

**CITY OF DOVER BOARD OF ADJUSTMENT
AGENDA**

Wednesday, April 17, 2019 at 9:00 AM

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

ROLL CALL

APPROVAL OF AGENDA

APPROVAL OF MINUTES of March 20, 2019 Meeting

COMMUNICATIONS & REPORTS

1. Reminder: The next Board of Adjustment regular meeting is scheduled for May 15, 2019 at 9:00am in the City Council Chambers.

NEW BUSINESS

Applicant #V-19-04

223 and 225 West Division Street. NCALL has requested a variance from the requirements of the *Zoning Ordinance*, Article 4 §4.14 pertaining to the bulk standards of the C-1A (Limited Commercial Zone). Specifically, the applicants seek to increase the maximum permitted number of stories from two to three, and increase the maximum height permitted in feet from 30 feet to 34 feet. The variances are being requested so that a new 3-storey office building may be built on both parcels that are to be consolidated. The new building will be utilizing the existing setbacks that currently exist on both parcels. Subject properties are zoned C-1A (Limited Commercial Zone). Tax Parcels: ED-05-076.08-05-28.00-000 and ED-05-076.08-05-29.00-000. The owner of record for both properties is NCALL.

ADJOURN

29 Del. C. § 10004(e)(2)

THE AGENDA ITEMS MAY NOT BE CONSIDERED IN SEQUENCE. THIS AGENDA IS SUBJECT TO CHANGE TO INCLUDE THE ADDITION OR THE DELETION OF ITEMS, INCLUDING EXECUTIVE SESSIONS.

CITY OF DOVER
BOARD OF ADJUSTMENT MINUTES
March 20, 2019

A Regular Meeting of the City of Dover Board of Adjustment was held on Wednesday, March 20, 2019 at 9:00 A.M. with Chairman Sheth presiding. Members present were Chairman Sheth, Mr. Keller, Mr. Hufnal, Colonel Ericson and Mr. Senato.

Staff members present were Mr. Diaz, Mr. Swierczek, Mr. Hugg, City Solicitor Mr. Rodriguez, and Mrs. Savage-Purnell.

APPROVAL OF AGENDA

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

APPROVAL OF THE REGULAR BOARD OF ADJUSTMENT MEETING MINUTES OF JANUARY 23, 2019

Colonel Ericson moved to approve the meeting minutes of January 23, 2019 with the necessary corrections. The motion was seconded by Mr. Senato and unanimously carried 5-0.

OPENING REMARKS CONCERNING APPLICATIONS

Mr. Dave Hugg, Planning Director stated that the meeting today will be conducted in accordance with the Agenda. There are three (3) applications on the agenda under New Business. Each Application file will be read, and the floor will be opened for questions of the applicant by the Board and for public testimony. If the Board needs to consult the City Solicitor, they will recess to discuss legal matters. If the applicant must leave, they can contact the Planning Office at 736-7196 to learn of the Board's decision. A formal notice of the decision will be mailed to the applicants. Approved variances expire after one year if the approved project has not commenced.

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

COMMUNICATIONS & REPORTS

The next Board of Adjustment regular meeting is scheduled for April 17, 2019 at 9:00am in the City Council Chambers.

NEW BUSINESS

Applicant #V-19-01

545 North DuPont Highway. Carla Menard and Ken Sisk have requested a variance from the requirements of the *Zoning Ordinance*, Article 5 §4.7 pertaining to permitted signs. Specifically, the applicants seek to permit one (1) additional wall sign over the maximum two (2) wall signs allowed for a building with a single street frontage. The property is located on the east side of North DuPont Highway north of Townsend Boulevard. It is 0.86 acres +/- in size and is currently occupied by a Panera Bread Restaurant. Subject property is zoned C-4 (Highway Commercial

Zone) and subject to the SWPOZ (Source Water Protection Overlay Zone). Tax Parcel: ED-05-068.09-01-34.01-000. The owner of record is Dover DE Retail, LLC C/O Lemek Slower Lower LLC. *A substantially similar variance was reviewed by the Board of Adjustment on November 15, 2017 and received partial approval. A requested revision to the partially approved variance was subsequently reviewed by the Board on December 20, 2017 and was denied. Both the approval and the denial have expired without the approved sign being installed.*

Exhibits for the Record: Staff Report, zoning exhibit, and statement and plans submitted by the applicant. Legal Notice was published in the Delaware State News on March 10, 2019. The public was notified in accordance with regulations.

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

Mr. Diaz gave a summary presentation of the Variance Application Request (wall signage at Panera Bread). A substantially similar variance was reviewed by the Board of Adjustment on November 15, 2017 and received partial approval. A requested revision to the partially approved variance was subsequently reviewed by the Board on December 20, 2017 and was denied. Both the approval and the denial have expired without the approved sign being installed.

Colonel Ericson asked what the difference of the sign was from the 2017 to now. Mr. Diaz replied that the difference is the 94 square foot sign is no longer part of the application.

Colonel Ericson asked if the 35.67 square foot sign was the same sign and it states Panera Bread. Mr. Diaz replied yes, it is the same sign and it states Panera Bread. It does not state drive-thru which was the 47.27 square foot version.

Mr. Hufnal questioned if the 94.74 square foot sign was a mural that was on the back of the building that was denied. Mr. Diaz replied yes.

Mr. Hufnal questioned if the 35.67 square foot sign was just the Panera Bread sign on the front before they made the adjustment to add the “drive-thru”. Mr. Diaz replied yes, that is right.

Mr. Hufnal questioned if they had already issued a Sign Permit #17-2206 for the 35.67 square foot sign. Mr. Diaz replied yes, that is also right.

Mr. Keller questioned if the approvals and denials of 2017 have expired and it may be a technical point, but the decisions do not expire. Mr. Rodriguez replied that is correct.

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

Representative: Mrs. Kim Diehl, Kent Sign Company

Ms. Diehl was sworn in by Mr. Rodriguez.

Ms. Diehl testified that as explained by Mr. Diaz the sign variance was issued for “Panera Bread”. There was some confusion because they wanted “Panera Bread drive-thru”. They came back. She was not involved in any of these proceedings but gathered it from reading the paperwork that it was denied. She does not think that they understood that they could then still install “Panera Bread”. They came to her a few months ago and said they wanted to put up “Panera Bread drive-thru” on the north facing end of the building. She mentioned to them that it was denied once before, and she thought they should just ask for “Panera Bread”. It is obvious that it is a drive-thru lane on that side that can be seen; so, they agreed to just go ahead and ask for “Panera Bread” once again. We cannot put up a monument sign which is allowed at that location. Per Code, we are allowed two (2) building signs and one ground sign. The ground sign cannot be placed because of the placement of the building. Therefore, they would like to install a third sign on the building. There is an access road that comes right next to us, but it is not an actual named road. If it was a named road, they would be allowed four (4) building signs as is the Longhorn Steakhouse which is on the other end of the property. Because Longhorn Steakhouse front another road, they are allowed the four (4) signs which did not require them to request a variance. So, Longhorn Steakhouse has four (4) building signs and one (1) ground sign. We are keeping with the character of that area.

Colonel Ericson questioned that normally a large company like yours can get a signage up right away, but this was delayed over a year and had to resubmit. He asked Ms. Diehl if she was aware of the reason for the delay. Ms. Diehl replied she was not involved in the first install. They did not install any of the Panera Bread signage. She is not 100% sure why the sign did not get installed except she was told there was some confusion as the “Panera Bread” was approved and “Panera Bread drive-thru” was denied. She does not think that the other people that were involved in all this understood that they could then go back and install the “Panera Bread”. Again, she is not 100% sure as she is just getting involved about 2 months ago with any of this. She is not sure who the original sign company was who installed all that.

Chairman Sheth opened the public hearing.

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

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

Mr. Hugg asked for clarification as he reviewed the Exhibits that there are existing signs on Panera Bread facing Route 13 and facing south and the north wall does not have any signage on it. Ms. Diehl replied that is correct.

Chairman Ericson moved to approve variance application V-19-01 based upon the testimony given and the analysis by the Staff. Furthermore, we approved this a year ago and this was just a matter of delaying beyond the expiration time. The motion was seconded by Mr. Keller. The motion unanimously carried 5-0.

