance Type: Area Variance

Variances Requested: Allow for an increase in the maximum sum of all areas permitted to be covered by a principal building and accessory buildings from 20% to 56.89% in order to allow for a proposed building addition.

Project Description

The Applicant is requesting an area variance from the requirements of Article 3 §1.14(a)(v) of the *Zoning Ordinance*. The use of the subject properties is as a Place of Worship (Church), which is a conditionally allowed use in the RG-1 Zone (General Residence Zone). The Variance Request is to increase the maximum sum of all areas permitted to be covered by a principal building and accessory buildings from 20% to 56.89% in order to allow for a proposed building addition.

The location consists of two parcels upon which the existing Church Building stands. The existing principal building exceeds this building coverage limitation of the *Zoning Ordinance* and is considered legal non-conforming. This request is to allow for design development of a Building Addition to the Church which would then be subject to a separate Conditional Use Site Plan application review process with the Planning Commission.

Property and Adjacent Properties: Zoning and Land Use

The two subject properties total 11,520 SF in land area and are zoned RG-1 (General Residence Zone). The Church location sits on the northeast corner of North Queen Street and Fulton Street spanning half of the overall block from N. Queen Street to an alley on the east. The front elevation of the building faces N. Queen Street. See Existing Conditions Sheet C-051 in Exhibit C.

The Place of Worship structure known as Mt. Zion A.M.E. Church that sits on these properties was built circa 1959 with later renovations. The church building's original construction was established prior to the current zoning provisions of the City of Dover *Zoning Ordinance*. It is considered a legal non-conforming use and building. The existing church building (footprint) covers 44.72% of the total land area. Also, the existing church building encroaches into the front yard setbacks and the other property line setbacks.

The properties in the surrounding blocks are zoned RG-1 (General Residence Zone). The property (109 N. Queen Street) adjacent to the north contains a one-family detached dwelling that is listed as a Vacant Building. Continuing to the north are other single family detached dwellings. There are several churches along N. Queen Street in the proximity. A series of parcels across the street from the subject site are owned by Mt. Zion A.M.E. Church. Directly across from the church is a single family home owned by the applicant. There is also a parking lot for the church.

A Zoning Map Exhibit (Exhibit A) prepared by Staff is attached to this Report. It shows the subject properties location and surrounding zoning.

Code Citations

RG-1 (General Residence Zone)

Zoning Ordinance, Article 3 Section 2. General residence zones (RG-1 and RG-2) lists the permitted uses, conditional uses, and other provisions of the RG-1 zone. In Article 3 Section 2.11, it notes for the RG-1 zone that the allowable uses include those uses permitted in the one-family residence zones; this refers to *Zoning Ordinance*, Article 3 Section 1.

In the One-family Residence Zones, Places of Worship are a conditional use and have specific requirements for development. See code excerpt below.

Article 3 Section 1

1.14 The following uses are permitted, conditional upon the approval of the planning commission in accordance with the procedures and subject to the general conditions set forth in section 10.1 and to any specified requirements set forth below:

(a) Places of worship, including parish houses; [and] schools, including nursery schools, kindergartens and day care centers in accordance with [article 5](#), Supplementary Regulations, section 14. Child day care facilities; philanthropic and eleemosynary institutions; hospitals and sanitariums for general medical care; and funeral homes subject to the following requirements:

- i. Any school permitted under this paragraph [subsection 1.14(a)] shall be a nonprofit organization within the meaning of the Internal Revenue Act and shall be registered effectively as such thereunder.
- ii. Any school permitted under this paragraph [subsection 1.14(a)], other than a kindergarten, nursery school, or day care center, shall occupy a lot with an area of not less than two acres, plus one acre for each 100 pupils for which the building is designed.
- iii. Any kindergarten or nursery school permitted under this paragraph [subsection 1.14(a)] shall be limited to a maximum of 50 children in zones R-8 thru R-20 and a maximum of 100 children in all other zones. At least 100 square feet of outdoor play space per child shall be provided. Outdoor play space shall be fenced or otherwise enclosed on all sides and shall not include driveways, parking areas, or land unsuited by other usage or natural features for children's active play space. Fencing or other enclosures shall be a minimum height of four feet. The minimum lot area for each ten, or remainder over the multiple of ten, children shall be the same as the minimum lot area requirement for each dwelling unit in the districts in which such uses are to be located.
- iv. No such building or part thereof shall be erected with less than a 50-foot front yard or nearer than 25 feet from any other street or property line.
- v. The sum of all areas covered by all principal and accessory buildings shall not exceed 20 percent of the area of the lot.
- vi. Courts shall conform to the requirements of [article 5](#), section 3 hereof.

The current use as a Place of Worship is allowed as a Conditional Use per Article 3 Section 1.14 (a). The current use as a Place of Worship since established prior to the adoption of the *Zoning Ordinance* is considered legal non-conforming and can continue indefinitely per *Zoning Ordinance*, Article 7. Nonconforming Buildings and Uses. For any expansion of the use, it would be subject to the current zoning provisions and would require consideration through the Conditional Use application process to become a conforming use.

With the proposed Building Addition, the property would also become subject to the requirements listed (items i through vi). Specifically for this use as a Place of Worship, the requirements of Item iv and Item v would apply.

- The placement of the building on the lots does not meet the setback provisions outlined in Item iv; however, these setbacks are considered legal non-conforming and are allowed to continue as long as the degree of nonconformity is not increased or any new conformity created (per *Zoning Ordinance*, Article 7. Nonconforming Buildings and Uses). Any Building Addition would be limited to the existing setbacks of the existing building. Any Building Addition could not be placed any closer to the property lines than the existing building.
- In the case of Item v for the coverage of the lot by the principal building, a Building Addition increases the degree of nonconformity for the building coverage compared to the lot area. Thus, it requires consideration of a variance.

Applicant's Proposed Project

The Applicant has submitted a Site Plan Set (Exhibits C and D) and Architectural Drawing Set (Exhibit E). These plans/drawings depict the existing conditions of the site and building and the Building Addition proposal. A Building Addition with a footprint of 1,402 SF is proposed. This will increase the existing principal building coverage from 44.72% to a total building area of 56.89%. The Applicant had met with Planning Staff prior to the application submission to discuss the project proposal and the required review processes. Planning Staff generally finds the Variance requested to be the least necessary to allow for a Building Addition.

If the area variance is granted, the proposed project will still be subject to a separate application for a Planning Commission Review Process for a Conditional Use Site Plan and other applicable *Zoning Ordinance* provisions.

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 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:

"The property is currently zoned RG-1 (General Residential). Places of worship is a permitted use, conditionally approved by the Planning Commission. The building and use were established on these parcels prior to the City of Dover Zoning Ordinance being established. The use has not changed since it was established in 1959."

Staff Response:

The subject properties (two parcels) are zoned RG-1 (General Residence Zone). The RG-1 zone predominately allows for one-family dwellings (residences). However, there are a series of uses that are allowed through a Conditional Use review process. The Conditional Use process could allow for the placement of places of worship, schools, day care facilities, and other institutional uses. The use of the property as a Place of Worship is permitted as a Conditional Use in this RG-1 zone.

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

Applicant Response:

“There are currently three active churches within one block of this parcel, five active churches within two blocks. Directly across the intersection of Fulton St and N Queen St is Calvary Baptist Church. The current building and proposed addition are brick façade, which is consistent with other buildings within close proximity.”

Staff Response:

The area is a grid system of city street blocks with mid-block alleys consisting of lots laid out in the late 1800s-early 1900s. The area developed as housing with places of worship (churches) at select locations. The current Mt. Zion A.M.E. Church structure is largely massed and all brick with large stained glass windows, similar to the other churches in the area. The roof line is roughly the same height as the other structures both residential and non-residential in the area. The Church Building sits at a corner location with the front of the building (and its entrances) facing North Queen Street. The Church Building is set back slightly in comparison to the houses along the same side of the street. Staff acknowledges that there are other church properties in the proximity that also appear to be non-conforming with setbacks and the 20% building coverage regulation found in the current Code due to dates of construction.

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

Applicant Response:

“This building was constructed prior to the Zoning Ordinance being established and exceeded the building area coverage requirement prior to the Code. The adjacent and neighboring properties also exceed the maximum building area requirement of 20%, therefore this application does not set a precedent for future applications on neighboring properties.”

Staff Response:

Planning Staff acknowledges the pre-existing condition of the property for a Place of Worship was prior to *Zoning Ordinance* enactment in the City of Dover, as well as the pre-existing building coverage being more than the current allowed. The Church has been at this location since 1959 and there is no proposed use change.

The proposed Building Addition would be located where an existing access sidewalk and ramp system to the current Church Building exists on its north side. The Building Addition will continue to maintain the existing setbacks from the north property line and from the N. Queen Street front (west) property line. The new entry system (sidewalk, steps, ramp system) into the building will be closer North Queen Street. The increase in building coverage of the lot would have limited impact on neighboring properties as the Building access from the street sidewalk system and nearby parking opportunities of on-street parking and church designated parking lots remains the same.

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 church membership is improving, which benefits the community it serves; however, the current building footprint cannot continue to serve the needs of the members and requires additional space. Not permitting the addition as proposed would have an impact on the day-to-day activities and function of the church. The addition provides much needed Sunday School classroom space and additional office space. A second floor to the building is not feasible based on the existing structural components of the building. The extensive renovations required to the original building from a structural standpoint alone would be too costly for the age of the building and not feasible. A second floor to the building would also make the building out of character with the surrounding neighborhood. The first floor of the existing church is elevated several feet above the surrounding homes, and the roof line is equal in height with the adjacent homes. Adding a second floor would elevate the roof line significantly higher and would make the building out of character. The addition as proposed provides added safety elements such as moving the primary entrances to one end of the Sanctuary. Currently the Sanctuary is accessed by two entrances, one at the front and one at the back. The proposed addition allows the members to monitor the public entering and exiting the building. The existing ADA ramp is located on the side of the building. The proposed addition pushes the ADA entrance closer to the street for easier access. Not allowing the addition would limit the church from improving the current condition.”

Staff Response:

The pre-existing size of the properties (lots) limits the ability to comply with the present-day provisions of the *Zoning Ordinance* related to principal building coverage of the lot. The Building Addition seeks to continue the use of the Building as a Church facility at this location in the neighborhood while modernizing the building for programming functions and ADA accessibility. In review of alternatives, Staff concurs that adding an additional second story (thus not increase building coverage of the lot) would be out of character with the neighborhood and may not be structurally feasible. Planning Staff finds that an exceptional practical difficulty may be determined to be present.

Variance Recommendations

Planning Staff finds that the subject properties have conditions that limit any growth at this site based on the current zoning regulations. Planning Staff notes that the properties have existed in their current size and the existing Place of Worship (Church Building) at this location predate the establishment of the *Zoning Ordinance* in the City of Dover in 1961. The current zoning requirements would prohibit any increase in building coverage of the property; thus, limiting most improvements to the building/facility. Planning Staff finds that the Applicant has demonstrated 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 legal-nonconforming uses and setbacks to continue, provided the degree of non-conformity is not increased. The use of the property for a Place of Worship can continue. The current building setbacks will continue to be maintained.
- The ability to increase the amount of building coverage of the principal building on the property will allow for improvements to the building's function and ADA accessibility. A variance is required in order to construct any increase in building footprint on these parcels.
- The property is largely in keeping with the surrounding neighborhood in character, as several Places of Worship are located within this residential area of the City.
- For any expansion of the Place of Worship use, a Conditional Use application to the Planning Commission will be required subject to the provisions of the *Zoning Ordinance*. As a Building Addition is proposed, this would require review of a Conditional Use Site Plan by the Planning Commission.

Advisory Comments to the Applicant

- If granted, variances become null and void if work has not commenced within one (1) year of the date the variance was granted. At present there is no provision for extension.
- 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 Addition on the property. In this case, it will be a Conditional Use Site Plan as the use as a Place of Worship is subject to Conditional Use, which may be achieved through an application and review process involving the Planning Commission. 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
	BOA Application Form	1
A	Zoning Map Exhibit (Staff)	1
B	Applicant's Written Responses: Revised Letter of August 18, 2023	2
C	Mt. Zion AME Church Addition Site Plan Set (Sheets: C-001 Title Sheet, C-501 Existing Conditions, and C-101 Preliminary Site & Grading Plan).	3 with Addendum excerpt from Exhibit D
D	Mt. Zion AME Church Addition Site Plan Set Revised Title Sheet C-001	1
E	Mt. Zion AME Church Addition & Renovation Architecture Set (Sheets: A-100 Basement Plan – New Work & Room Finish Schedule, A-101 First Floor Plan – New Work & Room Finish Schedule, and A-201 Exterior Elevations)	3



Board of Adjustment Application

Application Information

Property Address: 101 N, Queen St., Dover, Delaware 19904
Tax Parcel Number: 2-05-07608-03-3700-000
Owner Name: MT. Zion Church A.M.E. Church
Property Zoning: General Residence (RG1)
Variance (s) Requested: Proposed property addition can not be developed with current lot coverage limits held by the Zoning Ordinance and Code, unless authorization from a variance is recieved.

*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.

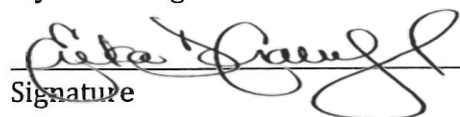
Area Variance

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 Rev. Dr. Erika D. Crawford, Pastor 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

Pastor of Mt Zion AME Church- Dover, DE 08/18/2023
Title Date



Board of Adjustment Application- cont.

Use Variance

A use variance shall be evaluated on the following criteria. **Please state how your request meets each of these criteria.**

1. That there are physical conditions applying to the land or building for which the variance is sought, which conditions are peculiar to such land or buildings, and have not resulted from any act of the applicant or any predecessor in title; and
2. That the aforesaid circumstances or conditions are such that the strict application of the provisions of this ordinance would deprive the applicant of all reasonable use of such land or building and the granting of the variance is necessary of the reasonable use of the land or building, and that the variance as granted by the board is the minimum variance that will accomplish this purpose;
3. That granting of the variance under such conditions as the board may deem necessary or desirable to apply thereto will be in harmony with the general purpose and intent of this ordinance, will not represent a radical departure therefrom, will not be injurious to the neighborhood, will not change the character thereof and will not be otherwise detrimental to the public welfare.

Appeal

Please state the administrative order, requirement, decision, or determination that you are appealing. (Provide a copy of the original decision that is being appealed)

Planning & Inspections View Map



9/6/2023, 3:54:11 PM

DE_Imagery_2017

- Red: Red
- Green: Green
- Blue: Blue

City Boundary

Vacant Buildings

Tier 1 Secondary Wellhead Protection Area

Tier 2 Primary Wellhead Protection Area

SWPOZ Source Water Protection Overlay Zones - Tier 3 Excellent Recharge Areas

Noise Zone Areas

65 DNL A

70 DNL B

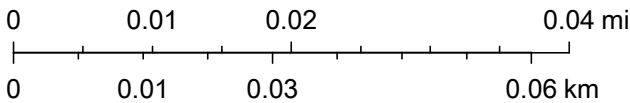
75 DNL C

80 DNL D

H Historic District

COZ-1 Corridor Overlay Zone

1:1,128



Surdex Corp, Esri Community Maps Contributors, City of Dover, Delaware FirstMap, New Jersey Office of GIS, VGIN, © OpenStreetMap, Microsoft, Esri, HERE, Garmin, SafeGraph, GeoTechnologies, Inc, METI/NASA, USGS,

August 18, 2023

Ring W. Lardner, P.E.
W. Zachary Crouch, P.E.
Michael E. Wheedleton, AIA, LEED GA
Jason P. Loar, P.E.
Jamie L. Sechler, P.E.

City of Dover
Department of Planning & Inspections
15 Loockerman Plaza
Dover, DE 19903

Attn: Ms. Mary Ellen Gray, AICP
Planning Director

RE: **Mt. Zion A.M.E. Church Building Addition**
BOA Hearing
City of Dover, DE
Tax Map No: 2-05-07608-03-3700 & 3800
DBF # 4335A001

Dear Ms. Gray:

On behalf of our client, Mt. Zion A.M.E. Church, we offer the following explanation in support of the application for an area variance. Specifically, the nature of the variance request relates to Article 3 §1.14(a)(v) of the *Zoning Ordinance* which notes that the maximum area for a conditional use in the RG-1 Zone is 20%. The property is unique, as a legally nonconforming lot that was first developed in 1959 as a church prior to the City of Dover Zoning Ordinance being established. The existing building area is currently 44.72%, the proposed building addition would increase the footprint by 12.17%, therefore the total building area for the site would be 56.89%. The following explanations describes how this application meets the four (4) criteria for granting the area variance.

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

The property is currently zoned RG-1 (General Residential). Places of worship is a permitted use, conditionally approved by the Planning Commission. The building and use were established on these parcels prior to the City of Dover Zoning Ordinance being established. The use has not changed since it was established in 1959.

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

There are currently three active churches within one block of this parcel, five active churches within two blocks. Directly across the intersection of Fulton St and N Queen St is Calvary Baptist Church. The current building and proposed addition are brick façade, which is consistent with other buildings within close proximity.

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

This building was constructed prior to the Zoning Ordinance being established and exceeded the building area coverage requirement prior to the Code. The adjacent and neighboring properties also exceed the maximum building area requirement of 20%, therefore this application does not set a precedent for future applications on neighboring properties.