Applicant #V-19-02

1160 South DuPont Highway and 59 Roosevelt Avenue. Richard W. Arndt and Patricia S. Arndt have

requested variances from the requirements of the *Zoning Ordinance*, Article 4 §4.15 pertaining to the bulk standards of the C-4 (Highway Commercial Zone). Specifically, the applicants seek to decrease the minimum required lot depth of 1160 South DuPont Highway from 150 feet to 144 feet, and the minimum required lot width from 150 feet to 135 feet. For 59 Roosevelt Avenue, the applicants are requesting a decrease of the minimum required lot depth from 150 feet to 90 feet, a decrease of the minimum required lot width from 150 feet to 50 feet, and an increase in maximum lot coverage from 75% to 87%. The variances are being requested so that approximately 3,150 SF of land may be transferred from 59 Roosevelt Avenue to 1160 North DuPont Highway, and the Roosevelt Avenue property then sold. Subject properties are zoned C-4 (Highway Commercial Zone). Tax Parcels: ED-05-077.17-05-75.00-000 and ED-05-077.17-05-74.00-000. The owners of record for both properties are Richard W. Arndt and Patricia S. Arndt.

Mr. Swierczek gave a summary presentation of the Variance Application Request for lot dimensions and lot coverage.

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

Chairman Sheth mentioned that his businesses have used H&H Electric but does not see that as a conflict of interest.

Mr. Rodriguez replied that was okay.

Representative: Mr. Adam Perza, Attorney, May & Perza, P.A., and Mr. Richard W. Arndt, Owner H&A Electric Company.

Mr. Perza stated that it was a very good summary given by Mr. Swierczek and they agree with everything that was indicated by Mr. Swierczek for the City. We hope that the Board of Adjustment would adopt the application based on the comments made by the City Planning Office. The applicant is trying to consolidate its use of the property. As the application indicated, a new building was built on the neighboring property which was the 1160 North DuPont Highway several years ago. In submitting the survey plot/the Site Plan to the City, the dimensions of the new lot once you move the property are nonconforming with the City Code as well as the current dimensions. We are already in nonconformance and we are just asking to change the nonconformance to continue the nonconformance in the same way it has been used for the past 50 years. The applicant has operated a business on this property probably since the late 60's or early 70's. There is no change in operation intended. The same business is conforming with the C-4 use of the Code. There will be no impact on the neighboring communities. To our knowledge, there have been no comments made by neighbors about the change. The change is not observable to anyone else in the world unless you can look at a Zoning Map. By removing the outbuildings that are existing on the 59 Roosevelt property, you will allow the present owners the option of basically selling the property to a third party down the road who will then want to use the entire property for their own use without having to worry about other buildings or liabilities on that property. It cleans up the issues and the corner of the property location and makes it easier. The only reason for this is because the resulting plan that was submitted for the new boundary line does not conform for the Code. The current lines do not conform to the Code either. These properties have been here for a hundred years and the code

was not adopted until many years after all that. At that time the character of neighborhood layout was residential and now it is all commercial. Right across the street is the car dealership and the McDonald's. There really is not an impact one way or the other to what would be the preapplication, preapproval and post approval. Again, we agree with the application and the comments of the City.

Mr. Hufnal asked if the area has an approved access by DelDOT. Mr. Perza replied that when the City approved the renovation of the building on the corner at the 1160 North DuPont Highway that access had to be approved 4-5 years ago. Overtime DelDOT has taken time more and more of this land because it keeps rounding out that curb and eating into it. The existing parking and driveway allocations have been approved by DelDOT and the City.

Mr. Hufnal mentioned his concern if you sell off 59 Roosevelt Avenue and that clearly has a good access off Roosevelt Avenue and with DelDOT if they did any expansion to that road would they constrict that entrance because that is a good access. Mr. Perza replied that there is no way of knowing what DelDOT will do. He would envision that DelDOT would have to make accommodation to the current property owner to continue using that property. The applicant would have significant problems with that also if they could not get clients and themselves to their own office. Could this happen, yes, but anything is possible with DelDOT. There is no known expansion at this time.

Mr. Keller had a question with the plan as prepared and somewhat in conjunction with the question raised by Mr. Hufnal. He asked if in the paved parking area if one of them was a handicap space. However, a large portion of the paved parking area extends into the existing right-of-way of US 13 south bound and the radial entrance to the property is more southerly and/or westerly. He wanted to know if the plan showed the existing paved parking area or whether it is a sketch of a future expanded parking area for 1160 North DuPont Highway. Mr. Perza replied that the parking areas that are identified on the Site Plan are existing and they preexisted the modifications of the curb made by DelDOT. When DelDOT basically encroached and rounded out the curb and switched it, they switched it into an area that was previously laid out in conformance which is no longer into conformance. The parking areas that you currently see do cross the line (DelDOT property line), but DelDOT was aware of that when it was done to allow the applicant to continue to use the premises.

Mr. Richard W. Arndt was sworn in by Mr. Rodriguez.

Mr. Arndt testified that there was another entranceway into the 1160 North DuPont Highway property off the right-hand turn lane. DelDOT wanted them to close it up and it turn gave them the right to have the parking area extend behind the right-of-way. That was their trade off because they did not want the entranceway in there at all.

Mr. Perza mentioned that he did not think that DelDOT would ever ask for nor would it be beneficial to increase the arc circle. DelDOT does not want another entrance onto Route 13 from this so they are not going to run around the driveway to reconnect to Route 13.

Mr. Senato mentioned that it was closed off and this is when they approved the procedure and

turned it back over to the City of Dover.

Mr. Keller asked if this was by virtue of some written agreement. Mr. Arndt replied that the only thing that is written about it is “we approve it as submitted.”

Mr. Keller asked if it was the entrance or the parking area that is within the existing right-of-way. Mr. Arndt replied the parking area as submitted on the plot plan.

Mr. Perza asked if it was 2014-2015. Mr. Arndt replied it went back to 2006.

Chairman Sheth asked if the same building (59 Roosevelt Avenue) was still being rented. Mr. Arndt replied yes.

Mr. Keller mentioned that his primary reason for raising the question is because DelDOT or Federal Highway Administration would have required a formal air space agreement approved by the FHA and DelDOT for any utilization by a private entity then the existing right-of-way. He asked if there was any such agreement or if this was a proposed parking area. Mr. Perza replied in researching the boundary line for this application for the Board of Adjustment they did not go back into the property history to pull any types of agreements that had been made with DelDOT, FHA or Federal government at all. He could not state whether any federal agreement was reached or not. He could state that the previous Site Plans that illustrate the existing parking and movement arrangements of record were approved. He did not know if they reference any type of FAA agreement.

Mr. Keller suggested to it might be a good idea to do so for liability purpose and private utilization of the existing right-of-way. For example, auto dealerships line up their cars for sale along the edge of the roadway within the right-of-way. He knows that this is a prohibited practice by virtue of DOT’s program, but it might be something that may or may not have an impact on today’s hearing but worthwhile in asking.

Mr. Swierczek mentioned he believed that the premises at 1160 North DuPont Highway was built in 2012. Mr. Arndt replied 2014.

Mr. Swierczek mentioned it would have been part of an Administrative Review process and DelDOT would have been involved. In order for an Administrative application to be approved, DelDOT would have had to approve it as well. This current variance application would not be proposing any sort of new entrances or parking lot layouts. The Site Plan is presented as it is intended to remain minus the lot line adjustment.

Mr. Perza mentioned that the only change is the back-corner lot line adjustment.

Mr. Keller asked as the plan illustrates would any vehicular access for 59 Roosevelt Avenue change if this application was to be approved. Mr. Perza replied that all vehicular access to 59 Roosevelt Avenue would be from the existing entrance at 59 Roosevelt Avenue. There is no change in paving, parking, driveway location or access ways to get into it. It is exactly the way it is without change. The only change is the back-property line to move the outbuildings over to the

neighboring property.

Mr. Keller asked if he would plan to have the associated cross easements. Mr. Perza replied yes, there was an easement drafted and submitted to the City. The City will most likely review the easement as part of the Minor lot Line Adjustment process. If this application is approved, they will continue with the application process through the City of Dover Planning Department.

Mr. Keller asked for clarification of Mr. Swierczek's previous statement with regards to the new application today because otherwise he was wondering why that simply could not be transferred and it would remain in the nonconforming status. Mr. Swierczek replied that is why the applicant is here today. Normally, it would be an Administrative process outside of the Board of Adjustment, but it's because of the proposed change it would simply be a change from one nonconforming layout to another nonconforming layout. It is the existing nonconforming that brings it to the Board of Adjustment first because they do not have the physical capacity to bring the properties into conformity, that is the reason they are before the Board of Adjustment today.

Mr. Keller stated that he understood that, but he thought otherwise that property could be transferred. But with it being a nonconforming property that such a transfer could not increase the degree of nonconformity as opposed to being venturing into a matter of them having to bring it into compliance for an otherwise straight sale.