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 church membership is improving, which benefits the community it serves; however, the current building footprint cannot continue to serve the needs of the members and requires additional space. Not permitting the addition as proposed would have an impact on the day-to-day activities and function of the church. The addition provides much needed Sunday School classroom space and additional office space. A second floor to the building is not feasible based on the existing structural components of the building. The extensive renovations required to the original building from a structural standpoint alone would be too costly for the age of the building and not feasible. A second floor to the building would also make the building out of character with the surrounding neighborhood. The first floor of the existing church is elevated several feet above the surrounding homes, and the roof line is equal in height with the adjacent homes. Adding a second floor would elevate the roof line significantly higher and would make the building out of character. The addition as proposed provides added safety elements such as moving the primary entrances to one end of the Sanctuary. Currently the Sanctuary is accessed by two entrances, one at the front and one at the back. The proposed addition allows the members to monitor the public entering and exiting the building. The existing ADA ramp is located on the side of the building. The proposed addition pushes the ADA entrance closer to the street for easier access. Not allowing the addition would limit the church from improving the current condition.

The Zoning Ordinance was established after this establishment was built and used as a place of worship, subjecting this property to a decreased permitted building area. The amendment to the Code has created an exceptional practical difficulty, not created by the applicant, such that the property owner cannot make reasonable modifications to the property that are intended to improve functionality, safety and access to the existing church. The variance, if authorized, will not alter the essential character of the neighborhood or district that is mixed use in nature. The proposed improvements will also improve safety for patrons accessing the church. The variance, if authorized, represents the minimum variance that affords relief and represents the least modification possible to improve the churches' function and safety. The variances, as requested, are shown on the site plan provided with this submission.

If you have any questions or need additional information, please call.

Sincerely,
Davis, Bowen & Friedel, Inc.

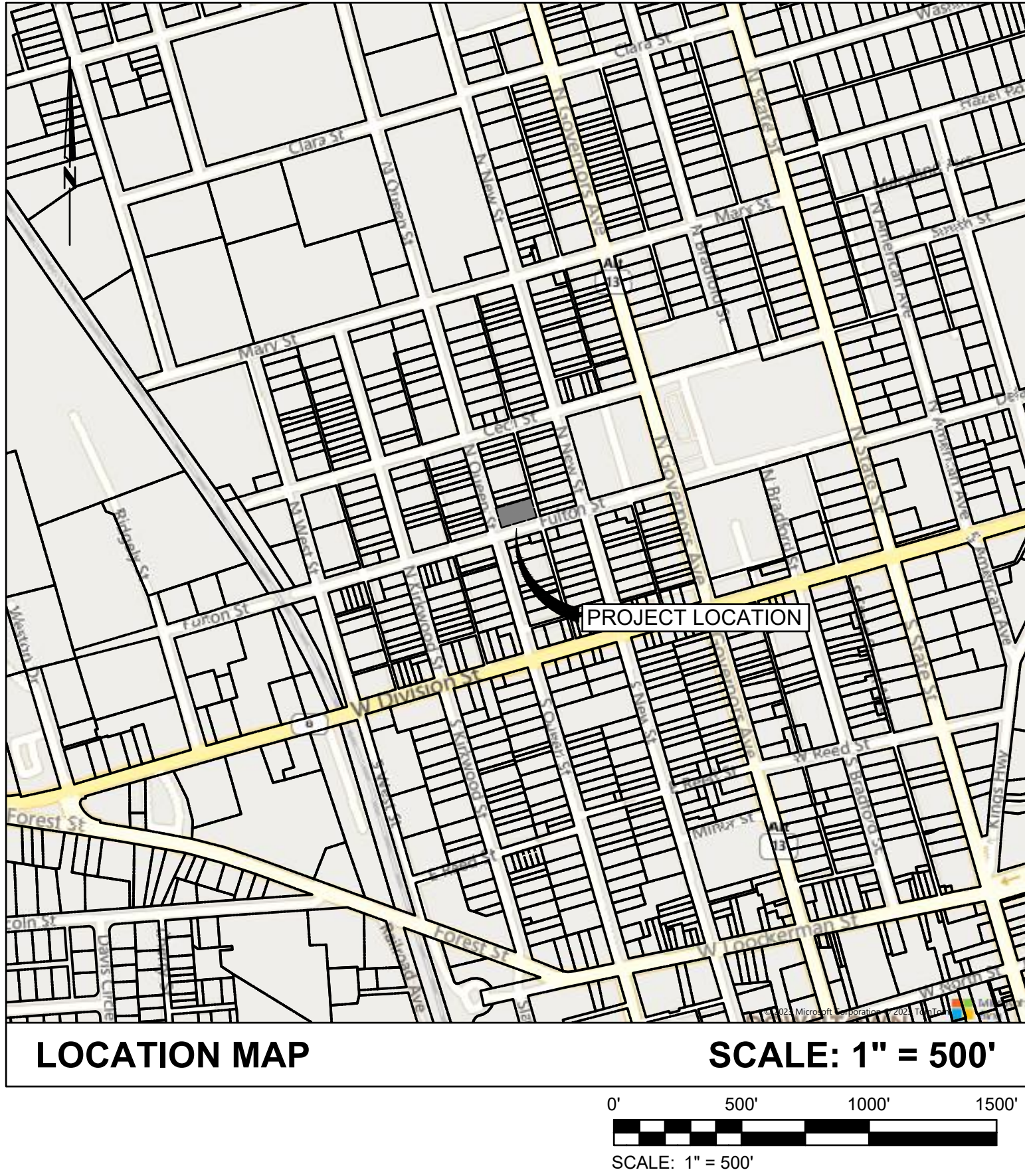
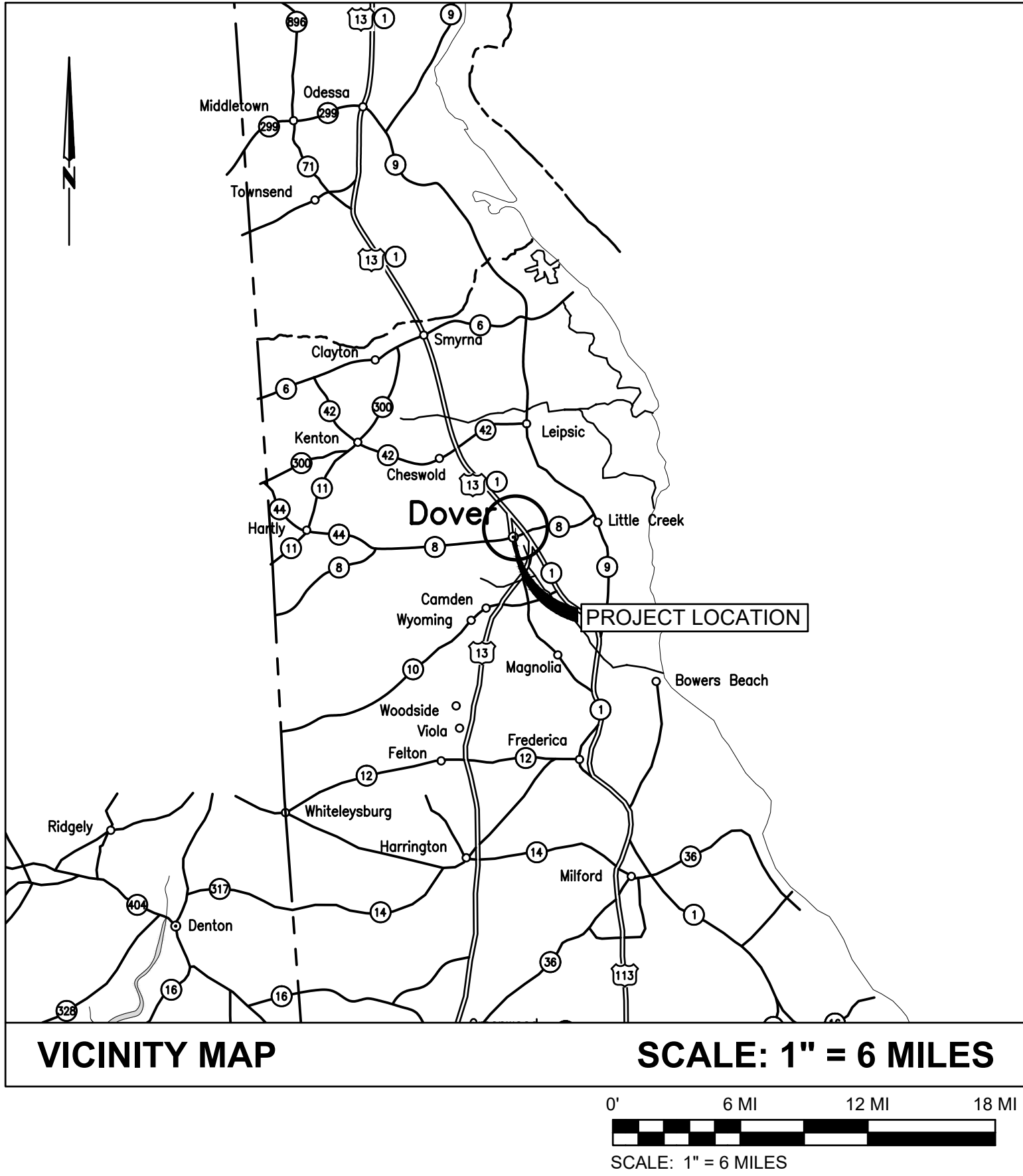


Timothy M. Metzner, RLA, LEED AP ND
Associate / Sr. Landscape Architect

P:\4335A\4335A001-Mt Zion AME Church\CAD\SHSHEET\PRELIM\4335A001-C-001-TITLE.dwg Aug 18, 2023 - 11:24am PERRY

DATA COLUMN

1	TAX MAP ID	2-05-07608-03-3700-000, 2-05-07608-03-3800-000	
2	DEED REFERENCE	BOOK: C 32, PAGE: 31	
3	APPROXIMATE PROJECT CENTER	<u>LATITUDE</u> 39.162461°	<u>LONGITUDE</u> 75.5309618°
4	ENGINEER DAVIS, BOWEN & FRIEDEL, INC. 1 PARK AVENUE MILFORD, DE 19963 TIMOTHY M. METZNER, RLA PHONE: (302) 424-1441 EMAIL: tmm@dbfinc.com	OWNER MT. ZION A.M.E. CHURCH 101 N QUEEN ST. DOVER, DELAWARE 19904	
5	DATUM	<u>HORIZONTAL</u> NAVD 83 (DE STATE PLANE)	<u>VERTICAL</u> NAVD 88
6	ZONING	<u>EXISTING</u> GENERAL RESIDENCE (RG1)	<u>PROPOSED</u> GENERAL RESIDENCE (RG1)
7	LAND USE	<u>EXISTING</u> LAND USE	<u>PROPOSED</u> LAND USE
8	UTILITY PROVIDERS	<u>SEWER</u> TOWN	<u>WATER</u> TOWN
		<u>GAS</u> N/A	<u>ELECTRIC</u> N/A
9	POSTED SPEED LIMIT	<u>FULTON ST (LOCAL ROAD)</u> 25 MPH	<u>N QUEEN ST (KCR 190A)</u> 25 MPH
10	FLOODPLAIN	THE PROPERTY IS NOT IMPACTED BY THE 100 YEAR FLOODPLAIN AS DETERMINED BY FEMA PANEL 10001C0166H, DATED MAY 05, 2003 & BY FEMA PANEL 10001C0167H, DATED MAY 05, 2003.	
11	TRANSPORTATION IMPROVEMENT DISTRICT (TID)	THE PROPERTY IS NOT LOCATED IN A TRANSPORTATION IMPROVEMENT DISTRICT (TID). DISTANCE TO NEAREST TID (MILFORD) : 18.244 MI.	
12	GROUNDWATER RECHARGE	THE PROPERTY IS LOCATED IN AN AREA OF FAIR GROUNDWATER RECHARGE.	
13	WELLHEAD PROTECTION AREA	THE PROPERTY IS NOT LOCATED IN A WELLHEAD PROTECTION AREA.	
14	WETLANDS	THE PROPERTY IS NOT IMPACTED BY STATE AND/OR FEDERALLY REGULATED WETLANDS.	
15	<u>CODE COMPLIANCE</u>	<u>REQUIRED</u>	<u>PROPOSED</u>
	FRONT SETBACK	50 FT	50 FT
	SIDE SETBACK	25 FT	25 FT
	REAR SETBACK	25 FT	25 FT
	MAXIMUM DENSITY	N/A	N/A
	MAXIMUM BUILDING HEIGHT	35 FT (2.5 STORIES)	35 FT (2.5 STORIES)
	PARKING	N/A	N/A
16	<u>AREAS</u>	<u>EXISTING</u>	<u>PROPOSED</u>
	SITE AREA	11,520.00 SF. (0.264 AC.) (100.00%)	11,520.00 SF. (0.264 AC.) (100.00%)
	WOODS	0.00 SF. (0.000 AC.) (00.00%)	0.00 SF. (0.000 AC.) (00.00%)
	IMPERVIOUS COVER	6315.08 SF. (0.145 AC.) (54.82%)	7,778.79 SF. (0.179 AC.) (67.51%)



MT ZION AME CHURCH ADDITION PRELIMINARY PLANS CITY OF DOVER KENT COUNTY, DELAWARE DBF# 4335A001 JUNE 2023

ENGINEER'S STATEMENT

I, UNDERSIGNED, HEREBY STATE THAT I AM A REGISTERED ENGINEER IN THE STATE OF DELAWARE. THE INFORMATION SHOWN HEREON HAS BEEN PREPARED UNDER MY SUPERVISION AND TO MY BEST KNOWLEDGE REPRESENTS GOOD ENGINEERING PRACTICES AS REQUIRED BY THE APPLICABLE LAWS OF THE STATE OF DELAWARE.

W. ZACHARY CROUCH, P.E.
DAVIS, BOWEN & FRIEDEL, INC.
1 PARK AVENUE
MILFORD, DE 19963

OWNER'S STATEMENT

I, UNDERSIGNED, HEREBY STATE THAT I AM THE OWNER OF THE PROPERTY DESCRIBED AND SHOWN ON THIS PLAN. THE PLAN WAS MADE AT MY DIRECTION. I ACKNOWLEDGE THE SAME TO BE MY ACT AND DESIRE THE PLAN TO BE RECORDED ACCORDING TO LAW. PERPETUAL MAINTENANCE OF STREETS AND COMMON AREAS SHALL BE THE RESPONSIBILITY OF THE DEVELOPER / OWNER.

MT. ZION A.M.E. CHURCH
101 N. QUEEN ST.
DOVER, DELAWARE 19904

APPROVED
CITY OF DOVER ENGINEER:

NAME
AGREEMENT #

INDEX OF SHEETS	
GENERAL	
C-001	TITLE SHEET
C-002	LEGEND & NOTES
DEMOLITION PLAN	
C-051	EXISTING CONDITIONS
C-052	PRELIMINARY DEMOLITION PLAN
SITE PLAN	
C-101	PRELIMINARY SITE & GRADING PLAN

Professional Certification. I hereby certify that these documents were prepared or approved by me, and that I am a duly licensed Professional Engineer in the laws of the State of Delaware License No. 12734. Expiration Date: 09-30-24.

DAVIS, BOWEN & FRIEDEL, INC.
ARCHITECTS • ENGINEERS • SURVEYORS

BALDWIN, DELAWARE
508-241-1441
410-343-9791

MT ZION AME CHURCH ADDITION CITY OF DOVER KENT COUNTY, DELAWARE

Date: JUNE 2023
Scale: AS SHOWN
Dwn.By: YAP
Proj.No.: 4335A001

TITLE SHEET

Dwg.No.:
C-001

**DAVIS
BOWEN &
FRIEDEL, INC.**

ARCHITECTS - ENGINEERS - SURVEYORS

dbf

**EASTON, MARYLAND
410.770.4744**

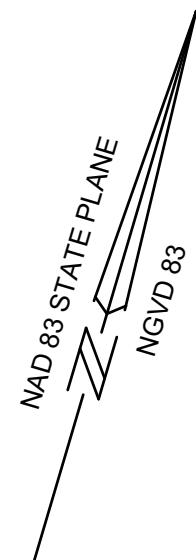
**MILFORD, DELAWARE
302.424.1444**

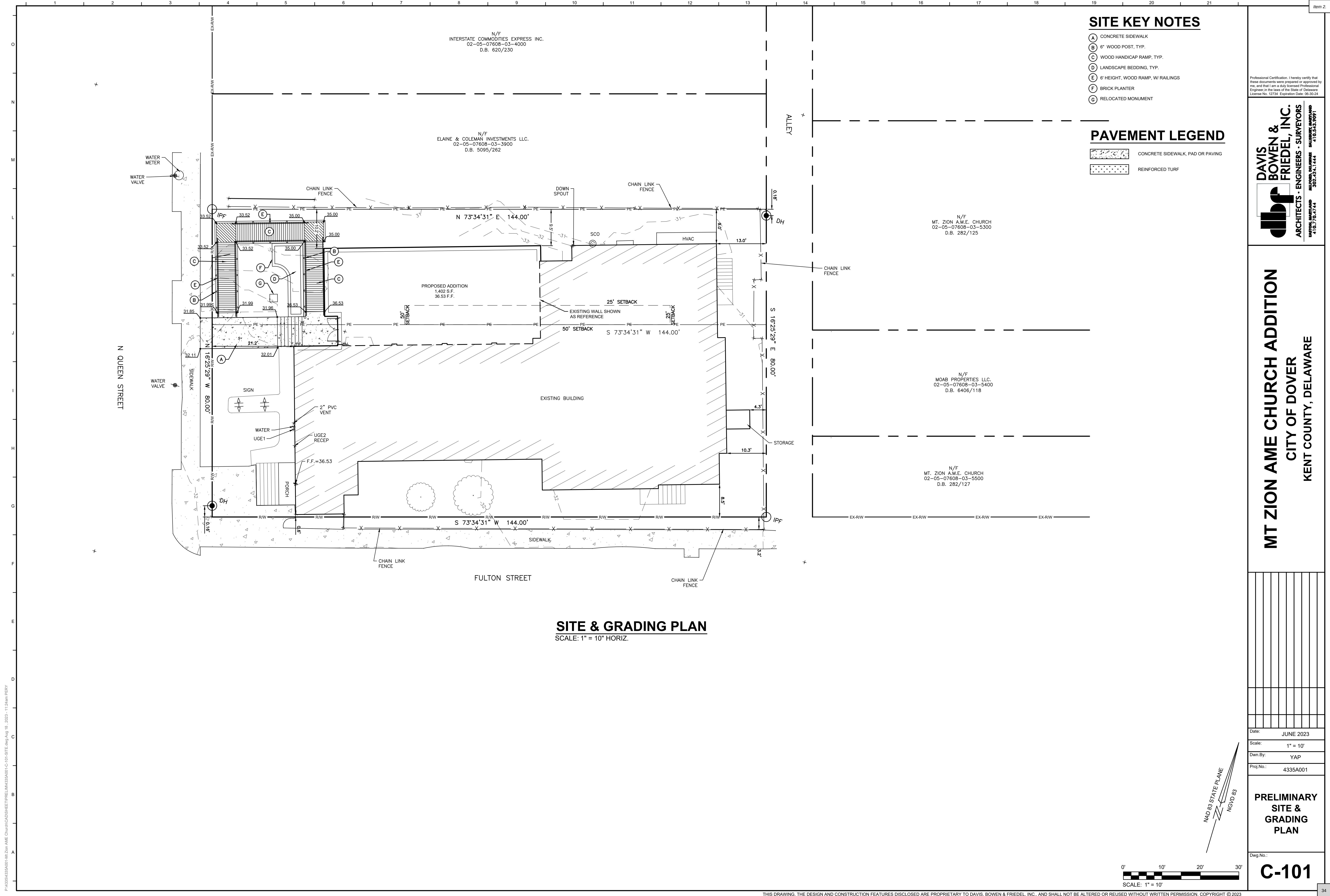
**SALISBURY, MARYLAND
410.543.9991**

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EXISTING CONDITONS

C-051





SITE KEY NOTES

- (A) CONCRETE SIDEWALK
- (B) 6" WOOD POST, TYP.
- (C) WOOD HANDICAP RAMP, TYP.
- (D) LANDSCAPE BEDDING, TYP.
- (E) 6' HEIGHT, WOOD RAMP, W/ RAILINGS
- (F) BRICK PLANTER
- (G) RELOCATED MONUMENT

PAVEMENT LEGEND

- CONCRETE SIDEWALK, PAD OR PAVING
- REINFORCED TURF

SITE & GRADING PLAN

SCALE: 1" = 10" HORIZ.

Professional Certification, I hereby certify that these documents were prepared or approved by me, and that I am a duly licensed Professional Engineer in the laws of the State of Delaware License No. 12734, Expiration Date: 05-30-24.

DAVIS BOWEN & FRIEDEL, INC.
ARCHITECTS - ENGINEERS - SURVEYORS
BALTIMORE, MARYLAND 410-535-5791
SALESBURG, DELAWARE 302-241-1444

MT ZION A.M.E. CHURCH ADDITION
CITY OF DOVER
KENT COUNTY, DELAWARE

Date: JUNE 2023
Scale: 1" = 10'
Dwn.By: YAP
Proj.No.: 4335A001

PRELIMINARY
SITE &
GRADING
PLAN

Dwg.No.:
C-101

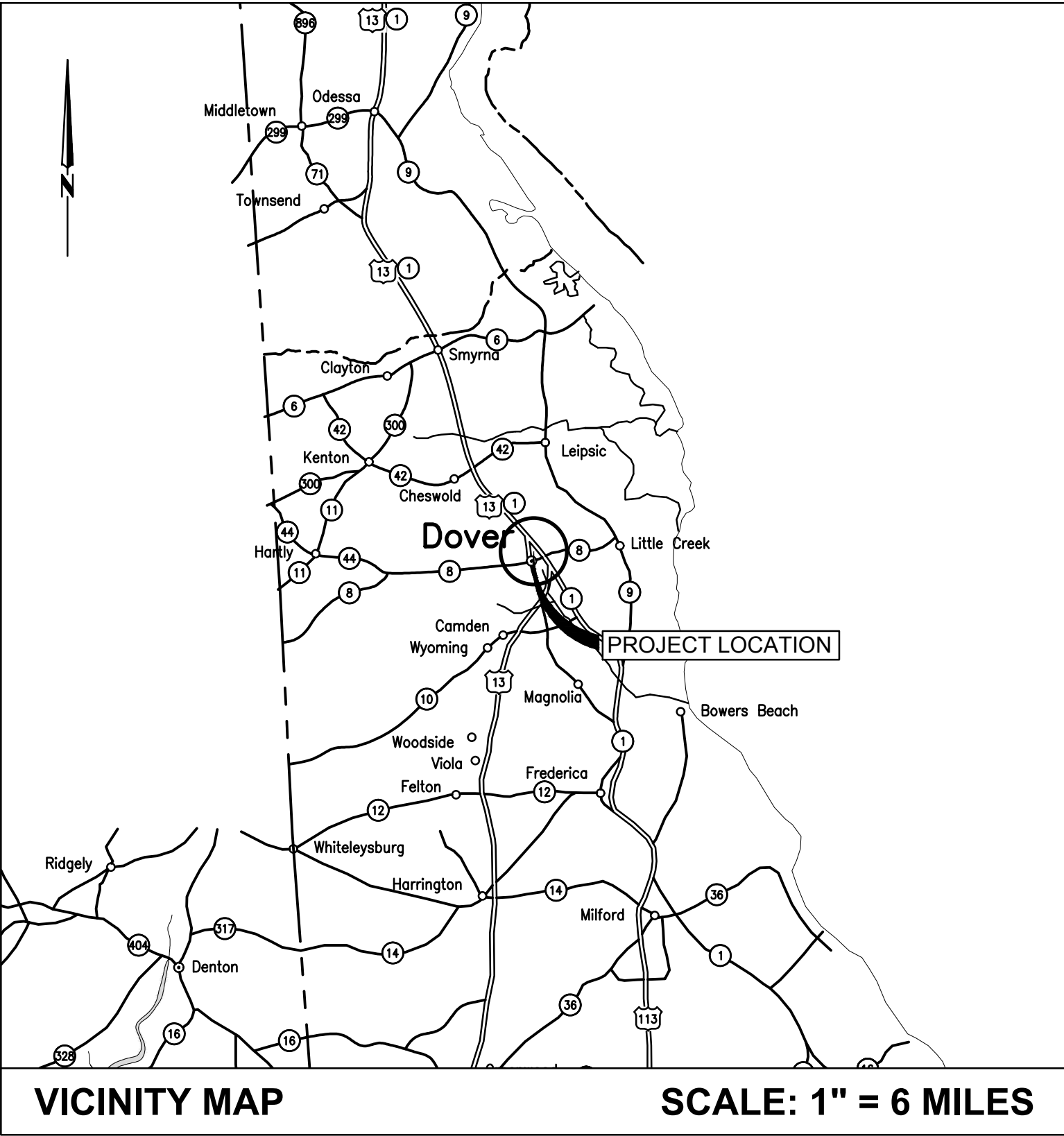
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DATA COLUMN

1	TAX MAP ID	2-05-07608-03-3700-000, 2-05-07608-03-3800-000			
2	DEED REFERENCE	BOOK: C 32, PAGE: 31			
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4	ENGINEER	OWNER			
	DAVIS, BOWEN & FRIEDEL, INC.	MT. ZION A.M.E. CHURCH			
	1 PARK AVENUE	101 N QUEEN ST.			
	MILFORD, DE 19963	DOVER, DELAWARE 19904			
	TIMOTHY M. METZNER, RLA				
	PHONE: (302) 424-1441				
	EMAIL: tmm@dbfinc.com				
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	BUILDING FOOTPRINT	5,152 SF. (0.118 AC) (44.72%)		1,402 SF. (0.032 AC) (12.17%)	
	OVERALL BUILDING FOOTPRINT	---		6,554 SF. (0.150 AC) (56.89%)	

MT ZION AME
CHURCH ADDITION
PRELIMINARY PLANS
CITY OF DOVER
KENT COUNTY, DELAWARE
DBF# 4335A001
JUNE 2023



ENGINEER'S STATEMENT

I, UNDERSIGNED, HEREBY STATE THAT I AM A REGISTERED ENGINEER IN THE STATE OF DELAWARE. THE INFORMATION SHOWN HEREON HAS BEEN PREPARED UNDER MY SUPERVISION AND TO MY BEST KNOWLEDGE REPRESENTS GOOD ENGINEERING PRACTICES AS REQUIRED BY THE APPLICABLE LAWS OF THE STATE OF DELAWARE.

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101 N. QUEEN ST.
DOVER, DELAWARE 19904

APPROVED
CITY OF DOVER ENGINEER:

NAME
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DAVIS, BOWEN & FRIEDEL, INC.
ARCHITECTS • ENGINEERS • SURVEYORS
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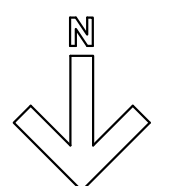
MT ZION AME CHURCH ADDITION
CITY OF DOVER
KENT COUNTY, DELAWARE

Date: JUNE 2023
Scale: AS SHOWN
Dwn.By: YAP
Proj.No.: 4335A001

TITLE SHEET

Dwg.No.:

C-001


$$1/8" = 1'-0"$$

Room Type	FLR	Base	Walls	Trim & Frames	Wainscot	Clg	Notes
A	--	--	--	--	--	--	--
B	--	--	--	--	--	--	--
C	--	--	--	--	--	--	--
D	--	--	--	--	--	--	--
E	--	--	--	--	--	--	--
F	--	--	--	--	--	--	--
G	--	--	--	--	--	--	--
H	--	--	--	--	--	--	--
I	--	--	--	--	--	--	--
J	--	--	--	--	--	--	--
X	--	--	--	--	--	--	--

CPT = CARPET TILE
LVT = LUXURY VINYL TILE
VCT = VINYL COMPOSITION TILE
PT = PAINT
ACT = ACOUSTICAL CEILING TILE
VB = VINYL BASE
VINYL = SHEET VINYL
PT WD = PAINTED WOOD
CT = CERAMIC TILE

1. REPLACE APPROXIMATELY 2'-0" HIGH x 6'-0" WIDE WINDOW.
2. REPLACE PORTION OF CMU WALL BELOW WINDOW DOWN TO FLOOR SLAB.
3. REPLACE PORTION OF DRYWALL CEILINGS AS REQUIRED TO ACCOMMODATE SPRINKLER SYSTEM INSTALLATION.

A1

A16

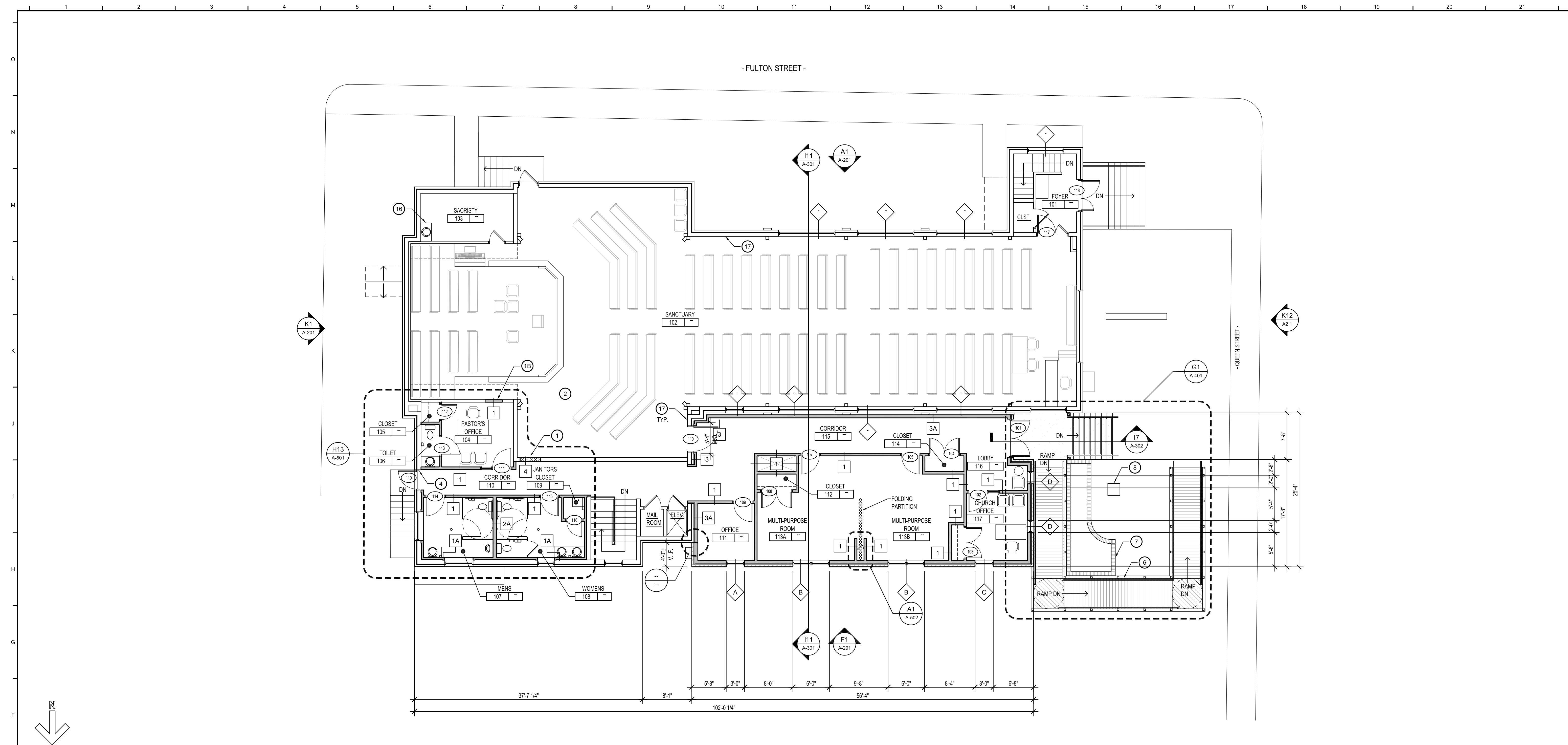
MT. ZION AME CHURCH
ADDITION & RENOVATIONS
101 N QUEEN ST, DOVER, DE 19904

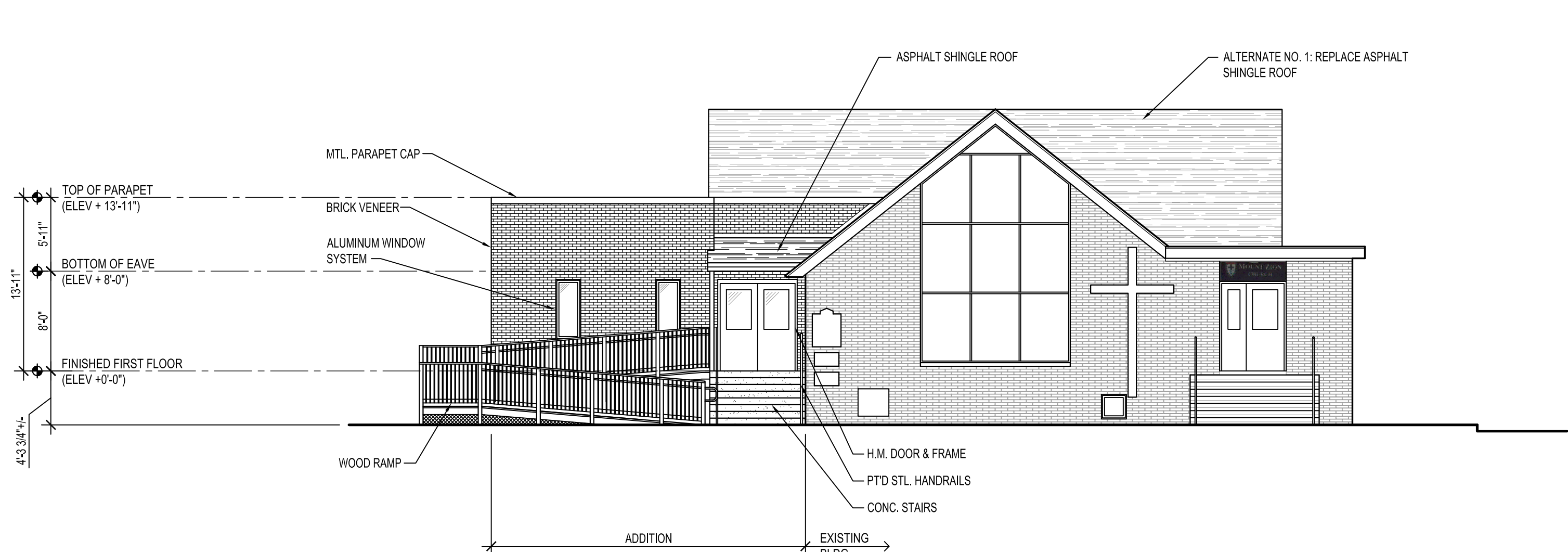
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**FIRST FLOOR
PLAN - NEW
WORK & ROOM
FINISH
SCHEDULE**