Mr. Swierczek mentioned that generally speaking in terms of if there were setbacks that were going to be increased in its nonconformity then that would be the issue. The problem is that as both properties are not in conformity there is no ability to move the property line without in some capacity increasing the nonconformity. Mr. Keller stated that he understood.

Chairman Sheth opened the public hearing.

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

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

Mr. Hufnal mentioned that the Planner did an excellent job in summarizing the application. It is a difficult case; and with the complexity of it, Mr. Swierczek did a great job.

Mr. Hufnal moved to approve variance application V-19-02 based upon the testimony given and the evidence presented by Staff. The motion was seconded by Mr. Keller. The motion unanimously carried 5-0.

Applicant #V-19-03

106 Willis Road. Howard Joseph has requested two variances from the requirements of the *Zoning Ordinance*, Article 4 § 4.3 pertaining to the bulk standards of the RG-2 (General Residence) Zone. Specifically, the applicant seeks to subdivide the property into two duplex lots each with a lot area of 3,750 SF, which is less than the minimum 5,000 SF required under the zoning. The applicant also seeks to permit a 5-foot side yard on each lot, which is less than the

minimum 10-foot wide side yard required under the zoning. The 0.17-acre vacant property is located on the west side of Willis Road, north of Division Street. Subject property is zoned RG-2 (General Residence Zone). Tax Parcel: ED-05-068.19-01-23.00-000. The owner of record is 1944 Builder LLC.

Mr. Diaz gave a summary presentation of the Variance Application Request related lot area and setbacks.

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

Mr. Keller asked what was the approximate time for the processing of the applicant's request. Mr. Diaz replied it depends on when the applicant submits the application and afterwards how soon they can revise the plans to show the conditions of the approval that the Planning Commission gives. Then of course, they would need to get a Building Permit for the structure itself. Between the application deadline for the Planning Commission and the Planning Commission meeting is typically 1 ½ months. How long after that from the Planning Commission the conditional approval to the final approval of the project varies and could be anywhere from 3-6 months. Sooner if the plans can be revised quickly.

Mr. Keller mentioned as a notice or warning for the applicant, if this variance request was approved today would those actions be considered a trigger so that the approval would not expire a year from now if physical construction had not started. Mr. Diaz replied that the next steps have to be taken within a year and that would mean submission to the Planning Commission. It would not mean that the physical construction of the dwelling has to happen within a year.

Representative: Mr. Howard Joseph, Owner.

Mr. Howard Joseph was sworn in by Mr. Rodriguez.

Mr. Joseph testified that the variance requested is to allow a decrease in the minimum lot size from 5,000 SF to 3,750 SF and to allow a decrease in the minimum side yard setback from 10 feet to 5 feet to put a duplex on the property.

Mr. Keller mentioned that one year comes and goes fairly quickly when you are anticipating planning, applications, construction, etc. He only made that point so that we would not be a year from now coming back stating that "I really did not get started yet". There are certain steps that have to be taken to allow you to retain that application if it was approved.

Chairman Sheth opened the public hearing.

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

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

Mr. Keller moved to approve application V-19-03 as presented noting the City's thorough review in the recommendations for approval and noting that the proposal would be in keeping with the nature and allowable uses of the existing Zoning Code. It is one of the very few remaining undeveloped lots in the neighborhood and it would lend for continuity of the type of structure within that neighborhood. There is no likelihood that it would detrimental to any neighboring properties or owners in his estimation. The motion was seconded by Mr. Hufnal. The motion unanimously carried 5-0.

The meeting was adjourned by Mr. Hufnal and seconded by Mr. Colonel Ericson at 10:05 A.M.

Sincerely,

Maretta Savage-Purnell
Secretary



City of Dover

Board of Adjustment

April 17, 2019

V-19-04

Location: 223 and 225 West Division Street

Applicant: NCALL

Owner: NCALL

Tax Parcels: ED-05-076.08-05-28.00-000
ED-05-076.08-05-29.00-000

Application Date: March 15, 2019

Present Zoning: C-1A (Limited Commercial Zone)

Present Use: Commercial/ residential (existing buildings to be demolished)

Proposed Use: Offices (new construction)

Reviewed By: Julian Swierczek, Planner I

Variance Type: Area Variance

Variances Requested: To allow an increase in the maximum permitted number of stories from two (2) to three (3), and to allow an increase in the maximum permitted building height from thirty (30) feet to thirty-four (34) feet.

Project Description

The applicant proposes to demolish each of the existing buildings on the two (2) existing lots and then consolidate the 2 (two) existing parcels into one (1) parcel. The applicant plans to then build one (1) new three-story building to contain offices for NCALL and a potential business incubator space for Delaware State University. To achieve this, the applicant is requesting two variances, both from the provisions of the *Zoning Ordinance*, Article 4 §4.14 pertaining to the bulk standards of the C-1A (Limited Commercial Zone). For the first variance the applicant is requesting to allow the maximum number of stories permitted in the C-1A to be increased from two to three stories.

The applicant is further seeking a second variance from the bulk standards of the C-1A as found in the *Zoning Ordinance*, Article 4 §4.14. Specifically, the Applicant is requesting to be permitted an increase in the maximum building height allowed from thirty (30) feet to thirty-four (34) feet. This is to accommodate the planned third floor.

A plot plan of the existing layout of the two properties is provided by the applicant in Exhibit C. The applicant has similarly submitted a plot plan showing the intended layout of the new building after the two lots are consolidated. This is presented as Exhibit D. The applicant has also submitted a series of photos showing the existing conditions of the site as Exhibit E. Finally, the applicant has submitted a rendering and floor plans of the proposed building, which is submitted as Exhibit F. It should be noted that the bulk standards for the C-1A as found in the *Zoning Ordinance*, Article 4 §4.14 also requires a minimum front yard setback of 25 feet. As the project would have frontage on both Division Street and New Street, this would require that the front yard setback be observed on both of those street frontages. However, Article 7 §1.13 allows the existing nonconforming setbacks to be continued for the new building, provided that the new building be built within one year of the demolition of the existing structures.

This project has not yet been reviewed by the Planning Commission; submission and approval of a Site Development Plan application would be needed before the proposed office building could be constructed. The two parcels currently addressed as 223 and 225 West Division Street would be consolidated as part of the Site Development Plan.

Adjacent Land Uses

The property is zoned C-1A and is located on the north side of West Division Street, east of North New Street. The property addressed as 223 West Division Street has frontage on West Division Street, while the property addressed as 225 West Division Street has frontage on both West Division Street and North New Street. There is an unnamed alley that runs along the north of both properties. Along West Division Street to both the east and west are properties also zoned C-1A, containing a mix of uses, primarily residential uses including one-family residences which are a permitted use in the zone. The properties to the north along North New Street are zoned RG-1 (General Residence Zone) and contain primarily one-family residences.

A Zoning Map Exhibit (Exhibit A) showing the property and adjacent zoning districts can be found in the attachments to this Report. In addition, the applicant provided a plot plan that

notes neighboring zoning as well (Exhibit D). Finally, the applicant has provided a series of photos (Exhibit E) that shows the condition of the current buildings, as well as some showing the neighborhood.

Code Citations

According to *Zoning Ordinance*, Article 3 §12.1(e), business, professional, and governmental offices are a permitted use in the C-1A Zone. Neither “offices” or specified office types are given a definition in the *Zoning Ordinance*. However, “story” and “height” are defined in Article 12 of the *Zoning Ordinance* as follows:

Story: That part of any building, exclusive of cellars but inclusive of basements, comprised between the level of one finished floor and the level of the next higher finished floor, or if there be no higher finished floor, then that part of the building comprised between the level of the highest finished floor and the top of the roof beams.

Height: The vertical distance measured from the average elevation of the finished grade at the front of the building to the highest point of the roof for flat and mansard roofs and to the mean height between [the] eave and ridge for other types of roofs.

Zoning Ordinance, Article 4 §4.14 lists the bulk and area standards for several Commercial zoning districts, including the C-1A Zone. Article 7 §1.3 allows the existing nonconforming setbacks to remain for the new building, provided that the new building be built within one year of the demolition of the existing structures. Specifically, the *Zoning Ordinance* states:

Article 7 Section 1

- 1.3 Normal maintenance and repair, structural alteration in, and moving, reconstruction or enlargement of a building which does not house a nonconforming use, but is nonconforming as to the district regulations for lot area, lot width, front yard, side yard, rear yard, maximum height, maximum lot coverage, or minimum livable floor area per dwelling is permitted if the same does not increase the degree of, or create any new nonconformity with such regulations in such building.

Table 1 below summarizes the requirements applying to the C-1A and compares them to the applicant’s proposed project. The standards requiring a variance are highlighted, the standards that are legal non-conforming are in bold, and not subject to the variances requested.

	C-1A (Limited Commercial Zone)	Applicant's Project
Standard:	Requirements	Proposed
Lot area (sq. ft.)	-	5,120
Lot width (ft.)	25	71
Lot depth (ft.)	-	104.5
Front yard (ft.)	25	4.5
Side yard (ft.)	Non required, but 5 feet min. if provided	3.4
Rear yard (ft.)	15	20
Side or rear yards which adjoin a residential zone (ft.)	15	20
Off-street parking spaces	-	5
Maximum permitted:		
Building Height (stories)	2	3
Building Height (ft.)	30	34
Floor area ratio	1.5	<1.5

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 a part of the application, the applicant was asked to state how the requested variance relates to the above four criteria. The applicant's responses are provided below, along with a staff assessment of the application in accordance with the required criteria. These responses may also be found in Exhibit B.

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

Applicant Response:

"The property is located on Division Street which is zoned Commercial C-1A, a busy main thoroughfare that runs east to west through Dover. It is lined with a mixture of buildings: commercial, residential, churches and a number of vacant and boarded up properties. Many of the properties are three stories, have gabled roofs and front directly on the sidewalk. The design created by Architectural Alliance for a new building is very much in keeping with the character of the neighborhood while also bringing a fresh and attractive look to an area that is quite depressed. Homeownership is low in the area, but the block of N. New Street (between Division and Fulton) that intersects with our property has been completely transformed by *CDHFH, with a projected estimate of 76% homeownership by the end of 2019, from around 16% in 2016. NCALL assisted Habitat with the revitalization by purchasing 23 N. New Street as part of the deal to acquire 225 W. Division. 23 N. New was a known drug house and center of illegal activity and the safety of the block has been much increased by its closure. NCALL is in the process of transferring the property to Habitat who will build a new home on the site."

**Note: CDHFH = Central Delaware Habitat for Humanity*

Staff Response: The C-1A Zone permits retail stores; personal service establishments; service establishments; restaurants; business, professional, and governmental offices; one-family residences, including attached and semi-detached dwellings; Apartments and multi-family dwellings. It also conditionally drive-throughs as an accessory to a permitted use. The proposed use is considered as a professional office which is a permitted use.

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

Applicant Response:

"225 W. Division was formerly divided into four apartments and was maintained very poorly; one of the apartments could only be accessed by a ladder. 223 was previously a shoe repair store and had been vacant for some time. NCALL has completed environmental testing and asbestos abatement since acquiring the properties in December and demolition should occur by the end of March. Replacing the two properties with a new and attractive building will have the immediate effect of improving this northeast corner of Division and New Streets and bring an asset to the vicinity that can be used for community meetings, and other gatherings. It will also spur economic activity by helping local entrepreneurs grow their businesses.

The building next door to 223 is three stories; next to that building is a church with a steeple, higher than the thirty-foot height restriction. A number of other buildings on that block are three stories and higher than thirty-feet.”

Staff Response:

The character of the immediate vicinity is predominately residential, with several single-family dwellings, particularly to the north along North New Street. Residential dwellings are also present along West Division Street, with the property immediately adjacent to the east being a 2 ½- 3 story multi-tenant residential structure. Also, along this section of the Division Street corridor there are several commercial uses as well as institutional uses in the form of places of worship and also vacant lots. Staff agrees with the applicant that the area has somewhat struggled. The two properties subject to this variance request themselves have fallen into neglect. Even though the zoning permits only a two (2) story building to be developed, many of the houses in the immediate surroundings are 2 ½ story to three (3) stories. The proposed development does well to emulate the existing architecture of the area by incorporating common features such as gabled roofs.

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

Applicant Response:

“That restrictions that we are requesting to be removed are: 1. To allow a three story building that will be in excess of the thirty-foot height restriction by no more than four feet, and 2. To allow the new building to be built on the existing footprint and not to have the front and side required setbacks which would make the project unfeasible. The removal of these restrictions will not adversely affect the neighboring properties because there are already several three-story buildings, or more than 20 feet in height, on the block and in the surrounding area, and the new building will not exceed the footprint of the existing structures. Additionally, the development of this attractive new building will create a valuable community asset, will help increase surrounding property values and will be the catalyst for the revitalization of this depressed, but important, commercial corridor in downtown Dover.”

Staff Response:

Staff notes that while the first variance the applicant is requesting is for the maximum number of stories to be increased from two (2) to three (3), the *Zoning Ordinance* already permits the applicant to reuse the previously established, non-conforming setbacks. The second variance the applicant is requesting is therefore from the maximum permitted height of the building, so as to increase the maximum from thirty feet to thirty-four feet.

Staff does not think that removing these restrictions would have any adverse effect on the neighboring properties or uses. As noted, the proposed use is permitted, and as the applicant has noted, many of the surrounding buildings are more than two (2)

stories and taller than thirty (30) feet. The applicant has also worked with their architect to ensure that the architecture of the proposed building is in keeping with the surrounding structures. The need for the additional height is likely due to the floor to floor height needed to accommodate mechanical systems. The applicant has sought to mitigate the added height requirement by accommodating the third-floor space within a gabled roof which is designed to include a series of dormers. This is in keeping with the architecture of the surrounding neighborhood.

Staff also notes that the neighborhood was subject of a corridor planning study in 2015 which resulted in the *Division Street/ Forest Street: Dover Capital Gateway Plan and Design Book*. This plan includes various recommendations for revitalizing the Division Street corridor, including ones related to urban design and land use. On page 12 of the plan, one of the Guiding Principles and Objectives laid out states:

Create an aesthetically pleasing, welcoming, and vibrant gateway to the Capitol District that has a defined sense of place and attracts positive activity.

To achieve this objective, a series of action items are proposed:

- Increase habitable, inhabited properties and reduce dilapidated, vacant properties
- Increase community and economic activity in the area
- Improve comfort and safety of visitors and residents
- Expand and improve greenspace / recreational facilities that provide opportunities during and outside of daylight hours
- Create visually attractive streetscapes through landscaping, utilities, signage, and other infrastructure
- Provide a visual landmark/monument

The proposed building has the potential to further the first and second items on this list, and possibly the third and last items as well.

A Community Preference Survey was taken as part of the plan, which found that survey participants would prefer to see three (3) to four (4) story buildings along the Division Street corridor. Changing the code to limit buildings in the corridor to this height is therefore part of the Implementation Plan of the *Dover Capital Gateway Plan and Design Book*. Allowing the height variances for NCALL's building would be in keeping with the goals of the plan.

Lastly, this significant investment would further enhance the ongoing revitalization efforts already present in this area of the City resulting from the *Restoring Central Dover Plan* initiative. There have been significant efforts by NCALL themselves in this area.

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:

“NCALL, a local nonprofit affordable housing agency, has already made an investment to develop these parcels through acquisition, security, insurance, maintenance, environmental testing, asbestos abatement and demolition, as well architectural renderings and an engineering site plan. Wherever possible, we have used Dover based businesses including Compliance Environmental and Mountain Consulting. In February, NCALL was awarded a Downtown Development District rebate reservation from DSHA in the amount of \$338,000 for hard construction costs. A grant of \$25,000 was received from the Crestlea Foundation for interior furnishings. A proposal was submitted to the Longwood Foundation on March 1 for \$500,000 to help with construction costs, and an application to the Economic Development Administration will be submitted with the assistance of Delaware State University for the remainder of the hard costs, which will be in the region of \$1.5 million. The costs incurred to date are around \$300,000 which is a large investment for a nonprofit, but one that was that was made with the full support of NCALL’s Board of Directors who recognize the need to be proactive and take some risks to improve downtown Dover. As the funding received demonstrates, this is a project that has aroused the interest and approval of funders. The lots are not conducive to the development of residential housing because of the amount of traffic on Division Street, and they are better suited to the proposed project.”

Staff Response:

Staff agrees with Applicant in acknowledging their already significant investment into the project. Staff also notes that the applicant had informed them that they needed to acquire this property at 225 West Division Street as part of an agreement to purchase a separate property for redevelopment as a single-family residence. NCALL did not therefore set out to acquire this property for their offices, but decided new offices were the best use for the site. The *Code* currently only allows for two story structures in the C-1A zone, but the limitations of the available land, together with the anticipated needs of NCALL, mean that three stories would be required to accommodate the applicant’s needs. This, together with the investments already made into the site, would mean that not receiving these variances would incur a significant financial hardship for the applicant, as well as a practical difficulty as they would not be able to develop the needed office space.