Dwg.No.:

A-101

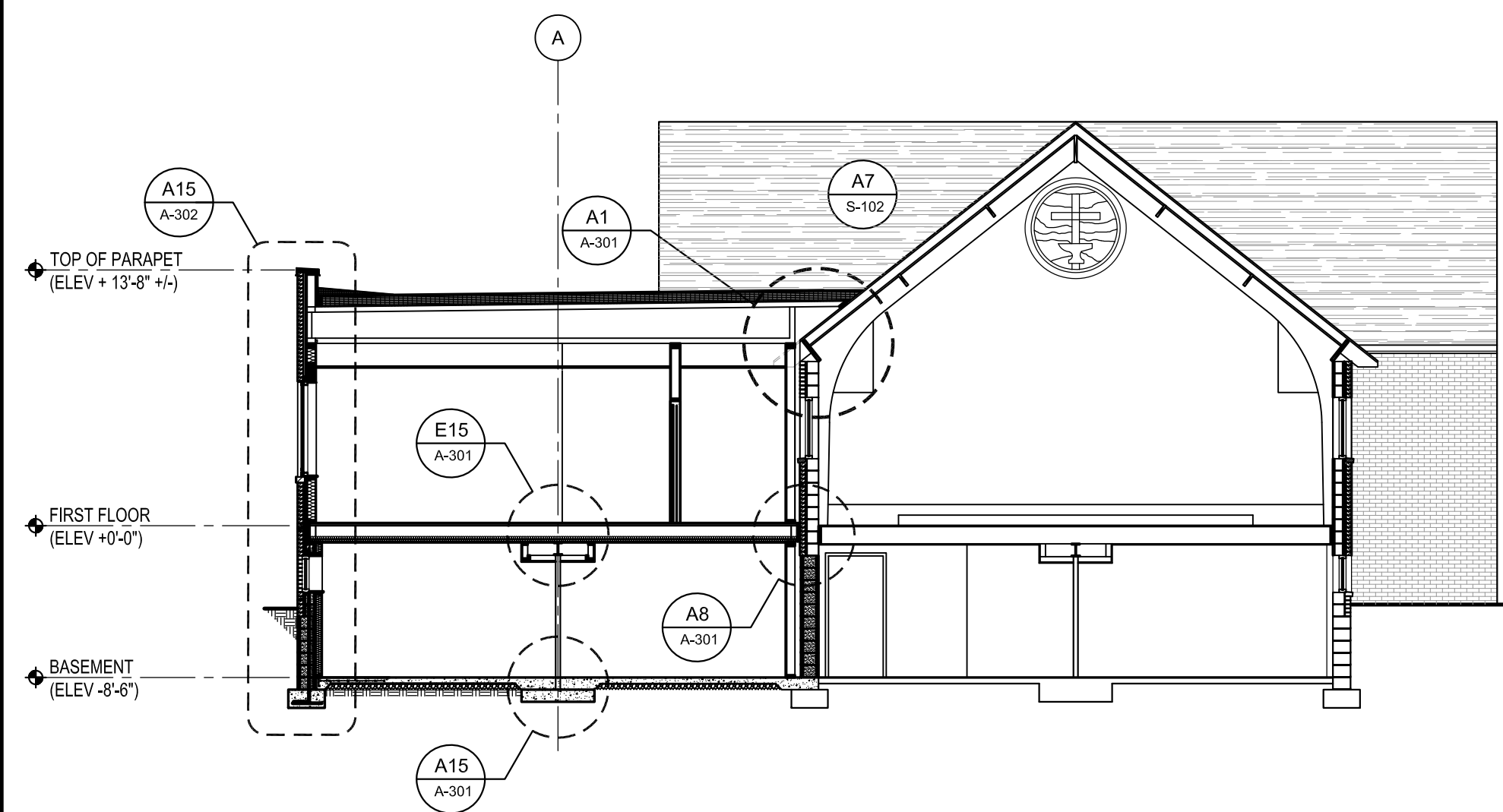
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K12 | WEST ELEVATION

$$1/8'' = 1'-0''$$


1/8" = 1'-0"



I11 | BUILDING SECTION

$$1/8" = 1'-0"$$

**DAVIS
BOWEN &
FRIEDEL, INC.**

ARCHITECTS • ENGINEERS • SURVEYORS

BATON, MARYLAND
410.776.4744

MILFORD, DELAWARE
302.424.1441

SALISBURY, MARYLAND
410.343.9091

MT. ZION AME CHURCH
ADDITION & RENOVATIONS
101 N QUEEN ST, DOVER, DE 19904

[illegible]

Date:	April 12, 2023
Scale:	AS NOTED
Dwn.By:	LMP
Proj.No.:	4335A001.B03

EXTERIOR ELEVATIONS

Dwg. No.

A-201



City of Dover
Board of Adjustment

Meeting of September 20, 2023
Appeal V-23-03

Appeal Filed By: Dr. Wilma Mishoe and The Apartments at Mishoe Cove, LLC
By John A. Sergovic, Jr., Esq. of Sergovic Carmean Weidman McCartney & Owens, P.A.

Application Date: Appeal Received July 19, 2023
Scheduled for September 20, 2023 Meeting

Request for Appeal:

Appeal #V-23-03

Consideration of an application by Dr. Wilma Mishoe and the Apartments at Mishoe Cove, L.L.C. seeking an appeal to the City of Dover Board of Adjustment from the decision of the City of Dover Planning Commission to approve Site Development Plan S-23-06 College Road Apartments at Railroad Avenue/Grove Street.

- S-23-06 College Road Apartments at Railroad Avenue/Grove Street – On June 20, 2023, the Planning Commission granted conditional approval of the Site Development Plan and Lot Consolidation Plan for construction of two 6-story mid-rise apartment buildings with a total of 385 units consisting of studio, 1 bedroom, and 2 bedroom units. The ground level of each apartment building is parking and the other site improvements include six 7-car garage buildings, parking lots, landscaping, and recreation areas. The Project also includes street construction/improvements to Raymond Street and Railroad Avenue. A Lot Consolidation Plan will combine the four parcels located east of Railroad Avenue for a total of 31.08 acres of land. These properties are zoned RG-5 (General Residence Zone for Mid-Rise Apartments). The subject area is located north of, but not adjacent to College Road, and east of the Railroad corridor in the vicinity of Raymond Street, Railroad Avenue, and Grove Street. Property Owners: Patel College Properties, LLC and Patel Excess College Road, LLC. Tax Parcels: ED-05-067.00-02-53.00-000, ED-05-067.00-02-54.00-000, ED-05-067.00-02-55.00-000, and ED-05-067.00-02-56.00-000. Council District 4.

Request for Appeal

Dr. Wilma Mishoe and The Apartments at Mishoe Cove, LLC has filed an Appeal of a decision by the City of Dover Planning Commission to approve Site Development Plan S-23-06 College Road Apartments at Railroad Avenue/Grove Street.

Finding on Jurisdiction for Appeal

A legal counsel finding has been received and signed by the Chairman of the Board of Adjustment that the Board does not have jurisdiction to hear Appeal #V-23-03. See Exhibit 1.

Code Citations

Jurisdiction and Procedures

The Board of Adjustment provisions for Appeals are outlined in the *Zoning Ordinance* and within *Delaware Code*. See the following code citations and for the full code text see Exhibit 2 – *Dover Code of Ordinances*, Appendix B - Zoning, Article 9. Board of Adjustment.

Dover Code of Ordinances, Appendix B - Zoning, Article 9. Board of Adjustment:
Section 2. Powers and duties:

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

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

Zoning Ordinance, Article 9 §3 further outlines the procedures for both variances and appeals. Appeals are subject to a Public Hearing before the Board of Adjustment which must be noticed by publication in the newspaper and by mailed notice to property owners within 200 feet of the subject property.

The Appeal must be filed in writing on prescribed forms and is subject to a filing fee. It is noted that this fee may be returned to the applicant (*Zoning Ordinance*, Article 9 §3.4) under certain provisions:

Article 9 §3.4 The board of adjustment may, in its discretion, return to the applicant part or all of the fee paid by him in the event that his appeal under section 2.2 Appeal of administrative order, requirement, decision, or determination hereof is partially or wholly successful.

The Appeal (written application and submission items) as filed shall consist of the following per the *Zoning Ordinance*, Article 9 §3.5:

Article 9 §3.5 Each variance application or appeal shall fully set forth the circumstances of the case. Every variance application or appeal shall refer to the specific provision of the ordinance involved, and shall exactly set forth, as the case may be, the interpretation that is claimed, the details of the variance that is applied for and the grounds on which it is claimed that the same should be granted.

- **A copy of the Appeal as filed by the Appellant (Wilma Mishoe and The Apartments at Mishoe Cove, LLC) is attached as Exhibit 3A and 3B.**
 - **Exhibit 3A – Application to Board of Adjustment for Appeal**
 - **Exhibit 3B – Letter on behalf of the Appellant (Dr. Wilma Mishoe and The Apartments at Mishoe Cove, LCC) dated July 19, 2023 from John A. Sergovic, Jr., Esquire of Sergovic Carmean Weidman McCartney & Owens, P.A.**

The provisions of *Delaware Code* (22 Del. C. § 301) also note a procedure for Appeals:
22 Del. C. §324 Appeals to board.

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

Additional correspondence was sent and received regarding the filing of this Appeal.

- **Exhibit 4A: Letter to John A. Sergovic, Jr. Esq. dated July 25, 2023 from Mary Ellen Gray, AICP as Planning, Inspections, and Community Development Director**
- **Exhibit 4B: Letter on behalf of the Planning Commission dated August 16, 2023 from Glenn C. Mandalas, Esquire of Baird Mandalas Brockstedt & Federico**
- **Exhibit 4C: Letter dated August 30, 2023 from John A. Sergovic, Jr., Esquire of Sergovic Carmean Weidman McCartney & Owens, P.A.**

The following items are provided as reference:

- **Exhibit 5 – *Dover Code of Ordinances, Appendix B - Zoning, Article 10. Planning Commission***
- **Exhibit 6 – Notice of Decision Letter of Planning Commission Action on Site Development Plan S-23-06 College Road Apartments at Railroad Avenue/Grove Street** (Enclosures referenced in this Letter are on file in the Planning Office as part of Application File S-23-06)

GUIDE TO ATTACHMENTS

Exhibit	Description/Author	# Pages
1	Determination of Board of Adjustment Jurisdiction for Appeal #V-23-03	1
2	<i>Dover Code of Ordinances, Appendix B - Zoning, Article 9. Board of Adjustment</i>	3
3A	Application to Board of Adjustment for Appeal (Applicant Submission)	7
3B	Letter on behalf of the Appellant (Dr. Wilma Mishoe and The Apartments at Mishoe Cove, LCC) dated July 19, 2023 from John A. Sergovic, Jr., Esquire of Sergovic Carmean Weidman McCartney & Owens, P.A.	9
4A	Letter to John A. Sergovic, Jr. Esq. dated July 25, 2023 from Mary Ellen Gray, AICP as Planning, Inspections, and Community Development Director	2
4B	Letter on behalf of the Planning Commission dated August 16, 2023 from Glenn C. Mandalas, Esquire of Baird Mandalas Brockstedt & Federico	2
4C	Letter dated August 30, 2023 from John A. Sergovic, Jr., Esquire of Sergovic Carmean Weidman McCartney & Owens, P.A.	12
5	<i>Dover Code of Ordinances, Appendix B - Zoning, Article 10. Planning Commission</i>	8
6	Notice of Decision Letter of Planning Commission Action on Site Development Plan S-23-06 College Road Apartments at Railroad Avenue/Grove Street	3

CITY OF DOVER, DELAWARE
BOARD OF ADJUSTMENT
DECISION

Case No.

Dover, Delaware

Applicant/

Owner: Wilma Mishoe and the
Apartments of Mishoe Cove, LLC

Date: July 19, 2023

STATEMENT OF FACTS

This is an Appeal filed by Wilma Mishoe and the Apartments of Mishoe Cove, LLC ("Applicants"), from a Decision of the City of Dover Planning Commission ("Commission"), approving a Site Development Plan S-23-06. The Board received a legal opinion dated August 16, 2023 alleging that this Board lacks jurisdiction to hear this Appeal.

This Board has authority to hear Appeals from an administrative official in the enforcement of the Zoning Ordinance and a Site Plan Decision by the Planning Commission clearly is not a determination made by an administrative official and does not vest the Board with power to hear the Appeal. Further, a Site Plan Decision by the City of Dover Planning Commission is not a zoning determination and does not constitute zoning, which is the limit of the authority of this Board.

Since the Application, on its face, shows that this Board is without jurisdiction to hear the Appeal, based upon the statements herein and the legal opinions rendered, the Appeal is summarily dismissed without a convening of the Board.



K. C. Sheth, Chairman of the Board

NHR:rp

ARTICLE 9. BOARD OF ADJUSTMENT

Section 1. Creation, appointment and organization.

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

Section 2. Powers and duties.

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

- 2.1 *Variance.* The board shall have the authority to authorize variances from provisions of the zoning ordinance that are not contrary to public interest where the board determines that a literal interpretation of the zoning ordinance would result in undue hardship or exceptional practical difficulties to the applicant. In granting variances, the board shall determine that the spirit of the zoning ordinance is observed and substantial justice done.
- 2.11 *Area variance.* A variance shall be considered an area variance if it relates to bulk standards, signage regulations, and other provisions of the zoning ordinance that address lot layout, buffers, and dimensions. In considering a request for an area variance, the board shall evaluate the following criteria and document them in their findings of fact:
- (a) The nature of the zone in which the property lies;
 - (b) The character of the immediate vicinity and the contained uses therein;
 - (c) Whether, if the restriction upon the applicant's property were removed, such removal would seriously affect neighboring properties and uses; and
 - (d) Whether, if the restriction is not removed, the restriction would create unnecessary hardship or exceptional practical difficulty for the owner in his efforts to make normal improvements in the character of that use of the property that is a permitted use under the provisions of the zoning ordinance.
- 2.12 *Use variance.* A variance shall be considered a use variance if it would permit a use of the subject property that would otherwise not be permitted on the subject property. In considering a request for a use variance, the board shall determine that the following criteria exist and document them in their findings of fact:
- (a) That there are physical conditions applying to the land or building for which the variance is sought, which conditions are peculiar to such land or building, and have not resulted from any act of the applicant or any predecessor in title; and
 - (b) That the aforesaid circumstances or conditions are such that the strict application of the provisions of this ordinance would deprive the applicant of all reasonable use of such land or building and the granting of the variance is necessary for the reasonable use of the land or building, and that the variance as granted by the board is the minimum variance that will accomplish this purpose; and

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

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

Section 3. Procedure.

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

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

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

(Ord. of 7-12-1982, § 4; Ord. of 6-24-1991; Ord. of 7-12-2004(2) ; Ord. of 4-28-2008(2); Ord. No. 2009-09, 6-22-2009; Ord. No. 2010-18, 8-9-2010)



Board of Adjustment Application

Application Information

Property Address: Raymond/Jason Street, Dover, DE 19904

Tax Parcel Number: 2-00-067.00-01-17.00/000

Owner Name: Wilma Mishoe and the Apartments at Mishoe Cove, L.L.C.

Property Zoning: N/A - (Paper Street)

Variance (s) Requested: N/A

*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- This Section is not applicable.

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 N/A 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.

Sergovic Carmean Weidman McCartney & Owens, P.A.
 John A. Sergovic, Jr., Esq.

7/19/23

Signature of Appellants' Counsel

Title, Counsel for Appellants

Date



City of Dover, DE

Department of Planning and Inspections
P.O. Box 475, Dover, Delaware 19903
(302) 736-7010 Fax: (302) 736-4217
www.cityofdover.com

Board of Adjustment Application- cont.

Use Variance- This section is not applicable.

A use variance shall be evaluated on the following criteria. **Please state how your request meets each of these criteria.**

1. That there are physical conditions applying to the land or building for which the variance is sought, which conditions are peculiar to such land or buildings, and have not resulted from any act of the applicant or any predecessor in title; and
2. That the aforesaid circumstances or conditions are such that the strict application of the provisions of this ordinance would deprive the applicant of all reasonable use of such land or building and the granting of the variance is necessary of the reasonable use of the land or building, and that the variance as granted by the board is the minimum variance that will accomplish this purpose;
3. That granting of the variance under such conditions as the board may deem necessary or desirable to apply thereto will be in harmony with the general purpose and intent of this ordinance, will not represent a radical departure therefrom, will not be injurious to the neighborhood, will not change the character thereof and will not be otherwise detrimental to the public welfare.

Appeal

Please state the administrative order, requirement, decision, or determination that you are appealing. (Provide a copy of the original decision that is being appealed)

The Dover City Planning Commission erred in approving Site Development Plan S-23-06 College Road Apartments at Railroad Avenue/Grove Street. Please see the attached letter for reasoning in support of this appeal. A copy of the original decision is not available at this time and will be provided under separate cover.¹

¹ The attached letter signed by John A. Sergovic, Jr., Esq., is incorporated herein by reference.