Variance Recommendations

Staff recommends approval of the variance to increase the maximum number of stories for the proposed building from two (2) stories to three (3) stories, as well as the variance to increase the maximum height for the proposed building from thirty (30) feet to thirty-four (34) feet for reasons as follows:

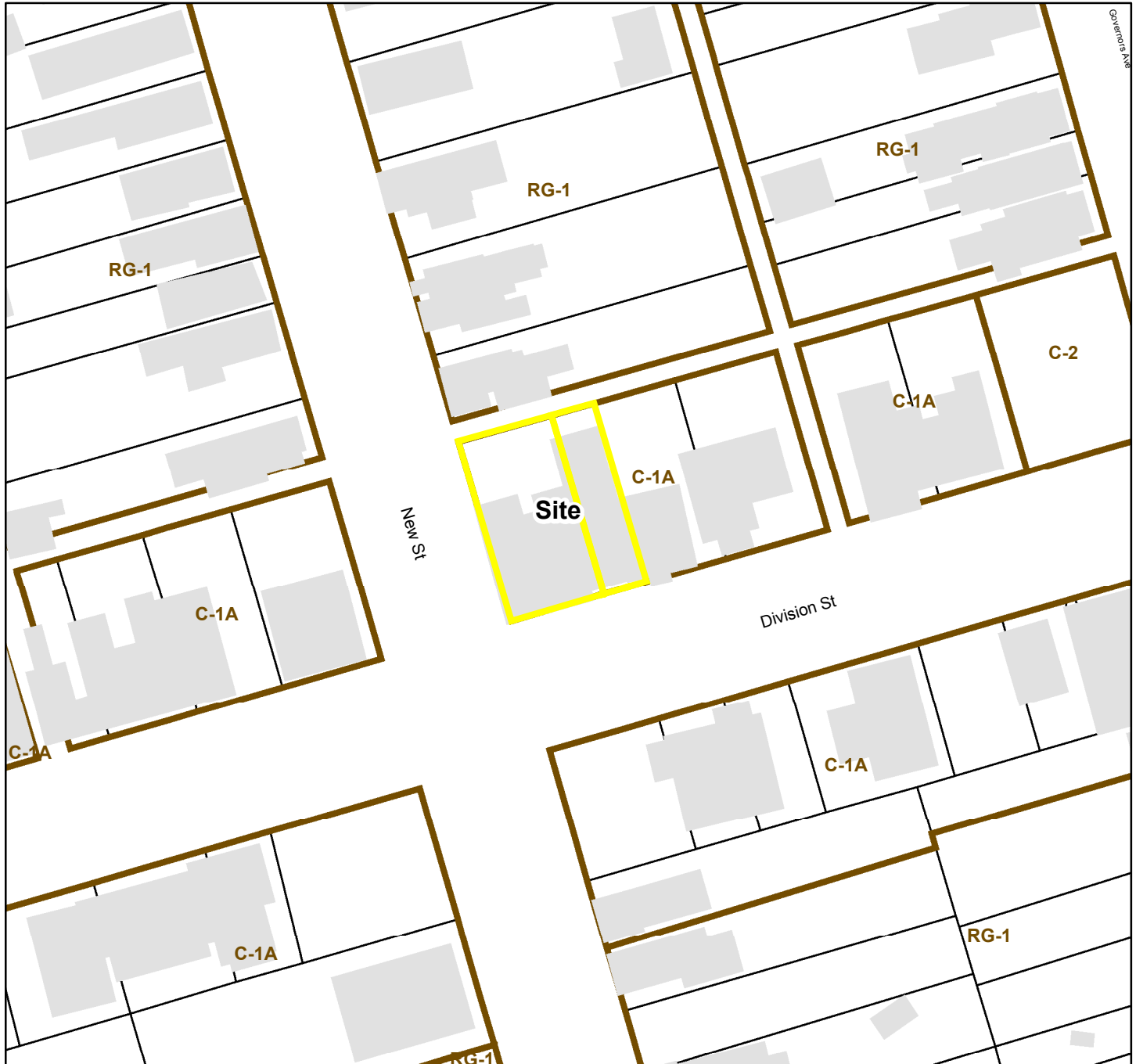
- The proposed use for an office space is in keeping with the nature and allowable uses in the C-1A Zone.
- The number of stories and height of the building proposed is comparable to existing buildings in the vicinity along the West Division Street corridor.
- The property is currently vacant and in poor condition and this development would constitute a major investment in the area.
- Development of the property as proposed would be in keeping with the goals of the 2015 *Division Street/Forest Street: Dover Capital Gateway Plan and Design Book*.
- If the variances for either the number of stories or building height were not granted, the applicant would be greatly restricted in the availability of floor space to provide for their needs.

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.
- Improvements to the property are subject to Site Development Plan approval processes through the Planning Commission, and appropriate permits from the City of Dover Department of Planning & Inspections and other agencies.
- These properties are located within Dover's Downtown Development District and may be eligible for a variety of incentives offered by the City, County, and State for redevelopment activities.







GUIDE TO ATTACHMENTS

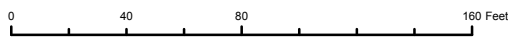
Exhibit	Description/Author	# Pages
A	Zoning Map Exhibit (Staff)	1
B	Applicant Responses to Criteria	1
C	Site Plan of Existing Properties (Applicant)	1
D	Site Plan of Project Proposal (Applicant)	1
E	Photos of Existing Site Conditions (Applicant)	4
F	Renderings and Floorplans of Proposed Building	5



Title: Lands of NCALL
 Address: 223, 225 West Division Street
 Parcel IDs: ED-05-076.08-05-28.00-000
 ED-05-076.08-05-29.00-000
 Zoning: C-1A (Limited Commercial Zone)
 Owner: NCALL
 Date: 04/09/2019

Legend

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



NCALL
Application to the Board of Adjustments, City of Dover
March 13, 2019
Area Variance, Response to Criteria

RE: 223 West Division Street, Dover, DE 19904
Tax ID: 05-076.08.05-29.00-00001

225 West Division Street, Dover, DE 19904
Tax ID: 05-076.08-05-28.00-000

Background:

NCALL is dedicated to the transformation of downtown Dover and has been achieving this objective through its Restoring Central Dover initiative. There are a number of revitalization strategies underway, including the development of single family homes to improve the overall rate of homeownership in the area, which is very low, about 27%. NCALL and Central Delaware Habitat for Humanity (CDHFH) were awarded two rounds of Strong Neighborhoods Housing Funds by Delaware State Housing Authority (DSHA) to build new homes to sell to first time homebuyers, to address the imbalance and stabilize the neighborhood. A third application for this funding was submitted to DSHA on March 8. Between the two agencies, 32 homes have already been built in Central Dover, seven are under construction and 22 lots are held for future development.

In October 2018, CDHFH asked NCALL to assist them in the acquisition of two nuisance properties in Central Dover, 23 N. New and 225 W. Division. At the same time, we became aware that Delaware State University (DSU) was seeking a location for a small business incubator in the same area. 225 W. Division is a substantial property and the adjacent building, 223, was owned by CDHFH. Habitat offered to donate 223 W. Division to NCALL as part of the purchase. The combined site of these two properties is an excellent location for the incubator. DSU is excited about the location and the opportunity to work with NCALL to bring economic development opportunities to the area. Small businesses are needed in Dover to ensure the revitalization of the commercial corridors, including Division and Lockerman Streets. Two recent NCALL supported initiatives are **Unlock the Block** (to pair business owners with available retail and/or office space), and **The Launcher** (to help aspiring entrepreneurs create a business plan and locate financing and other resources.) Two small businesses found locations in Central Dover in the fall, and a new phase of the Unlock the Block program should begin in the next month. The Launcher program graduated 13 entrepreneurs on November 26 and a new class started on January 28 with 15 participants. All of these initiatives dovetail to expand economic opportunity through small business development, and will help bring commercial activity and jobs to the area. This supports the efforts of Restoring Central Delaware and will expand the revitalization of vacant properties beyond homeownership.

Kevin Wilson of Architectural Alliance has developed initial plans and renderings of the building, which are attached to this application. Troy Adams of Mountain Consulting developed the site plan, which is also attached.

The proposed three-story office building will be approximately 7,920 square feet. It will contain approximately 1,800 square feet on the ground floor and 3,020 square feet on each of the second and third floors. Five parking spaces will be located adjacent to the alley north of the building. The property is located at the corner of West Division Street and North New Street, is a combination of two existing lots into one that totals 5,280 square feet, and is in a commercial C1-A zone.

The building will be equipped with an elevator and two independent fire-rated stairwells leading from each floor to the exterior. There will be bathrooms and kitchenettes accessible for persons with physical disabilities on the ground and second floor levels. Additionally, the building will contain six offices and open / flex office space on all three levels.