APPLICATION FOR MAILING LIST

Application is hereby made to the City of Dover's Department of Planning and Inspections for preparation of a listing of the names and mailing addresses of all property owners within the specified feet of the Subject Site indicated below, and further described on the attached Plan, as they appear on the municipal tax roll.

SUBJECT SITE:

(Address)

Raymond/Jason Street, Dover DE 19904

(Tax Parcel Number)

2 - 0 0 - 0 6 7 . 0 0 - 0 1 - 1 7 . 0 0 / 0 0 0

OWNER OF RECORD:

(Name & Address)

Wilma Mishoe and the Apartments at Mishoe Cove, L.L.C.
353 Rita-Wilma Road, Dover, DE 19904

This application is made in conjunction with my application for the following on the subject property (Check appropriate item):

- ☒ **BOARD OF ADJUSTMENT (200 ft.)**
☐ **ANNEXATION (200 ft.)**
☒ **OTHER- A fee of \$15.00 will be assessed for the creation and distribution of a mailing list, based on the City of Dover's Data Distribution Policy.**
 Specify distance _____

Please forward the requested mailing list to the following:

- ☐ Department of Planning & Inspections Staff _____
☐ City Clerks Office
☒ Other: Send to address below

Department of Planning and Community Development
Board of Adjustment
15 Loockerman Plaza
Dover, DE 19901

APPLICANT'S CERTIFICATION

My signature hereon indicates my acknowledgement and understanding of the public notice that will be sent with regards to my application/inquiry.

Applicant's Signature: Wilma Mishoe *

Date: July 17, 2013

For Office Use Only	
Date Prepared: _____	Paid: _____
Preparer's Initials: _____	File Number _____
Date Set: _____	
Sender's Initials: _____	

PROJECT CONTACT LIST

Please print or type the names of individuals who wish to receive correspondence related to the project (D.A.C.) Reports, Meeting Agendas, Decision Notices, etc.

Be sure to include the **name of a contact person** for **ALL** engineering firms, corporations, realtors, etc.

APPLICANT/ OWNER	NAME	ADDRESS	TELEPHONE/FAX E-MAIL
	Wilma Mishoe/Apartments at Mishoe Cove, L.L.C.; 353 Rita-Wilma Road, Dover, DE 19904; 302-465-8889; wmishoe1@comcast.net		

EQUITABLE
OWNER

PROFESSIONAL ENGINEER/
ARCHITECT SURVEYOR

OTHERS

John A. Sergovic, Jr., Esq., 25 Chestnut Street, P.O. Box 751, Georgetown, DE 19947
302-855-1260 / john@sussexattorney.com, Attorney for Appellants, Wilma Mishoe
and The Apartments at Mishoe Cove, L.L.C.

Brian T. Riffin, Esq. 317 duPont Parkway, Suite B, P.O. Box 1016, Middletown, DE
19709 / 302-449-0400 / brian@parkway-law.com, Attorney for Patel College
Properties, LLC and Patel Excess College Road, LLC



Board of Adjustment Check List

_____ Copy of Application

_____ Eight (8) copies of submission items:

_____ Response to Criteria

_____ Survey, Site Plan, Photos, Etc.

_____ Fee

\$300 – residential

\$600 – non- residential

\$300 – appeal

_____ Request for Mailing List Form

_____ Project Contact List Form

_____ Electronic Version

_____ PDF of Survey, Site Plan, Photos, Etc.

_____ Word Document of response to
questions.

Name (Signature) John A. Sergovic, Jr., Esq., Counsel Date 7/19/23
For Appellants

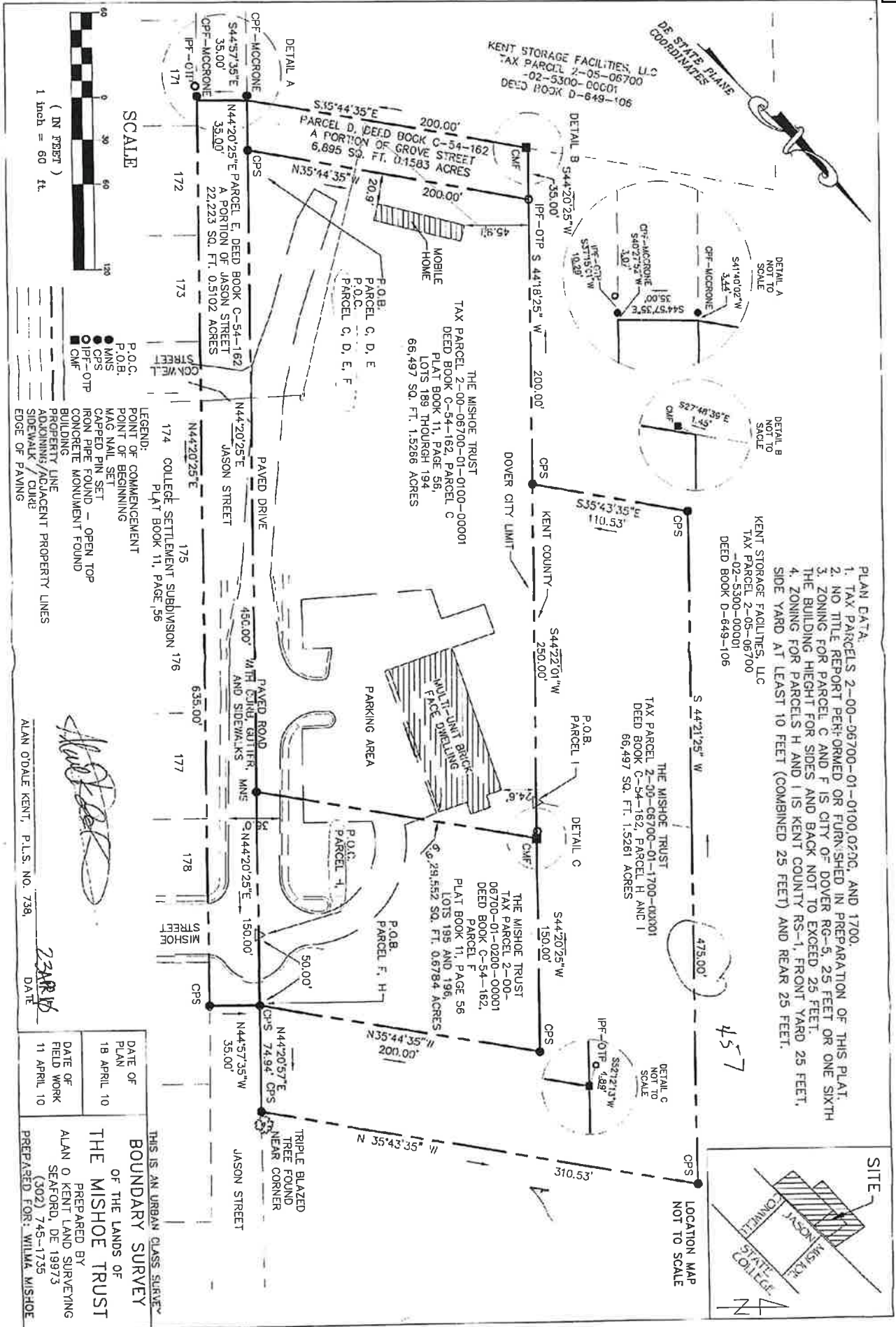
CITY OF DOVER
BOARD OF ADJUSTMENT

Schedule of application deadlines and Board of Adjustment meeting dates for the year of 2023. The submittal procedures for the Board of Adjustment are outlined in *Zoning Ordinance*, Article 9, Section 3. Prior to application submission a pre-application meeting with Planning Staff is required.

<u>MONTH</u>	<u>DEADLINE DATE</u>	<u>MEETING DATE</u>
JANUARY	12/16/2022	01/18/2023
FEBRUARY	01/13/2023	02/15/2023
MARCH	02/10/2023	03/15/2023
APRIL	03/17/2023	04/19/2023
MAY	04/14/2023	05/17/2023
JUNE	05/12/2023	06/21/2023
JULY	06/16/2023	07/19/2023
AUGUST	07/14/2023	08/16/2023
SEPTEMBER	08/18/2023	09/20/2023
OCTOBER	09/15/2023	10/18/2023
NOVEMBER	10/13/2023	11/15/2023
DECEMBER	11/17/2023	12/20/2023
JANUARY	12/15/2023	01/17/2024

For Information Contact:

City of Dover
 Department of Planning & Inspections
 15 Loockerman Plaza
 P.O. Box 475
 Dover, DE 19903
 (302) 736-7196 Planning Office Phone
 (302) 736-4217 Fax
www.cityofdover.com



SERGOVIC CARMEAN WEIDMAN
McCARTNEY & OWENS, P.A.



John A. Sergovic, Jr.
 David J. Weidman
 Shannon R. Owens
 Rachel Bleshman
 Tyler J. Friedman

Website: www.sussexattorney.com

Shannon Carmean Burton
 Deirdre A. McCartney
 Harold W.T. Purnell, II
 George B. Smith, of Counsel

July 19, 2023

VIA EMAIL AND FIRST-CLASS MAIL

(CompPlan@dover.de)

Department of Planning and Community Development
 Board of Adjustment of the City of Dover
 15 Loockerman Plaza
 Dover, DE 19901

Re: Site Development Plan S-23-06 College Road Apartments at Railroad Avenue/Grove Street

Details of the Appellants (Dr. Wilma Mishoe and The Apartments at Mishoe Cove, L.L.C.) Basis for Appeal of the City of Dover Planning Commission Approval of Site Development Plan S-23-06 on June 20, 2023, by which they are Aggrieved to the Board of Adjustment of the City of Dover:

On June 20, 2023, the City of Dover Planning Commission (hereinafter the “Commission”) voted to approve Site Development Plan S-23-06 (hereinafter the “Site Development Plan”).¹ Approval of the Site Development Plan occurred in error. Dr. Wilma Mishoe and the Apartments at Mishoe Cove, L.L.C. (hereinafter the “Mishoes”)² hold title to Raymond/Jason Street, which Patel College Properties, LLC and Patel Excess College Road, LLC

¹ A copy of the written decision is not available at this time. A copy of the decision will be provided under separate cover when made available.

² Please Note that Dr. Mishoe has signed the Application twice, once in her individual capacity and once in her capacity as managing member of her the Apartments at Mishoe Cove, LLC.

(hereinafter “PCP”) seeks to use for ingress and egress to their proposed apartment complexes. The Commission improperly determined that Raymond/Jason Street had been annexed by the City of Dover and was therefore available for PCP to use as ingress and egress to their proposed apartment complexes.

The Board of Adjustment of the City of Dover (hereinafter the “Board”) has the ability to hear and decide appeals where it is alleged by the appellant there is an error in any order, requirement, decision or refusal made by an administrative official or agency based on or made in the enforcement of the zoning regulations per Appendix B, Article 9, Section 2.2 of the Dover Code of Ordinances. Ord. No. 2010-18, 8-9-2010. When the Commission acts on a site plan, it acts not in a legislative capacity, but in a partial ministerial and partial quasi-judicial capacity. *East Lake Partners v. City of Dover Planning Com’n*, 655 A.2d 821, 825 (1994). Acting in a ministerial capacity puts appellate review of the Commission’s Site Development Plan decision within the jurisdiction of the Board. Furthermore, an appeal to the Superior Court through a writ of certiorari is only available when a lower entity has acted in a judicial or quasi-judicial capacity, there is no other adequate remedy at law, and there is no right to an appeal. *Delta Eta Corp. v. City of Newark*, 2023 LEXIS 36 at *22 (Del. Ch. Feb. 2, 2023).

Furthermore, under Appendix B, Article 10, Section 2.13 of the Dover Code of Ordinances, the threshold for a zoning review is described as site development plans involving construction of a single-family detached, single-family attached, or single-family semidetached dwelling; an accessory structure; or a nonresidential change of use for which no building addition or increase in impervious surface is proposed. Ord. No. 2011-14, 8-8-2011. Section 2.14 describes an administrative site plan as all site plans which do not meet the threshold for zoning review. *Id.* Accordingly, the approval of the above-referenced site by the City of Dover Planning Commission

was based upon an administrative review, made by an agency acting in an administrative capacity, rendering the Board the proper avenue for appellate relief.

The Commission should not have approved the Site Plan due to the issues surrounding PCP's interest, or lack thereof, in Raymond/Jason Street. Raymond/Jason Street is a paper street which is a part of the property owned by the Mishoes, tax map parcel number 2-00-067.00-01-17.00/000 ("Parcel 17"). While the Board is generally without conclusive authority to adjudicate private title disputes incident to the granting of building permits or variances, however, disputed ownership may be the basis for denial of a building permit. *MacDonald v. Board of Adjustment*, 558 A.2d 1083, 1087. The Superior Court in *MacDonald* later clarifies that this rule is limited to easements, and the proper forum for a title dispute is the courts. *Id.* at 1088. However, the Superior Court notes that a party must still meet the burden of ownership. *Id.* In the *MacDonald* matter before the Superior Court, presentation of a deed was sufficient to establish ownership to the building inspector in a ministerial decision. *Id.* In this matter, the burden of ownership was not satisfied by PCP. The burden in this case requires a showing that Raymond/Jason Street was a properly annexed street available for use of ingress and egress by PCP.

There is no physical, maintained road in the portion of Raymond/Jason Street at issue, rather, this area of Raymond/Jason Street, which appears on maps and surveys is located upon a parcel owned by the Mishoes. The residents of said parcels use the land over paper Raymond/Jason Street for their personal enjoyment. A private drive created by the Mishoes and maintained at their own expense, runs adjacent to the portion of Raymond/Jason Street at issue for ease of access to other parts of their property. The private drive is located entirely on property which is undisputedly owned by the Mishoes. Furthermore, the width of Raymond/Jason Street is approximately thirty-

five feet (35'). Even if available as a means of access, it is incapable of serving as a sufficient manner of egress and ingress for the proposed 385 apartment units.

The annexation of Raymond/Jason Street by the City of Dover was improper and the Commission committed an error of law by approving the Site Development Plan. Evidence was provided to the Commission concerning issues with the annexation process as well as Dr. Wilma Mishoe's ownership. City Solicitor Nicholas H. Rodriguez, Esq. ("Mr. Rodriguez"), stated his belief that recording and plotting of an 1899 plot by the College Settlement Company constituted automatic dedication to public use. This is contrary to Delaware law. When a private entity plots and depicts paper streets on a recorded plot, there is only an offer of dedication which is not complete without acceptance. *See KELLEY v. PHILLIPS*, 13 Del. Ch. 261, 269 (July 21, 1922) (stating that while a conveyance of land bordering upon an unopened street on a city map may be said to constitute a dedication, it is well established that such dedication is not complete until there has been acceptance by duly constituted public authorities or by public use); *Nolan v. Eastern Co.*, 241 A.2d 885, 890 (Del. Ch. Apr. 17, 1968) (holding that the mere approval of a plot-plan by the board of directors of the then Street and Sewer Department did not constitute acceptance of the road in question as a public street); *Amer v. NVF Co.*, 1994 LEXIS 106, at *12 (Del. Ch. May 23, 1994) (reiterating that the two essential elements of dedication, under both the statute and at common law, are a landowner's affirmative intent to dedicate and an acceptance of the land by the public authority); and *Lickle v. Frank W. Diver, Inc.*, 238 A.2d 326, 330 (Del. 1968) (determining that sewer installation in the bed of the street, the establishment of grades, the erection of a street sign, and the appearance of the street on City maps was insufficient evidence to show an implied dedication to a public use). In this matter there was no action on the part of the Delaware Department of Transportation, the duly constituted authority, which created an acceptance of any

potential dedication. Nor has there been any public use which would constitute acceptance. As previously stated, the portions of Raymond/Jason Street which the city improperly annexed run through the lawns and wooded areas of property owned and enjoyed by the Mishoes. Numerous trees are present in these areas which render public use of the portion of Raymond/Jason Street at issue impossible as a means by vehicular ingress and egress.

Furthermore, the annexation was not done in compliance with the City of Dover Charter. All the owners of the Mishoe property were required to make an application for annexation in order for the approval of Council Resolution No. 2021-26, annexing Raymond/Jason Street into the City of Dover, to comply with Section 1.05 of the Dover Charter. Neither Dr. Mishoe nor the Apartments at Mishoe Cove, L.L.C. made an application for annexation. Without all owners of the property petitioning for annexation, the City Council was required to hold a vote in accordance with Section 1.05(2) of the Dover Charter. Previous annexations of portions of Raymond/Jason Street and adjoining lands on April 9, 1973 and September 12, 1983 of land based upon the College Settlement Company 1899 plot, evidence that the 1899 plotting and recording did not constitute an automatic dedication and acceptance, as there would have been no need to annex land which already is within the City of Dover boundaries. Thus, the Commission was under the mistaken belief that the portion of Raymond/Jason Street at issue had been properly annexed into the City of Dover when it approved the Site Development Plan.

Additionally, the Commission seemed unaware that the Mishoes had voiced opposition to the Site Development Plan as far back as April 26, 2022. At the April 17, 2023 Planning Commission meeting there were comments made regarding the timing of when Mr. Rodriguez and the City of Dover first became aware of the Mishoe family's opposition to PCP's Proposal (of Use of the portion of Raymond/Jason Street at issue (hereinafter the "Proposal")). Mr. Rodriguez stated

that the first written opposition and ownership dispute claim he received was in a letter the undersigned sent to the Commission on April 13, 2023. Mr. Rodriguez appeared to support comments made by at least two Planning Commissioners who implied the Mishoe family's claim had an ulterior motive due to the "last minute" nature of the opposition. This was neither the first notification nor the first written notice Mr. Rodriguez or the City had received regarding the Mishoes' position.