The structure will be concrete slab on grade with a wood frame above. Exterior materials will be brick and siding, with a combination of fiberglass roof shingles and EPDM roof membrane on the sloped and flat roof areas. Exterior windows will be aluminum frame insulated glazing, thermally broken frames. The building will be LEED Silver certified to ensure energy efficiency.

Response to Criteria:

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

The property is located on Division Street which is zoned Commercial C-1A, a busy main thoroughfare that runs east to west through Dover. It is lined with a mixture of buildings: commercial, residential, churches and a number of vacant and boarded up properties. Many of the properties are three stories, have gabled roofs and front directly on to the sidewalk. The design created by Architectural Alliance for a new building is very much in keeping with the character of the neighborhood while also bringing a fresh and attractive look to an area that is quite depressed. Homeownership is low in the area, but the block of N. New Street (between Division and Fulton) that intersects with our property has been completely transformed by CDHFH, with a projected estimate of 76% homeownership by the end of 2019, from around 16% in 2016. NCALL assisted Habitat with this revitalization by purchasing 23 N. New Street as part of the deal to acquire 225 W. Division. 23 N. New was a known drug house and center of illegal activity and the safety of the block has been much increased by its closure. NCALL is in the process of transferring the property to Habitat who will build a new home on the site.

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is a church with a steeple, higher than the thirty-foot height restriction. A number of other buildings on that block are three stories and higher than thirty-feet.

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

The restrictions that we are requesting to be removed are: 1. To allow a three story building that will be in excess of the thirty-foot height restriction by no more than four feet, and 2. To allow the new building to be built on the existing footprint and not to have the front and side required setbacks which would make the project unfeasible. The removal of these restrictions will not adversely affect neighboring properties because there are already several three-story buildings, or more than 30 feet in height, on the block and in the surrounding area, and the new building will not exceed the footprint of the existing structures. Additionally, the development of this attractive new building will create a valuable community asset, will help increase surrounding property values and will be the catalyst for the revitalization of this depressed, but important, commercial corridor in downtown Dover.

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:

NCALL, a local nonprofit affordable housing agency, has already made an investment to develop these parcels through acquisition, security, insurance, maintenance, environmental testing, asbestos abatement and demolition, as well as architectural renderings and an engineering site plan. Wherever possible, we have used Dover based businesses including Compliance Environmental and Mountain Consulting. In February, NCALL was awarded a Downtown Development District rebate reservation from DSHA in the amount of \$338,000 for hard construction costs. A grant of \$25,000 was received from the Crestlea Foundation for interior furnishings. A proposal was submitted to the Longwood Foundation on March 1 for \$500,000 to help with construction costs, and an application to the Economic Development Administration will be submitted with the assistance of Delaware State University for the remainder of the hard costs, which will be in the region of \$1.5 million. The costs incurred to date are around \$300,000 which is a large investment for a nonprofit, but one that was made with the full support of NCALL's Board of Directors who recognize the need to be proactive and take some risks to improve downtown Dover. As the funding received demonstrates, this is a project that has aroused the interest and approval of funders. The lots are not conducive to the development of residential housing because of the amount of traffic on Division Street, and they are better suited to the proposed project.

If restrictions are not removed, the financial feasibility of the building will be in jeopardy. The proposed square footage of 7,920 feet for this three-story building is necessary to accommodate the small business incubator, to create much needed office space in the community for NCALL's Restoring Central Dover staff, and to provide meeting space for the residents of the area. In addition, relaxing the restrictions will create an urban design matching the surrounding buildings, which have entrances directly on the sidewalks. Relaxing the setbacks will also allow for much needed parking spaces.

NOW/FORMERLY
MAYGAN BECKLES

ED-05-076.08-05-23.00-00001

12 N. NEW ST.
D.R. 9439-27
ZONING: RG-1

ALLEY
10' WIDE



NOW/FORMERLY
WAYNE C. TRADER

ED-05-076.08-05-27.00-00001

303 W. DIVISION ST.
D.R. 3539-248
ZONING: C1-A

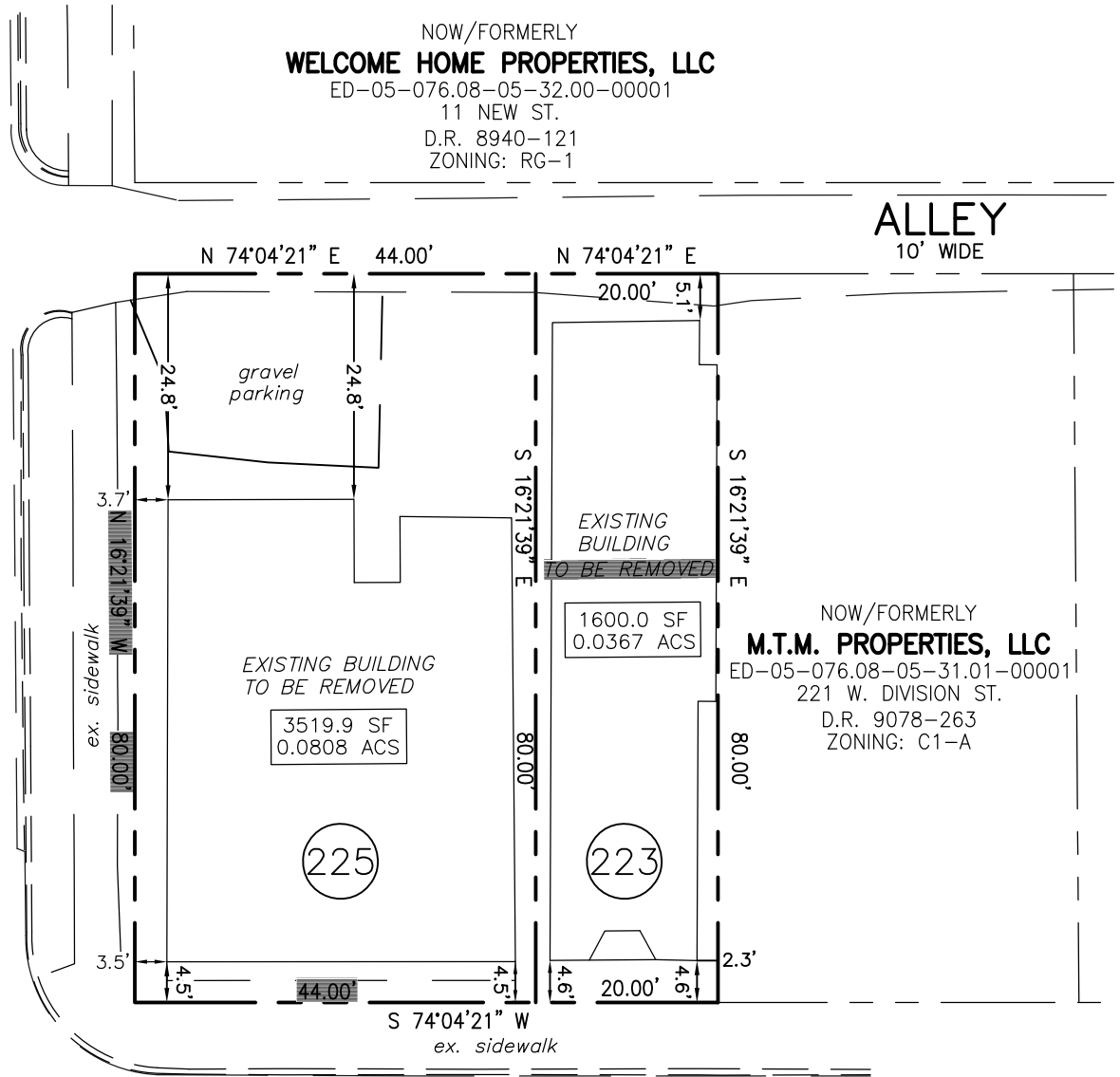
NEW STREET
60' WIDE

NOW/FORMERLY
WELCOME HOME PROPERTIES, LLC

ED-05-076.08-05-32.00-00001

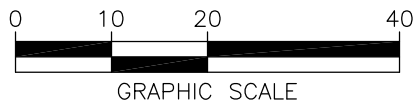
11 NEW ST.
D.R. 8940-121
ZONING: RG-1

ALLEY
10' WIDE



NOW/FORMERLY
M.T.M. PROPERTIES, LLC
ED-05-076.08-05-31.01-00001
221 W. DIVISION ST.
D.R. 9078-263
ZONING: C1-A

DIVISION STREET
60' WIDE



DESIGNED BY:	INITIALS
DRAWN BY:	TLA
CHECKED BY:	TLA
APPROVED(DESIGN)	
APPROVED(CONSTRUCTION)	