Upon hearing about a recommendation for approval at a Planning Commission meeting on March 21, 2022, Dr. Mishoe became aware that the Proposal would affect her property. Dr. Mishoe gathered and reviewed her property surveys and deeds of record in the Kent County Recorder of Deeds, to confirm her beliefs regarding her property rights. She also met in person with the Kent County Planner. Dr. Mishoe subsequently attended Dover City Council Committee of the Whole meetings on April 26, 2022, June 28, 2022, and again on July 26, 2022 to voice her opposition and to assert the claim of ownership to portions of the effected property. After the July 26, 2022 City Council meeting, Mr. Rodriguez called Dr. Mishoe and requested she meet with him. Dr. Mishoe agreed and attended the meeting with her sister, Rita Mishoe Paige, on or about August 18, 2022. Dr. Mishoe took copies of various deeds, surveys, and reports and presented them to Mr. Rodriguez. Mr. Rodriguez requested that he be allowed to make a copy of one of the deeds which Dr. Mishoe presented at this meeting. Dr. Mishoe complied with this request. She later learned that Mr. Rodriguez had shared the copied deed with the Dover City Planner.

On or about September 19, 2022, an additional meeting took place, upon Mr. Rodriguez's request. It was Dr. Mishoe's understanding that she would be meeting with Mr. Rodriguez, Dawn Melson-Williams, and Mary Ellen Gray. Dr. Mishoe attended the meeting with her son, Dr. Travis Mishoe Sudler, and was surprised to find that about four or five representatives

of PCP were also at the meeting. Dr. Mishoe was not aware that PCP would be present at the meeting, nor that it would be represented by counsel.

Dr. Mishoe and other property owners in her neighborhood later met with PCP representatives on at least two separate occasions, on site at the disputed property, to discuss the details of the Proposal. When Dr. Mishoe disagreed with PCP's desired use of her property, PCP asserted it was City property which Dr. Mishoe did not own. Dr. Mishoe again stated her belief that she did own the property in question and did not understand how the property could have been annexed without a request from her. She further noted that she does not pay taxes to the City of Dover on the property, she pays them to Kent County.

On or about October 18, 2022, Dr. Mishoe and property owners from her neighborhood met with Mr. Rodriguez in the College Settlement neighborhood. Mr. Rodriguez observed the neighborhood and stated that he understood the character of the neighborhood, primarily that it was a quiet, safe neighborhood and home to many senior residents and residents with physical disabilities. Mr. Rodriguez also commented to Dr. Mishoe that PCP should not come through the neighborhood through Raymond/Jason Street. On November 4, 2022, Shannon R. Owens, Esquire, an attorney with our firm, sent a letter to Mr. Rodriguez and the Dover City Council plainly stating our firm's representation of Dr. Mishoe and her opposition to the Proposal and setting forth the ownership issue and requesting additional time to resolve the issues.

Dr. Mishoe eventually came to believe, due to Mr. Rodriguez's comments and various interactions with her, that PCP would take a different route to create access to the College Road Apartments. For this reason, until sometime shortly before the March 20, 2023 Planning Commission meeting, the Mishoe family took no further action in regard to the issue. Until the Mishoe family became aware that the Proposal still intended the road access for the College Road

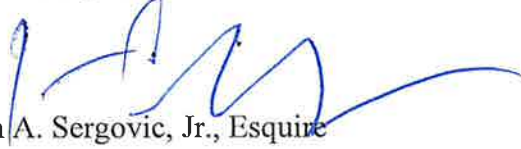
Apartments to run through Raymond/Jason Street, Dr. Mishoe had no reason to think there was a need for any additional opposition to the Proposal. A written petition was submitted to the Dover Planning Commission on or about March 17, 2023 again opposing the Application.

Despite the multiple interactions between Mr. Rodriguez and Dr. Mishoe between July 2022 and November 2022, he failed to correct the Planning Commission members' statements at the April 17, 2023 Planning Commission meeting. He also failed to perform a title search despite being on notice of the Mishoes' opposition to his position on ownership of Raymond/Jason Street and Dr. Mishoe providing him with copies of deeds, surveys, and reports for his review.

It is important to note that the Mishoes' title claim is also established under the doctrine of adverse possession. Exchanges of Parcel 17 ran back and forth between Dr. Mishoe's father and mother, Luna Mishoe and Hattie Mishoe ("L and H Mishoe") and JEMM Investors ("JEMM") a number of times beginning in the 1980's. It is unclear which of the Mishoes or JEMM had proper title to Raymond/Jason Street. However, the deed from Hattie Mishoe to the Mishoe Trust asserting title to Raymond/Jason Street in Deed Book C 054, page 162 was recorded on January 7, 1994 and provides the starting period for a claim of adverse possession. The Mishoes and their invitees (tenants) have been the only open, notorious, hostile, adverse, exclusive, continuous users in actual possession of the land since this time. The annexation of the Raymond/Jason Street did not occur until December 13, 2021, well over the twenty-year period establishing adverse possession. Furthermore, Dr. Mishoe and her predecessors in title have been paying taxes on Parcel 17 since 1991. The description on the Kent County tax bill for Parcel 17 on the Mishoes' tax bills refers to "Parcels D-E-H-I – Jason Street" based upon the deeds in the Mishoe chain of title, starting in 1994.

For the foregoing reasons, the Site Development Plan was approved in error. If you have any questions, the undersigned stands ready to address them.

Very truly yours,



John A. Sergovic, Jr., Esquire

JAS/tjf

Enclosures

cc: Dr. Wilma Mishoe (via email)
The Apartments at Mishoe Cove (via email)
Douglas D. Barry, PE, Pennoni (via email dbarry@pennoni.com)
Brian T. Riggan, Esq. (via email brian@parkway-law.com)
Dominic J. Balasico, Esq. (via email dominic@parkway-law.com)
Nicholas Rodriguez, Esq. (via email nrodriguez@schmittrod.com)
Glenn Mandalas, Esq. (via email glenn@bmbde.com)



July 25, 2023

John A. Sergovic, Jr.
Sergovic Carmean Weidman McCartney & Owens, P.A.
25 Chestnut Street
P.O. Box 751
Georgetown, DE 19947

RE: BOA application regarding Site Development Plan S-23-06 College Road
Apartments at Railroad Avenue/Grove Street

Dear Mr. Sergovic:

Thank you for your application to the Board of Adjustment (BOA) regarding an appeal to the Dover City Planning Commission's June 20, 2023 decision approving Site Development Plan S-23-06 College Road Apartments at Railroad Avenue/Grove Street.

However, per Appendix B, Article 9, Section 2.2 *Appeal of administrative order, requirement, decision, or determination*

(https://library.municode.com/de/dover/codes/code_of_ordinances?nodeId=PTIICOOR_APXBZO_ART9BOAD_S2PODU) of the City of Dover Code regarding appeals to the Board of Adjustment, the Board of Adjustment shall:

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

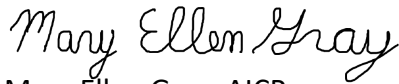
Accordingly, the BOA does not have the authority to review decisions made by the Planning Commission given that members of the Planning Commission are not considered administrative officials and that the BOA can only hear appeals to actions regarding the enforcement of the zoning ordinance. Therefore, the Department of Planning, Inspections and Community Development has concluded the BOA does not have jurisdiction and we are prepared to administratively reject this appeal. It is the Department's position that our rejection of the appeal satisfies your client's obligation to exhaust administrative remedies before requesting a state court's review of the Planning Commission's decision.

However, if your position is that an administrative rejection of the appeal is insufficient to exhaust administrative remedies, we can process this application to have the BOA determine if it has jurisdiction to hear and decide the appeal. If you wish to proceed then the hearing date for this application is September 20, 2023.

Please confirm within 10 days of this correspondence if an administrative rejection is acceptable or if you want your application forwarded to the BOA.

Thank you in advance for your prompt attention to this matter.

Sincerely,

A handwritten signature in cursive script that reads "Mary Ellen Gray".

Mary Ellen Gray, AICP
Planning, Inspections, and Community Development Director

Cc: Application File
Glenn Mandalas



Glenn C. Mandalas, Esquire
(302) 645-2262
Glenn@bmbde.com

Item 3.

August 16, 2023

VIA ELECTRONIC MAIL & CERTIFIED MAIL

Chairperson Kishor C. Sheth
City of Dover Board of Adjustment
Department of Planning and Community Development
15 Loockerman Plaza
Dover, DE 19901
CompPlan@dover.de.us

RE: Board of Adjustment Application Submitted July 19, 2023, relating to an appeal of Planning Commission Approval of Site Development Plan S-23-06

Dear Chairman Sheth:

My firm represents the City of Dover Planning Commission (the “Commission”) in relation to the Commission’s decision regarding Site Development Plan S-23-06. I am writing in response to the appeal to the City of Dover Board of Adjustment (the “Board”) filed by Dr. Wilma Mishoe and the Apartments at Mishoe Cove, LLC (the “Appellants”) contesting the Commission’s approval of Site Development Plan S-23-06 (the “Appeal”). For the following reasons, the Board is clearly without jurisdiction to hear the Appeal, and as a result, we respectfully request that the Board dismiss this matter.

The Delaware General Assembly created municipal boards of adjustment pursuant to 22 Del. C. § 321. Delaware Code permits boards of adjustment to hear appeals in certain zoning matters. 22 Del. C. § 324 provides in relevant part:

§ 324 Appeals to board.

“Appeals to the board of adjustment may be taken by any person aggrieved or by any officer, department, board or bureau of the municipality affected by any decision of the administrative officer. . . .”

Additionally, the Board’s powers and duties are specifically promulgated under Dover Code, Appendix B, Art. 9, § 2.2, which states in relevant part:

Appeal of administrative order, requirement, decision, or determination. The [Board] shall have the authority to hear and decide appeals where it is alleged there is any order, requirement, decision or determination made by an administrative official in the enforcement of the zoning ordinance. . . .

Here, Appellants rely upon Dover Code, Appendix B, Art. 9, § 2.2 for the contention that the Board has jurisdiction to hear the Appeal of the Commission. However, a site plan decision by the Planning Commission clearly is not a determination made by an administrative official. As a result, § 2.2 does not vest the Board with power to hear the Appeal.

Further, the decision being appealed is a site plan decision, which does not constitute zoning. *see Deibler v. Sea Gate Village*, 1983 WL 142507, at *3 (Del. Ch. Aug. 24, 1983) (holding in part that site plan approval is not akin to adoption of a zoning ordinance). Since the matter being appealed is not a zoning determination, the Board cannot hear it. *See Friends of Paladin v. New Castle Cnty. Bd. of Adjustment*, 931 A.2d 436 (Del. 2007).

“It is well established that a writ of certiorari proceeding in the Superior Court is the appropriate cause of action for determining whether, on the face of the record, the City of Dover Planning Commission exceeded its powers or failed to conform to the requirements of law.” *Dover Hist. Soc. v. City of Dover Plan. Comm'n*, 838 A.2d 1103, 1106 (Del. 2003). The Board has no authority under state law or the City Code to hear an appeal of a decision of a site plan decision by the Commission. As a result, we respectfully request that the Board summarily dismiss the Appeal.

Thank you for your time and consideration. Please feel free to contact me if you have any questions.

Sincerely,

/s/ Glenn C. Mandalas, Esq.
Glenn C. Mandalas, Esquire

Enclosure

CC: Mary Ellen Gray
Nicholas H. Rodriguez, Esq.
Nicholas G. Kondraschow, Esq.
John A. Sergovic, Jr., Esq.
Tyler Friedman, Esq.
Dominic J. Balascio, Esq.
Brian T. Riffin, Esq.

SERGOVIC CARMEAN WEIDMAN
McCARTNEY & OWENS, P.A.



John A. Sergovic, Jr.
 David J. Weidman
 Shannon R. Owens
 Rachel Bleshman
 Tyler J. Friedman

Website: www.sussexattorney.com

Shannon Carmean Burton
 Deirdre A. McCartney
 Harold W.T. Purnell, II
 George B. Smith, of Counsel

August 30, 2023

RECEIVED

SEP 5 2023

VIA ELECTRONIC MAIL AND FIRST-CLASS MAIL

(CompPlan@dover.de)

Chairperson Kishor C. Sheth
 Department of Planning and Community Development
 15 Loockerman Plaza
 Dover, DE 19901

CITY OF DOVER
 PLANNING & INSPECTIONS

Re: Board of Adjustment Application Submitted July 19, 2023, relating to an appeal of Planning Commission Approval of Site Development Plan S-23-06

Dear Chairperson Sheth:

I respectfully disagree with Mr. Mandalas' assessment that the Board of Adjustment (hereinafter the "Board") lacks jurisdiction to hear Dr. Mishoe and the Apartments at Mishoe Cove's (hereinafter the "Mishoes") appeal of the approval of Development Plan S-23-06 (hereinafter the "Plan"). Please find Mr. Mandalas' August 16, 2023 letter attached as **Exhibit "A"**. The Board has the ability to hear and decide appeals where it is alleged by the appellant there is an error in any order, requirement, decision or refusal made by an administrative official or agency based on or made in the enforcement of the zoning regulations. Dover Code, Appendix B, Art. 9, § 2.2. When the City of Dover Planning Commission (hereinafter the "Planning Commission") acts on a site plan, it acts not in a legislative capacity, but in a partial ministerial and partial quasi-judicial capacity. *East Lake Partners v. City of Dover Planning Com'n*, 655 A.2d

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 Fax: (302) 855-1270 • (302) 855-0553

Chairperson Kishor C. Sheth
Department of Planning and Community Development
August 30, 2023
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821, 825 (1994). Since the Planning Commission acts in a ministerial capacity, it qualifies as an administrative official within the purview of Dover Code, Appendix B, Art. 9, § 2.2.

Mr. Mandalas further argues that the decision made by the Planning Commission did not involve a zoning matter. Mr. Mandalas cites *Deibler v. Sea Gate Village*, to claim that a site plan decision is not akin to the adoption of a zoning ordinance. Mr. Mandalas' citation to *Deibler* is in reference to the plaintiff in that matter's argument that a majority of Commissioners was needed to approve a site plan. *Deibler v. Sea Gate Village*, LEXIS 493, at *6-7 (Del. Ch. Aug. 24, 1983). The Chancery Court noted that the town charter required the majority of all elected Commissioners to enact an ordinance and the plaintiff's argument was therefore predicated on a holding that a site plan approval had to be accomplished by ordinance. *Id.* at *7. The Chancery Court reasoned that a site plan approval was not akin to the adoption of an ordinance. *Id.*

The approval of the Plan in this matter is not akin to the adoption of a zoning ordinance, as the adoption of a zoning ordinance is a legislative act. If it were such a legislative act, then the Board would have no jurisdiction in this matter. However, the Board is an appointed agency of a legislative body and is empowered to hear and decide any appeal in which an error is alleged in any decision made in the enforcement of zoning regulations. The role of the Commission is to ensure site plans meet all criteria of the zoning ordinance and the Planning Commission must:

“[R]eview site development plans and require changes and conditions so that the end result, to the maximum extent possible, will achieve the general intent of the zoning ordinance which is in part “to provide for the orderly and desirable development and use of land” and to accomplish the specified six objectives, all of which involve on-site considerations.”

Chairperson Kishor C. Sheth
Department of Planning and Community Development
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Page 3

East Lake Partners v. City of Dover Planning Com'n, 655 A.2d 821, 824 (1994).

Such objectives include that when the Planning Commission considers acting upon a site development plan, it shall consider the “public health, safety and welfare, the comfort and convenience of the public in general and of the residents of the immediate neighborhood in particular.” Dover Code, Appendix B, Art. 10, § 2.2. The welfare of the residents in the immediate neighborhood would certainly be negatively impacted if the property owners in that neighborhood were to have their property rights infringed upon.

Furthermore, the Board shall not decide any appeal without first holding a public hearing. Dover Code, Appendix B, Art. 10, § 3.1. The provisions of the ordinance relating to the Board are strictly construed and an appellant shall not be denied the right to an appeal when they have substantially complied with the procedural requirements set forth in the ordinance. Dover Code, Appendix B, Art. 10, § 3.7. In order to avoid incurring advertising fees, as suggested by Mr. Mandalas, the Board would risk depriving the Mishoes of their due process rights, subsequently putting the City of Dover at risk of legal action from the Mishoes. Please find Mr. Mandalas’ August 29, 2023 email attached as **Exhibit “B”**. Such actions the Mishoes may be entitled to take include a subsequent appeal, request for a writ of mandamus, and a claim for the violation of the Mishoes’ civil rights.

The Mishoes also assert that they are entitled to a hearing before the Board itself, and a decision may not be unilaterally made by the chairperson of the Board, as Nick Rodriguez seemed to imply. Please find Mr. Rodriguez’s August 29, 2023 email attached as **Exhibit “C”**. Dover Code, Appendix B, Art. 10, § 3 does not provide that the chairperson or any Board member may unilaterally decide jurisdiction over an appeal. The

Chairperson Kishor C. Sheth
 Department of Planning and Community Development
 August 30, 2023
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Mishoes assert that any unilateral action by the chairman of the Board is an *ultra vires* act and deprives them of their due process rights to a hearing before the Board under 22 Del. C. § 324 and Dover Code, Appendix B, Art. 10, § 3.1.