103 S. Bradford Street
Dover, DE 19904
P.O. Box 558
Dover, DE 19903
302.744.9875 Tel
866.672.6428 Fax

EXISTING CONDITIONS EXHIBIT

225/223 W. DIVISION ST.
DOVER, DE 19901

SCALE 1" = 20'	DATE 3/13/2019	PROJECT NO. 2019020	FIGURE 1
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NOW/FORMERLY
MAYGAN BECKLES
 ED-05-076.08-05-23.00-00001
 12 N. NEW ST.
 D.R. 9439-27
 ZONING: RG-1

ALLEY
 10' WIDE

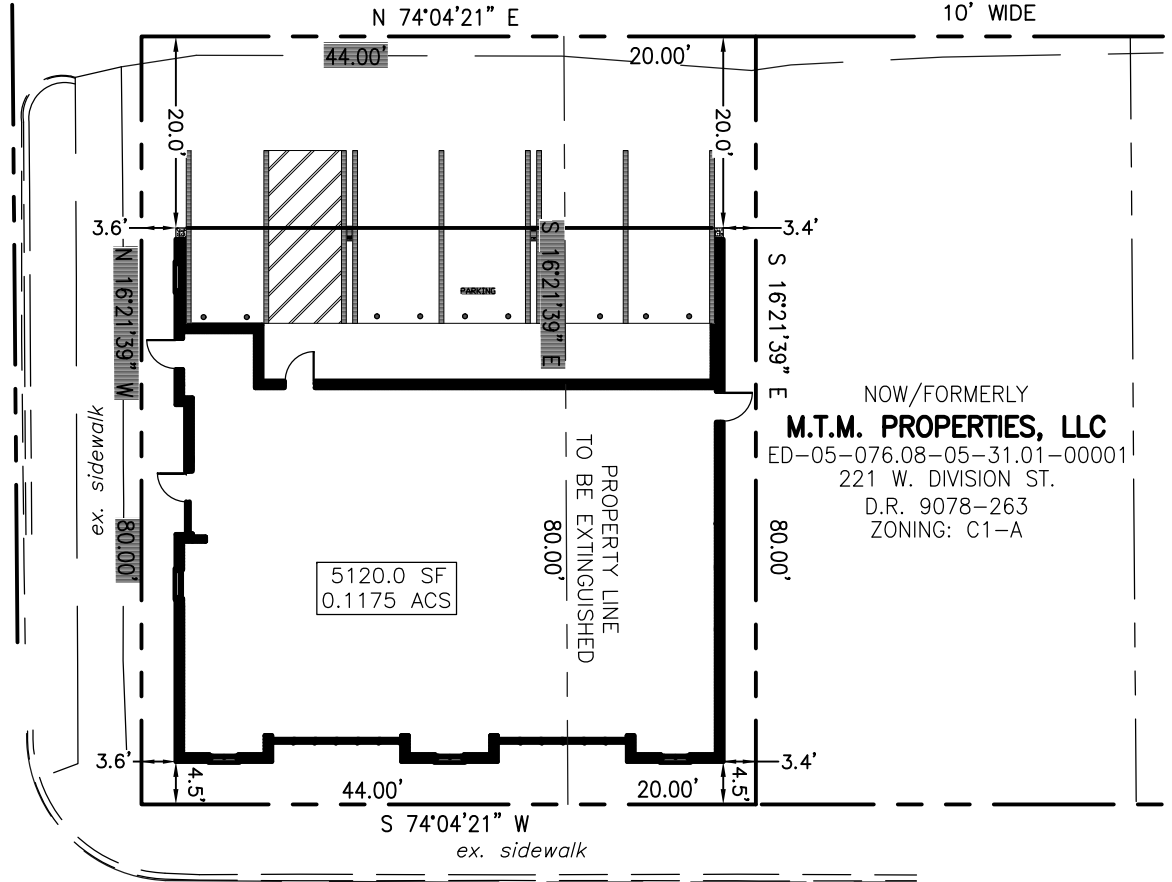


NOW/FORMERLY
WAYNE C. TRADER
 ED-05-076.08-05-27.00-00001
 303 W. DIVISION ST.
 D.R. 3539-248
 ZONING: C1-A

NEW STREET
 60' WIDE

NOW/FORMERLY
WELCOME HOME PROPERTIES, LLC
 ED-05-076.08-05-32.00-00001
 11 NEW ST.
 D.R. 8940-121
 ZONING: RG-1

ALLEY
 10' WIDE



NOW/FORMERLY
M.T.M. PROPERTIES, LLC
 ED-05-076.08-05-31.01-00001
 221 W. DIVISION ST.
 D.R. 9078-263
 ZONING: C1-A

DIVISION STREET
 60' WIDE

DESIGNED BY:	INITIALS
DRAWN BY:	TLA
CHECKED BY:	TLA
APPROVED(DESIGN)	
APPROVED(CONSTRUCTION)	



103 S. Bradford Street
 Dover, DE 19904
 P.O. Box 558
 Dover, DE 19903
 302.744.9875 Tel
 866.672.6428 Fax

SITE PLAN EXHIBIT

225/223 W. DIVISION ST.
 DOVER, DE 19901

SCALE 1" = 20'	DATE 3/13/2019	PROJECT NO. 2019020	FIGURE 2
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PROOF OF PROPERTY CONDITION
223 & 225 W. DIVISION STREET, DOVER

Front view from Division Street, 225 on left, 223 one story property next door on right