Additionally, the Mishoes question the involvement of Mr. Rodriguez. The challenge issued by the Mishoes is based upon conclusions reached by Mr. Rodriguez which are erroneous. The Planning Commission was advised by Mr. Rodriguez that the annexation of Raymond/Jason Street did not require the vote of the affected landowners. Such a position is contrary to Delaware law.

For the foregoing reasons, the Board has jurisdiction over the Mishoes' appeal of the Plan. Please contact me with any questions you may have.

Very truly yours,

/s/ John A. Sergovic, Jr., Esq.
 John A. Sergovic, Jr., Esquire

JAS/tjf

cc: Mary Ellen Gray (via email/mgray@doover.de.us)
 Nicholas H. Rodriguez, Esq. (via email/nrodriguez@schmittrod.com)
 Nicholas G. Kondraschow, Esq. (via email/nick@rawlaw.com)
 Glenn C. Mandalas, Esq. (via email/glenn@bmbde.com)
 Brian T. Riggin, Esq. (via email/brian@parkway-law.com)
 Dominic J. Balasico, Esq. (via email/dominic@parkway-law.com)
 Dr. Wilma Mishoe (via email)
 The Apartments at Mishoe Cove (via email)

EXHIBIT “A”



Glenn C. Mandalas, Esquire
(302) 645-2262
Glenn@bmbde.com

August 16, 2023

VIA ELECTRONIC MAIL & CERTIFIED MAIL

Chairperson Kishor C. Sheth
City of Dover Board of Adjustment
Department of Planning and Community Development
15 Loockerman Plaza
Dover, DE 19901
CompPlan@dover.de.us

**RE: Board of Adjustment Application Submitted July 19, 2023, relating to an
appeal of Planning Commission Approval of Site Development Plan S-23-06**

Dear Chairman Sheth:

My firm represents the City of Dover Planning Commission (the "Commission") in relation to the Commission's decision regarding Site Development Plan S-23-06. I am writing in response to the appeal to the City of Dover Board of Adjustment (the "Board") filed by Dr. Wilma Mishoe and the Apartments at Mishoe Cove, LLC (the "Appellants") contesting the Commission's approval of Site Development Plan S-23-06 (the "Appeal"). For the following reasons, the Board is clearly without jurisdiction to hear the Appeal, and as a result, we respectfully request that the Board dismiss this matter.

The Delaware General Assembly created municipal boards of adjustment pursuant to 22 Del. C. § 321. Delaware Code permits boards of adjustment to hear appeals in certain zoning matters. 22 Del. C. § 324 provides in relevant part:

§ 324 Appeals to board.

"Appeals to the board of adjustment may be taken by any person aggrieved or by any officer, department, board or bureau of the municipality affected by any decision of the administrative officer. . . ."

Additionally, the Board's powers and duties are specifically promulgated under Dover Code, Appendix B, Art. 9, § 2.2, which states in relevant part:

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& Federico LLC
August 16, 2023
Page 2

Appeal of administrative order, requirement, decision, or determination. The [Board] shall have the authority to hear and decide appeals where it is alleged there is any order, requirement, decision or determination made by an administrative official in the enforcement of the zoning ordinance. . . .

Here, Appellants rely upon Dover Code, Appendix B, Art. 9, § 2.2 for the contention that the Board has jurisdiction to hear the Appeal of the Commission. However, a site plan decision by the Planning Commission clearly is not a determination made by an administrative official. As a result, § 2.2 does not vest the Board with power to hear the Appeal.

Further, the decision being appealed is a site plan decision, which does not constitute zoning. *see Deibler v. Sea Gate Village*, 1983 WL 142507, at *3 (Del. Ch. Aug. 24, 1983) (holding in part that site plan approval is not akin to adoption of a zoning ordinance). Since the matter being appealed is not a zoning determination, the Board cannot hear it. *See Friends of Paladin v. New Castle Cnty. Bd. of Adjustment*, 931 A.2d 436 (Del. 2007).

“It is well established that a writ of certiorari proceeding in the Superior Court is the appropriate cause of action for determining whether, on the face of the record, the City of Dover Planning Commission exceeded its powers or failed to conform to the requirements of law.” *Dover Hist. Soc. v. City of Dover Plan. Comm'n*, 838 A.2d 1103, 1106 (Del. 2003). The Board has no authority under state law or the City Code to hear an appeal of a decision of a site plan decision by the Commission. As a result, we respectfully request that the Board summarily dismiss the Appeal.

Thank you for your time and consideration. Please feel free to contact me if you have any questions.

Sincerely,

/s/ Glenn C. Mandalas, Esq.
Glenn C. Mandalas, Esquire

Enclosure

CC: Mary Ellen Gray
Nicholas H. Rodriguez, Esq.
Nicholas G. Kondraschow, Esq.
John A. Sergovic, Jr., Esq.
Tyler Friedman, Esq.
Dominic J. Balascio, Esq.
Brian T. Riffin, Esq.

EXHIBIT “B”

John Sergovic

From: Glenn Mandalas <glenn@bmbde.com>
Sent: Tuesday, August 29, 2023 10:28 AM
To: 'Nicholas Rodriguez'
Cc: John Sergovic; Tyler Friedman; Brian Riffin; Dominic Balascio; Alexander C. Burns; Nicholas Kondraschow
Subject: RE: Mishoe BOA Appeal (Site Development Plan S-23-06)
Attachments: Dover BOA Letter re Site Plan Appeal.pdf

Nick –

I am writing to follow up on the attached correspondence sent a couple weeks ago. In the correspondence we explain why the Board of Adjustment is without authority or jurisdiction to hear and decide the Mishoe appeal. The City will soon incur advertising costs for the BOA meeting if it is not rejected by Board Chairman Sheth. For the reasons identified in our correspondence, we encourage you to advise the Board Chairman that the Board is without the authority or jurisdiction to hear the appeal and that it should be rejected promptly without convening the Board.

Thanks --
 Glenn

From: Glenn Mandalas
Sent: Wednesday, August 16, 2023 12:22 AM
To: 'Nicholas Rodriguez' <nrodriguez@schmittrod.com>
Cc: John Sergovic <john@sussexattorney.com>; Tyler Friedman <tyler@sussexattorney.com>; Brian Riffin <Brian@parkway-law.com>; Dominic Balascio <Dominic@parkway-law.com>; Alexander C. Burns <Alex@bmbfclaw.com>; Nicholas Kondraschow <nick@rawlaw.com>
Subject: Mishoe BOA Appeal (Site Development Plan S-23-06)

Nick—

Please see the attached correspondence.

Thanks—
 Glenn



**BAIRD
 MANDAL
 BROCKST**

Glenn C. Mandalas
Partner

1413 Savannah Rd., Suite 1, Lewes, DE 19958
 (302) 645-2262 (tel.) | (302) 313-5278 (fax)
glenn@bmbfclaw.com
www.BMBFClaw.com

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EXHIBIT “C”

John Sergovic

From: Nicholas Rodriguez <nrodriguez@schmittrod.com>
Sent: Tuesday, August 29, 2023 1:15 PM
To: Glenn Mandalas
Cc: John Sergovic; Tyler Friedman; Brian Riffin; Dominic Balascio; Alexander C. Burns; Nicholas Kondraschow
Subject: Re: Mishoe BOA Appeal (Site Development Plan S-23-06)

Glenn, I will dictate a decision for K.C. Sheth to sign.

On Aug 29, 2023, at 10:28 AM, Glenn Mandalas <glenn@bmbde.com> wrote:

Nick –

I am writing to follow up on the attached correspondence sent a couple weeks ago. In the correspondence we explain why the Board of Adjustment is without authority or jurisdiction to hear and decide the Mishoe appeal. The City will soon incur advertising costs for the BOA meeting if it is not rejected by Board Chairman Sheth. For the reasons identified in our correspondence, we encourage you to advise the Board Chairman that the Board is without the authority or jurisdiction to hear the appeal and that it should be rejected promptly without convening the Board.

Thanks --
 Glenn

From: Glenn Mandalas
Sent: Wednesday, August 16, 2023 12:22 AM
To: 'Nicholas Rodriguez' <nrodriguez@schmittrod.com>
Cc: John Sergovic <john@sussexattorney.com>; Tyler Friedman <tyler@sussexattorney.com>; Brian Riffin <Brian@parkway-law.com>; Dominic Balascio <Dominic@parkway-law.com>; Alexander C. Burns <Alex@bmbfclaw.com>; Nicholas Kondraschow <nick@rawlaw.com>
Subject: Mishoe BOA Appeal (Site Development Plan S-23-06)

Nick—

Please see the attached correspondence.

Thanks—
 Glenn

<image001.jpg>

Glenn C. Mandalas
Partner

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<Dover BOA Letter re Site Plan Appeal.pdf>

Nicholas Rodriguez
nrodriguez@schmittrod.com

ARTICLE 10. PLANNING COMMISSION¹

Section 2. Site development plan approval.

2.1 *Required.* Site development plan approval shall be required for the erection or enlargement of all structures and the establishment of any use for which site development plan approval is required by this ordinance. Site development plan shall be required according to the following criteria:

2.11 *Planning commission site plan review.* Site development plans shall be subject to review and approval by the planning commission if they meet the following thresholds:

- (A) *New structures.* Site plans for new structures of 5,000 square feet or greater in floor area; or
- (B) *Additions to existing structures.* Site plans for additions to existing structures that (1) constitute 15 percent or more of the existing floor area, and (2) new floor area is greater than 5,000 square feet; or
- (C) *Additions of impervious surface.* Site plans that propose new or additional impervious surfaces that (1) constitute 15% or more of the existing impervious surface area and (2) are equal to or greater than 5,000 square feet of impervious surface; or
- (D) *Adjacent to residential.* Nonresidential site plans with site disturbance greater than 2,500 square feet and adjacent to residential uses or residential zones.

2.12 *Site development master plan.* Site development master plans shall be subject to review and approval by the planning commission in accordance with subsection 2.44.

2.13 *Zoning review.* For site development plans involving construction of a single-family detached, single-family attached, or single-family semidetached dwelling; an accessory structure; or a nonresidential change of use for which no building addition or increase in impervious surface is proposed, the city planner or his designee may approve the site development plan in conjunction with building permit review.

2.14 *Administrative site plan.* All site development plans that do not meet the thresholds for zoning review in accordance with subsection 2.13 or planning commission site plan review in accordance with subsection 2.11 shall be reviewed as administrative site development plans.

2.2 *Objectives.* In considering and acting upon site development plans, the public health, safety and welfare, the comfort and convenience of the public in general and of the residents of the immediate neighborhood in particular shall be taken into consideration and appropriate conditions and safeguards may be prescribed as

¹Editor's note(s)—Ord. No. 2011-14, adopted Aug. 8, 2011, amended art. 10 in its entirety and enacted similar provisions as set out herein. The former art. 10 derived from Ord. of 2-28-1977; Ord. of 4-23-1979; Ord. of 4-28-1980; Ord. of 11-24-1980; Ord. of 7-12-1982, §§ 2, 3; Ord. of 5-11-1987; Ord. of 12-12-1988; Ord. of 6-12-1989; Ord. of 6-24-1991; Ord. of 10-13-1992; Ord. of 7-12-1992; Ord. of 12-14-1992; Ord. of 7-12-1993, § 6; Ord. of 6-13-1994; Ord. of 3-27-1995; Ord. of 1-10-1996; Ord. of 5-22-2000; Ord. of 9-25-2000; Ord. of 7-12-2004(2); Ord. of 11-13-2007; Ord. of 4-28-2008(2); and Ord. No. 2009-09, adopted June 22, 2009.

may be required that the results of approval may, to the maximum extent possible, further the expressed intent of this ordinance and the accomplishment of the following objectives in particular:

- 2.21 Maximum safety and convenience of vehicular, transit, bicycle, and pedestrian traffic by ensuring that all proposed and impacted streets, driveways and walkways are adequate, but not excessive in number, adequate in width, grade, alignment, capacity, and visibility, and suitably located, particularly with respect to their connections with public streets.
- 2.22 The provision of adequate access to all proposed structures, equipment, or material on the site for fire, ambulance, police, and other emergency services.
- 2.23 The provision of adequate off-street parking to accommodate the vehicles of persons connected with or visiting the use and to obviate the parking of such vehicles in public streets.
- 2.24 A site layout (including the location, power, direction, and time of any outdoor lighting of the site) which would have no adverse effect upon adjacent properties.
- 2.25 Landscaping of the site in a manner which is in character with that generally prevailing in the neighborhood and which provides reasonable screening, at all seasons of the year, of all playgrounds, parking areas, and service areas from the view of adjacent residential properties and streets.
- 2.26 In applicable cases, a drainage system and layout which would afford the best solution to any drainage problems.
- 2.27 Ensure that large scale development projects involving extended construction periods are planned and implemented in accordance with an approved site development master plan.
- 2.28 Consideration shall be given to the physical orientation and architectural characteristics of proposed buildings, the relationship of proposed buildings to existing buildings and to other proposed buildings, and their contributions to the overall image of the immediate vicinity by considering the building and architectural design guidelines as set forth in article 5, section 19. Design characteristics of proposed buildings and building additions shall not detract or devalue existing buildings in the immediate vicinity.
 - (A) If the planning commission determines that the proposed physical orientation and architectural characteristics of the proposed buildings do not meet the intent and objectives of this section, then the planning commission shall refer the proposal to the architectural review oversight subcommittee for review and comment.
 - (B) The subcommittee shall meet and review the proposal with the applicant, and return its comments to the planning commission by the next regularly scheduled meeting.
 - (C) The architectural review oversight subcommittee shall be appointed by the commission at its annual meeting, and membership shall consist of two planning commission members, and two design professionals with experience in construction, and the mayor or the mayor's designee. Two alternate design professionals with experience in construction shall also be appointed.

2.3 *Effect of site development plan approval.* No building permit will be issued for any structure covered by this section until an approved site development plan or approved amendment of any such plan has been secured by the applicant. No certificate of occupancy will be issued for any structure or use of land covered by this section unless the structure is completed or the land is developed or used in accordance with an approved site development plan or approved amendment of any such plan.

2.4 *Application procedure.*

- 2.41 *Preapplication meeting.* Prior to the submission of a site development plan, the applicant or his representative shall meet in person with the city planner or his designee with a sketch plan. The purpose of this meeting shall be to discuss proposed uses or developments in order to determine, first, whether the site development plan application shall be submitted to the city planner for consideration

and review as an administrative site plan or shall be referred to the planning commission. If the application is to be referred to the planning commission, the applicant shall be informed at the preapplication meeting which elements listed in subsection 2.5 below will be required in determination of conformity with the provisions and intent of this section, along with any other comments and suggestions intended to bring about conformity with the provisions and intent of this section.

2.42 *Administrative site plan review.*

- (A) *Process for administrative site plan application.* If, as a result of the preapplication meeting as described in subsection 2.41, it is determined that the proposed uses or development is of a type that may be approved by the city planner, the applicant shall submit the application for site development plan approval on forms approved for that purpose, to the city planner with the required documentation under the provisions of subsection 2.5, and a fee as provided for in Appendix F—Fees and Fines. The city planner shall coordinate the reviews of the various administrative departments of the City of Dover and outside regulatory agencies and approve the application within 30 days of the date of submission or refer it to the planning commission at their next scheduled meeting.
- (B) *Final plans and working drawings.* Following initial review and comment by the city planner, the applicant shall develop final construction plans for approval by the planning office. The planning office shall determine that all necessary approvals have been issued by city departments and outside regulatory agencies prior to issuing final plan approval. No building permit shall be issued until such time that the planning office has issued final site plan approval.
- (C) *Expiration.* Administrative site development plan approval shall expire on the last day of the 24th month after the date of final approval by the planning office if construction of the work authorized or use permitted has not started or unless an extension of time is applied for by the applicant and granted by the city planner. Approval shall also expire if the construction of work authorized has stopped for a period of one year unless an extension of time is applied for and granted by the city planner.
- (D) *Circumventing zoning requirements.* Administrative site plans shall not be used to circumvent the requirement of planning commission site plan review. If the city planner determines that cumulative administrative site plans on a property are being used to circumvent the requirements of the zoning ordinance or other provisions of the Dover Code of Ordinances, he shall refer the application to the planning commission, subject to the requirements of subsection 2.43.

2.43 *Planning commission site plan review.*

- (A) *Site development plan.* If, as a result of the preapplication meeting as described in subsection 2.41, it is determined that the proposed uses or development is of a type that would be reviewed by the planning commission and approval or disapproval of the application given by that body, the application for site development plan approval shall be submitted to the city planner on forms approved by the planning commission, at least 30 days prior to the planning commission meeting at which approval is to be requested. The application for site development plan approval shall be accompanied by a fee as provided for in Appendix F—Fees and Fines.
- (B) *Land subdivision.* If a proposed use or development requires planning commission review under the land subdivision regulations of the City of Dover as set forth in appendix A, the application for conditional approval of the preliminary layout, under article IV, section B of that ordinance appendix A, and the application for site development plan approval under this ordinance shall be submitted and reviewed concurrently. The application for site development plan approval shall be revised and all changed elements resubmitted and reviewed concurrently with the application

for plan approval under article IV, section C of the land subdivision regulations set forth in appendix A.