225 Interior



225 Interior



225 Interior



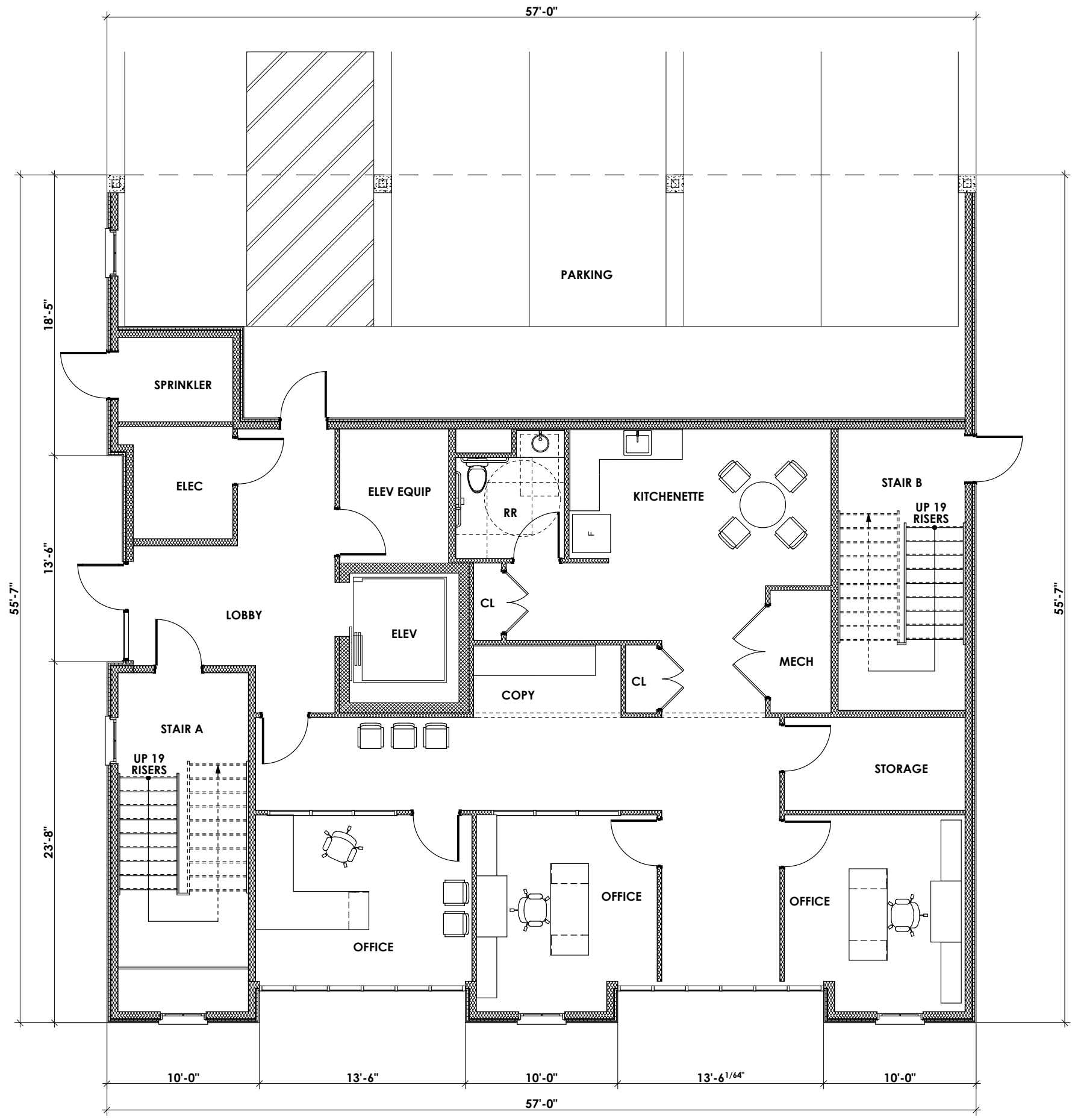
223 Exterior



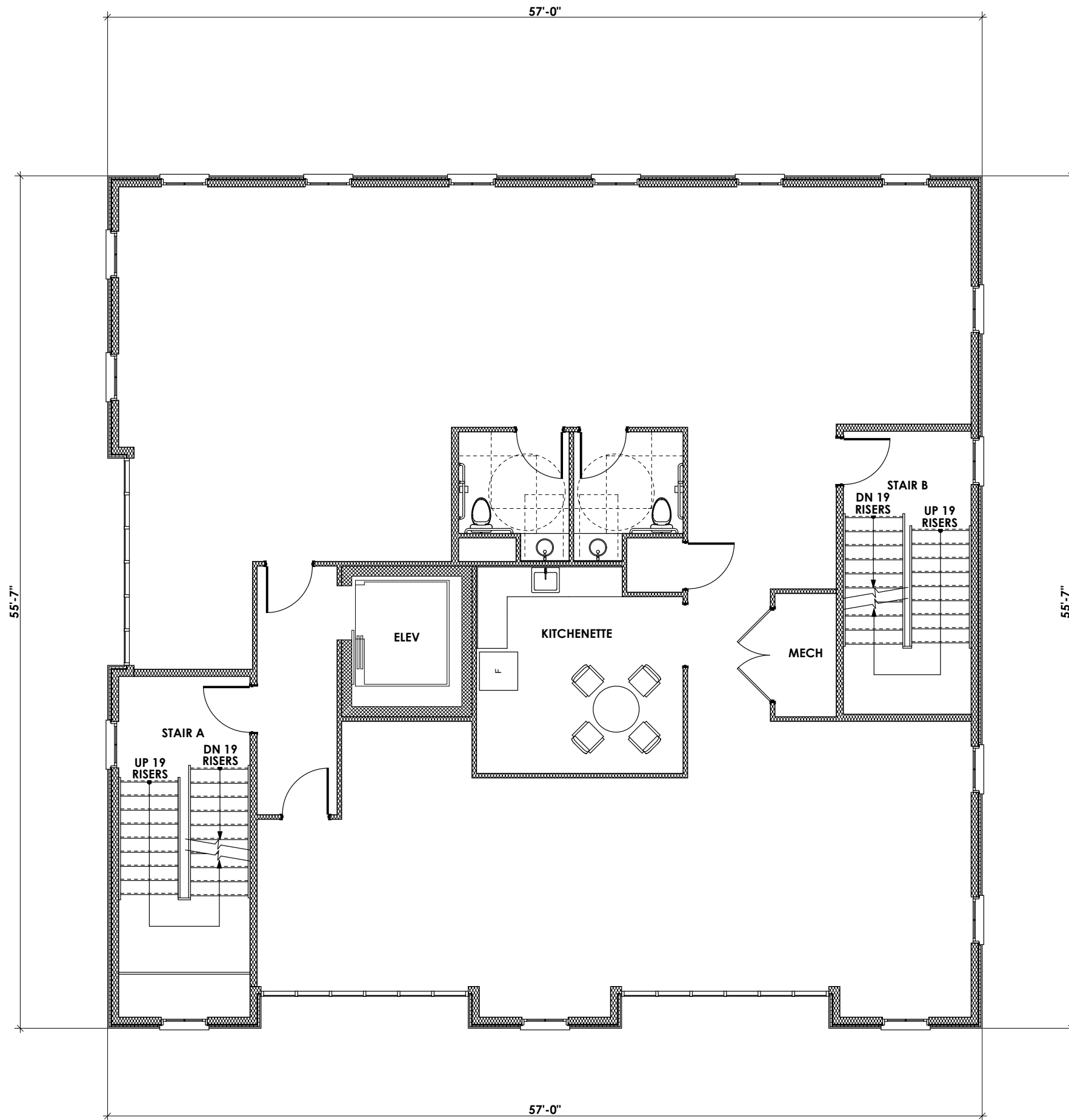
223 Interior



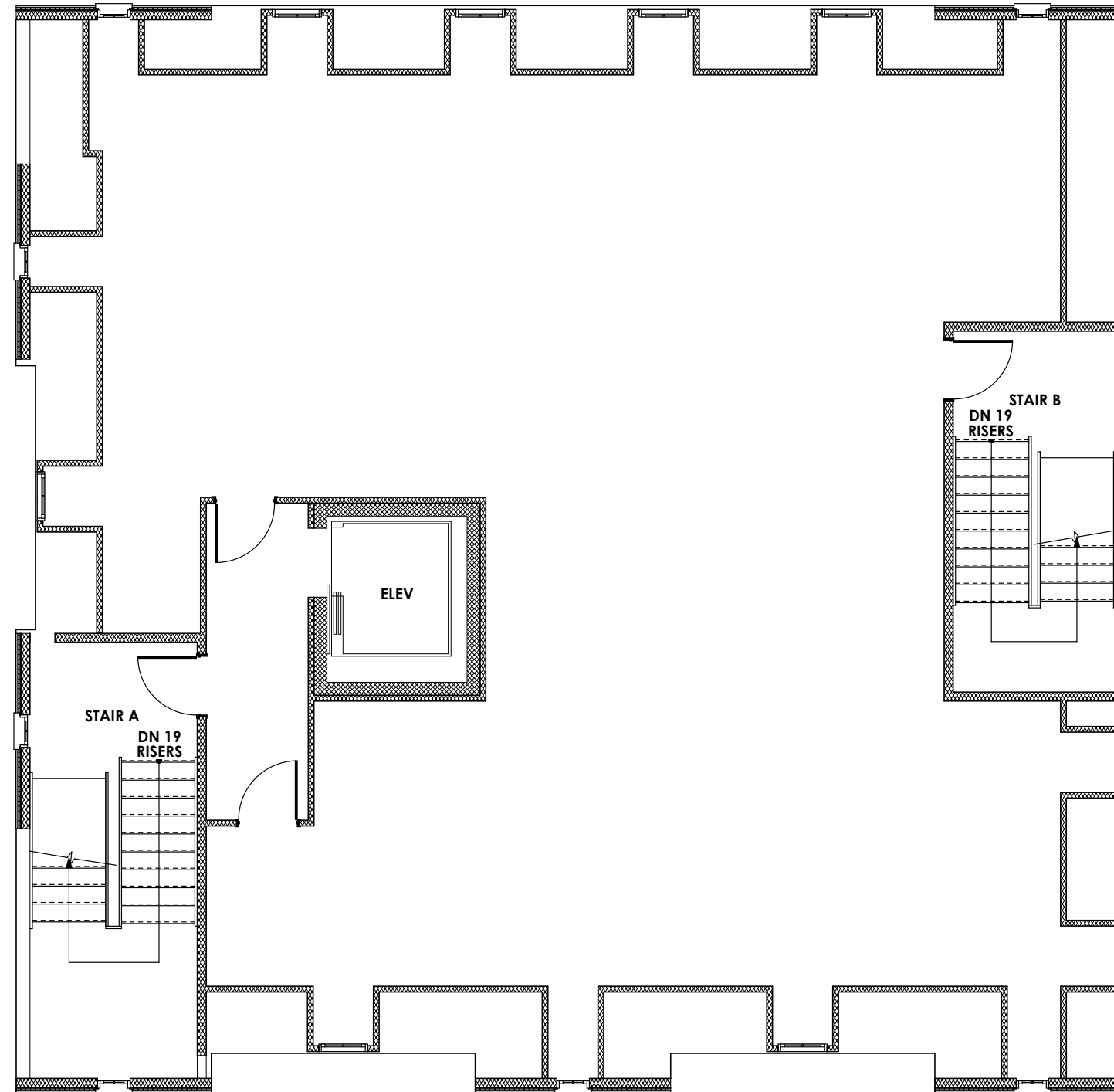




FIRST FLOOR



SECOND FLOOR



THIRD FLOOR

N. NEW STREET