- (C) *Public hearing.* Prior to the review and action on the site plan application, the commission shall hold a public hearing subject to the following public notification procedures:
- (1) The applicant shall advertise the public hearing in a newspaper of general circulation at least 15 days prior thereto.
 - (2) The applicant shall notify, by mail, all property owners within 200 feet of the extreme limits of the site plan property as their names appear on the municipal tax record at least 15 days prior thereto.
 - (3) The applicant shall post a notice outlining the date, time, place, and nature of the hearing in a conspicuous location on the property. Such notice shall be designed in accordance with standards set forth by the planning commission.
 - (a) The applicant shall provide the planning office with a copy of the notice, verification of newspaper publication, a date-stamped photo of the property posting, and post office mail receipts including the date of mailing for all letters on or before the meeting date.
 - (4) Said notices shall state the date, time and place of the hearing, the site location, a brief description of the site plan and shall state that a copy of the site plan application and plan is filed with the planning office for public review.
- (D) *City planner report.* For each site plan application to the planning commission the city planner shall issue a report to the planning commission including comments from other agencies detailing how the application conforms to the requirements of the zoning ordinance and other provision of city and state codes. This report shall not be deemed to represent a comprehensive list of all city and state code requirements. The city planner shall transmit copies of the proposed site development plan and the city planner's report to the planning commission at least seven days prior to the date of the meeting at which approval of the site development plan is to be requested.
- (E) *Planning commission action.* The planning commission shall act to approve or disapprove any application for site development plan received by it either as an original review or as a referral from the city planner under the provisions of subsection 2.42(A) of this article within 45 days or within such additional time as may be consented to by the applicant. Planning commission disapproval shall include written findings upon any site development plan element found contrary to the provisions or intent of the zoning ordinance.
- (F) *Notice of decision.* The planning office shall send the applicant a letter notifying the applicant of the planning commission's action regarding the site plan application. Such letter shall document any conditions and waivers approved or recommended as part of the application approval.
- (G) *Final plans and working drawings.* Following approval by the planning commission, the applicant shall develop final site plans for approval by the planning office. The planning office shall determine that all necessary approvals have been issued by city departments and outside agencies regulating street access and stormwater management, prior to issuing final plan approval. No building permit shall be issued until such time that the planning office has issued final site plan approval
- (H) *Amendments.* Substantial amendments to an approved site development plan shall be acted upon in the same manner as the original plan. The city planner shall review proposed amendments to determine if they are substantial in nature. Amendments that are not deemed

substantial may be referred to the planning commission for consideration at the discretion of the city planner.

(I) *Expiration of planning commission approval.*

- (1) Site development plan approval shall expire on the last day of the 24th month after the date of final or conditional approval of the planning commission if construction of the work authorized or use permitted has not started or unless an extension of time is applied for by the applicant and granted by the planning commission. Approval shall also expire if the construction of work authorized has stopped for a period of one year unless an extension of time is applied for and granted by the planning commission.
- (2) Request for extension of approval shall be made no later than 30 days prior to the final approval expiration date. Upon receipt of such request, the matter shall be considered at the next regularly scheduled meeting of the planning commission.
- (3) In considering a request for an extension of approval, the planning commission shall consider, but not be limited to, the following:
 - (a) Whether the project has been delayed for reasons beyond the control of the applicant, excluding economic or financial reasons.
 - (b) Whether the applicant has made substantial progress toward obtaining final approvals.
 - (c) Whether there have been any significant changes in the surrounding neighborhood.
 - (d) Whether there has been any related amendments to the zoning map or text, or the comprehensive plan, or if any waivers or variances have been granted.
- (4) Requests for extensions shall be submitted in writing to the planning office.
- (5) Under no circumstances shall the planning commission grant extensions beyond 36 months from the date of first approval.

2.44 *Site development master plans.* Conceptual site development master plans shall be reviewed by the planning commission in accordance with the provisions of subsection 2.43. Conceptual site development master plans shall depict a site development proposal that reflects general compliance with the provisions of the zoning ordinance and shall also reflect the following information on the plan:

- (A) *Conceptual master plan.* Conceptual master plan shall include the proposed general layout of building, streets, parking, open space, landscape concepts, and stormwater management areas.
- (1) Detailed site construction plans, details, and specifications are not required as part of a site development master plan submission.
 - (2) The plan shall illustrate distinct phase boundaries for each proposed construction phase and shall depict proposed construction and site improvements planned for each phase. Bulk quantities and area totals for each construction phase, and for the total site, shall be tabulated in a data column on the plan.
 - (3) Each construction phase shall be enumerated in sequential order on the site development master plan according to the order of construction contemplated by the plan. Phases shall be implemented in accordance with the approved site development master plan unless the city planner approves an alternate phasing.
 - (4) Each construction phase represented on the master plan shall be planned and designed to function independent of construction and site improvements contemplated in future

construction phases in all respects, including but not limited to bulk area provisions of the zoning district in which the site is located, off-street parking requirements, site entrances, emergency access requirements, site utilities, and stormwater management improvements except where the requirements and needs of a later phase are met and remain met by a previous phase of completed construction.

- (5) Any special agreements or conditions of approval relative to the overall development that have been specified by regulatory agencies shall be documented on the site development master plan.
 - (B) *Phased site plan approval.* Individual phased components of the conceptual master plan are to be reviewed and approved as an administrative site plan. Final site construction plans, including detailed site grading, paving, utilities, stormwater management, and tree planting and preservation plans shall be submitted for final approval by the city planner and/or authorized designee, and to other agencies having jurisdiction, on a phase by phase basis in accordance with the approved site development master plan, and all regulations of the City of Dover governing the approval of site plans as set forth in subsections 2.4 and 2.5.
 - (C) *Amendments.* Substantial amendments to an approved site development master plans shall be acted upon in the same manner as the original plan. The city planner shall review proposed amendments to determine if they are substantial in nature. Amendments that are not deemed substantial may be referred to the planning commission for consideration at the discretion of the city planner.
 - (D) *Expiration of planning commission approval.* For projects which are reviewed and approved by the planning commission as conceptual master plans, approval of the conceptual master plan shall remain valid for a period not to exceed five years from the date of planning commission approval, provided that the authorized construction or use has commenced within two years of approval and is proceeding toward completion. In addition, the time between the completion of one phase and the initiation of the next phase shall not exceed a period of two years.
- 2.5 *Site development plan elements submission requirements accompanying applications for site development plan approval.* The applicant shall cause a site development plan map to be prepared by a civil engineer, surveyor, land planner, or architect. The applicant shall submit copies of the site development plan to the city planner at the time of filing the formal application for site development plan approval under the provisions of subsection 2.42, subsection 2.43, or subsection 2.44. If the application is under the provisions of subsection 2.43 or 2.44, the city planner shall transmit copies of the site development plan map to the planning commission at least seven days prior to the meeting at which approval of the application for site development plan approval is to be requested. Site development plan elements shall include those listed below which are appropriate to the proposed development or use as indicated in the preapplication meeting required by the provisions of subsection 2.41.
- 2.51 *Scale dimensions.* Ten, 20, 30 or 40 feet to the inch, except that if the property has a maximum dimension over 900 feet, a scale of 50 feet to the inch may be used.
- 2.52 *Legal data.*
- (A) Tax parcel identification number.
 - (B) Name and address of the owner of record.
 - (C) Name and address of the equitable owner, if any.
 - (D) Name and address of the person, firm or organization preparing the map.
 - (E) Date, north point and written and graphic scale.

- (F) Sufficient description of information to define precisely the boundaries of the site, and total acreage of the site. All distances shall be given in feet and tenths of a foot. All angles shall be given to the nearest ten seconds or closer. The error of closure shall not exceed one in 10,000.
- (G) The locations, names and existing widths of adjacent street rights-of-way and curblines.
- (H) The locations and owners of record of all adjoining lands.
- (I) Locations, widths and purposes of all existing and proposed easements, setbacks, reservations and areas dedicated to public use within or adjoining the property.
- (J) A complete outline of existing or proposed deed restrictions or covenants applying to the property and recital of the deed references if they are of record.
- (K) Existing zoning on the site and adjacent properties.
- (L) Two location maps, one at a scale of 1,200 feet to the inch, and one at a scale of 400 feet to the inch, showing the distance along all adjacent roads to the nearest intersections.
- (M) Record of any agreements between the applicant and the city regarding the proposed development.

2.53 *Natural features.*

- (A) Contour lines at vertical intervals of two feet for land with an average existing slope of four percent or less, and at intervals of five feet for land with an average existing slope greater than four percent.
- (B) Location of different soil types, as indicated by the soil survey of Kent County, prepared by the Natural Resources Conservation Service, and including locations of flood hazard areas as identified in the FEMA Flood Insurance Maps. The soils information shall be supplemented by soil boring and percolation test data, if requested by the city.
- (C) Location of significant natural features, including bodies of water, wetlands, and forest areas.

2.54 *Proposed development.*

- (A) Existing buildings and other structures.
- (B) Location and width of all proposed streets and rights-of-way.
- (C) Location of all proposed structures, except one-family detached dwellings, and an indication of the total number of dwelling units.
- (D) Location and dimensions of all lot lines.
- (E) Building setback lines on all lots.
- (F) Location of all uses not requiring structures, including parks, playgrounds and other open space areas.
- (G) Location and plans for any outdoor signs.
- (H) Location, direction, power and time of use for any proposed outdoor lighting.
- (I) The location, size and arrangement of proposed sidewalks, driveways, loading areas, off-street parking areas and other paved areas.
- (J) Indication of the total amount of impervious surfaces and the development coverage.

- (K) Any proposed changes in elevation of the site and elevations of all streets, parking areas, and building foundations. The datum to which all elevations, including existing contour elevations, refer shall be clearly indicated on the plan.
- (L) Plans for surface drainage of the site. Such plans shall include stormwater run-off calculations and shall show the proposed method of accommodating the anticipated run-off.
- (M) Any proposed below-ground or above-ground utilities and any contemplated public improvements, including road improvements, on or adjoining the property. Plans for such utilities and improvements shall indicate whether the developer, the city, or other agency will bear the financial responsibility for the construction, and which improvements are intended to be dedicated to the city.
- (N) Proposed grading, screening and other landscaping, including types and locations of proposed street trees.
- (O) Architectural elevation drawings or other graphic representations illustrating exterior building characteristics of proposed buildings and/or building additions that would be visible from the public right-of-way. Elevation drawings shall be drawn to scale and shall reflect major architectural elements such as exterior surface materials, windows, doors, columns, and wall-mounted signage. Elevation plans are intended to provide a general depiction of the physical appearance, massing and scale of the proposed construction.
- (P) Speed reduction devices on any city or private street, drive, parking lot, fire lane or any other driveable surface, which causes a change in elevation which may result in emergency equipment having to reduce speed during a time of emergency, is prohibited. Speed cushions may be installed on privately owned commercial property, in accordance with Chapter 98—Streets, Sidewalks, Storm Sewers and Other Public Places, Article I.—In General, section 98-10—Speed Reduction Devices.

2.55 *Requested information.* Full and complete information requested by the city planner in accordance with the development information requirements set forth in section 4.

2.56 *Development in stages.* If the site development plan indicates more than one stage of the development, supplementary material shall be included to show compliance with article 5, section 9, Development in stages.

2.57 *Miscellaneous information.* Other information deemed by the planning commission to be necessary to determine conformity with the intent of this ordinance.

(Ord. No. 2011-14, 8-8-2011; Ord. No. 2014-08, 7-14-2014 ; Ord. No. 2014-20, 10-13-2014 ; Ord. No. 2016-09, 6-13-2016)

July 25, 2023

Patel College Properties, LLC
Patel Excess College Road, LLC
c/o Parkway Law, LLC (Attn: Dominic J. Balascio)
3171 DuPont Parkway Suite B
Townsend DE 19734
Via Email: dominic@parkway-law.com

Re: Notice of Decision - Planning Commission Action
Site Development Plan S-23-06 College Road Apartments at Railroad Avenue/Grove Street in Dover, Delaware
Tax Parcels: ED-05-067.00-02-53.00-000, ED-05-067.00-02-54.00-000, ED-05-067.00-02-55.00-000, and ED-05-067.00-02-56.00-000.

Dear Mr. Balascio:

At its meeting of June 20, 2023, the City of Dover Planning Commission moved to grant conditional approval to Site Development Plan Application S-23-06 College Road Apartments at Railroad Avenue/Grove Street. The project is for construction of two 6-story mid-rise apartment buildings with a total of 385 units consisting of studio, 1 bedroom, and 2 bedroom units. The ground level of each apartment building is parking and the other site improvements include six 7-car garage buildings, parking lots, landscaping, and recreation areas. The Project also includes street construction/improvements to Raymond Street and Railroad Avenue. A Lot Consolidation Plan will combine the four parcels located east of Railroad Avenue for a total of 31.08 acres of land. These properties are zoned RG-5 (General Residence Zone for Mid-Rise Apartments). The subject area is located north of, but not adjacent to College Road, and east of the Railroad corridor in the vicinity of Raymond Street, Railroad Avenue, and Grove Street. Property Owners: Patel College Properties, LLC and Patel Excess College Road, LLC. Council District 4.

This Application S-23-06 College Road Apartments at Railroad Avenue/Grove Street was originally submitted to the Planning Commission for Public Hearing and Review at their March 20, 2023 meeting. The Planning Commission conducted a Public Hearing and began review of this Application S-23-06 at their March 20, 2023 Meeting and deferred action seeking additional information. The Planning Commission continued review of this Application S-23-06 at their April 17, 2023 and deferred action until the June 2023 Meeting seeking additional information.

As adopted by the Planning Commission, the conditions of plan approval for the Site Development Plan S-23-06 College Road Apartments at Railroad Avenue/Grove Street from all reviewing agencies, including the Planning Staff Recommendations (as adopted), are outlined in the Development Advisory Committee (D.A.C.) Report dated March 8, 2023 and the Active Recreation Area Plan Report of March 14, 2023. A copy of the D.A.C. Report for S-23-06 and Active Recreation Area Plan Report are enclosed for your reference. If in the future major changes and revisions are proposed to the site design as presented to the Planning Commission,

you are required to contact the Planning Office to discuss. These changes may require resubmittal of the plan/drawings for review by the Development Advisory Committee, the Planning Commission or other agencies making recommendations or taking action in regard to the application.

In addition, the Planning Commission took action on the following:

- 1) Waiver Request – Reduction of the Parking Requirement: The Planning Commission took action to deny the Waiver Request for a Reduction of the Parking Requirement. The applicant had sought a reduction in the parking requirement from 867 parking spaces to 683 parking spaces by requesting a rate based on the type of apartment unit (studio, 1-bedroom, 2-bedroom) and a visitor rate resulting in an overall rate of 1.78 parking spaces per dwelling unit. The *Zoning Ordinance*, Article 6 Section 3 sets forth the parking requirements for apartments as a rate of two (2) parking spaces per dwelling unit plus 0.25 space per dwelling unit for visitor parking. The Final Plan will need to comply with the parking requirement established by the *Zoning Ordinance* based on the number of dwelling units in the project (maximum of 385 units).
- 2) Consideration of Active Recreation Area Plan: The Planning Commission took action to grant approval of the proposed Active Recreation Area Plan subject to the review comments of the Active Recreation Area Plan Report (of March 14, 2023). The project is required to provide 1.618 acres for Active Recreation Area as based on 10% of the gross development area. The plan provides 1.67 acres including the following recreation amenities: a Multi-Sport Court, Sand Volleyball Court, Picnic Pavilion, Paved Walking Trail, Woodland Walking Trail, Outdoor Fitness States Covered Bike Racks, and Yoga/Game Rooms within the Buildings' interior.

Planning Commission approval is valid for two (2) years from the date of approval, during which time the Site Development Plan shall be finalized, Building Permits obtained, and the project commenced. For Site Development Plan S-23-06, the approval expiration date is June 30, 2025. To apply for an extension of time from the Planning Commission, this office shall be in receipt of a letter from the owner/ applicant requesting such extension at least 30 days prior to the expiration of the original approval. The letter requesting such extension shall state the reasons why an extension is necessary.

When all necessary revisions have been made to the Plan, a Check Print of the Site Plan set must be submitted to the Planning Office for review. Check Print submittals to other Development Advisory Committee member agencies are required for their approval of the Plan as well. Coordinate with other agencies directly and forward approval letters to the Planning Office as they are obtained. Upon determination that the Plan is complete, we will request that you submit a specific number of signed and sealed copies of the Final Plan to our office for approval and endorsement for approval.

As a reminder, the Public Notice Physical Posting signage should have been removed from the property by June 27, 2023. Physical Posting signage not removed in a timely manner will be treated as an abandoned sign per the *Zoning Ordinance*. Should you have any questions or require further

assistance, please contact the Planning Office and the plan reviewer Dawn Melson-Williams at (302) 736-7196 or at dmelson@dover.de.us.

Sincerely, on Behalf of the City of Dover, DE Planning Commission
Department of Planning & Inspections



Dawn E. Melson-Williams, AICP
Principal Planner
dmelson@dover.de.us

Enclosures: Final D.A.C. Report of March 8, 2023
Active Recreation Area Plan Report of March 14, 2023

CC via email:

Mary Ellen Gray, AICP, Planning Director
Jason Lyon, PE, Director of Department of Water & Wastewater
Mark Novak, Director of Department of Public Works
Doug Barry, Pennoni Associates Inc.
Greg Rishel, Pennoni Associates Inc.
Glenn Mandalas, Esq., Baird, Mandalas, Brockstedt & Federico
File S-23-06