CITY OF DOVER BOARD OF ADJUSTMENT
AGENDA
Wednesday, September 18, 2019 at 9:00 AM

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

ROLL CALL

APPROVAL OF AGENDA

APPROVAL OF MINUTES of August 21, 2019 Meeting

COMMUNICATIONS & REPORTS

1. Reminder: The next Board of Adjustment regular meeting is scheduled for October 16, 2019 at 9:00am in the City Council Chambers.

OLD BUSINESS

Applicant #V-19-07

805 and 815 Forest Street, and 726 West Division Street. Victor Giangrant has requested a variance from the requirements of the *Zoning Ordinance,* Article 4 §4.15 pertaining to the maximum lot coverage in the C-3 (Service Commercial) Zone, and Article 3 §27.67 pertaining to the lot coverage, front, side and rear yard setbacks/landscaping requirements for the Corridor Overlay Zone (COZ-1). They are requesting the above variances to be able to utilize the entirety of the two lots addressed as 815 Forest Street and 726 West Division Street for their expanded car wash facilities, namely thirteen (13) new parking spaces with vacuum stations. Subject properties are zoned C-3 (Service Commercial Zone) and are subject to the COZ-1 (Corridor Overlay Zone). Tax Parcels: ED-05-076.08-01-40.00-000, ED-05-076.08-01-38.00-000, ED-05-076.08-01-39.00-000. The owners of record are Clean Cars Inc. and Melinda F. Giangrant. *This Application is continued from the August 21, 2019 Meeting of the Board of Adjustment. The Public Hearing remains open.*

- At the Request of the Applicant, Application V-19-07 will remain postponed as they are evaluating their proposed project for potential revisions.

NEW BUSINESS

Applicant #V-19-08

731 and 801 West Division Street. Central Delaware Housing Collaborative has requested variances from the requirements of the *Zoning Ordinance,* Article 3 §27.66 pertaining to the maximum number of stories and height in the COZ-1 (Corridor Overlay Zone); Article 3 § 27.63 (c)(ii) pertaining to the required 12-foot wide landscape buffer required in between building and the parking lot and drive areas; Article 3 §27.67 pertaining to open space and landscaping requirements in the COZ-1; and from Article 6 §5.3 pertaining to supplementary parking regulations for multiple dwellings. They are requesting these variances because they plan to construct a multiple-dwelling unit structure (apartments) to contain twelve (12) units that will be three (3) stories and thirty-nine (39) feet in height along with associated site improvements. The subject properties are zoned IO (Institutional and Office Zone) and subject to the requirements of

the COZ-1 (Corridor Overlay Zone). Tax Parcels: ED-05-76.08-01-34.00-000 and ED-05-076.08-32.00-000. The owner of record is AID in Dover, Inc. and equitable owner is Central Delaware Housing Collaborative. *This site was recently the subject of a Rezoning Application to permit the rezoning of both properties from C-2A (Limited Central Commercial Zone) to IO (Institutional and Office Zone) while remaining subject to the requirements of the COZ-1 (Corridor Overlay Zone). This application received Planning Commission recommendation for approval in May 20, 2019 and the rezoning was subsequently approved by the City of Dover City Council at their June 10, 2019 Meeting.*

Applicant #V-19-09

1203-1209 Walker Road (1205 Walker Road). MJ Stone, Inc. requested a variance from the requirements of the *Zoning Ordinance*, Article 4 §4.1 pertaining to the maximum height in the R-8 (One-family Residence) Zone. They are requesting this variance because the 150-foot-high existing radio tower with 3-foot antenna was previously considered legal non-conforming, but the recent alterations have increased the height of the structure by 11 feet (150-foot-high existing radio tower with 14-foot antenna). Subject property is zoned R-8 (One-family Residence Zone). Tax Parcel: ED-05-067.18-01-76.00-001-01. The owners of record are MJ Stone, Inc. c/o Mr. Michael Stone and Ms. Jessica Stone. *This site was recently the subject of a Conditional Use Plan Application C-19-04 to permit a Place of Public Assembly (Church) in an existing building at the rear of the property; it received conditional approval on July 15, 2019 from the Planning Commission.*

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
August 21, 2019

A Regular Meeting of the City of Dover Board of Adjustment was held on Wednesday, August 21, 2019 at 9:00 A.M. with Chairman Sheth presiding. Members present were Chairman Sheth, Mr. Keller, Mr. Hufnal, Colonel Ericson. Mr. Senato was absent.

Staff members present were Mr. Swierczek, Mr. Hugg, City Solicitor Mr. Rodriguez, and Mrs. Mullaney arrived at 9:15 A.M.

APPROVAL OF AGENDA

Mr. Hufnal moved to approve the agenda as submitted. The motion was seconded by Mr. Keller and unanimously carried 4-0. Mr. Senato was absent.

APPROVAL OF THE REGULAR BOARD OF ADJUSTMENT MEETING MINUTES OF JULY 17, 2019

Mr. Keller moved to approve the meeting minutes of July 17, 2019 with the necessary corrections. The motion was seconded by Colonel Ericson and unanimously carried 4-0. Mr. Senato was absent.

OPENING REMARKS CONCERNING APPLICATIONS

Mr. Dave Hugg, Planning Director stated that the meeting today will be conducted in accordance with the Agenda. There is one (1) application 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 application 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 September 18, 2019 at 9:00am in the City Council Chambers.

NEW BUSINESS

Applicant #V-19-07

805 and 815 Forest Street, and 726 West Division Street. Victor Giangrant has requested a variance from the requirements of the *Zoning Ordinance,* Article 4 §4.15 pertaining to the maximum lot coverage in the C-3 (Service Commercial) Zone, and Article 3 §27.67 pertaining to the lot coverage, front, side and rear yard setbacks/landscaping requirements for the Corridor Overlay Zone (COZ-1). They are requesting the above variances to be able to utilize the entirety

of the two lots addressed as 815 Forest Street and 726 West Division Street for their expanded car wash facilities, namely thirteen (13) new parking spaces with vacuum stations. Subject properties are zoned C-3 (Service Commercial Zone) and are subject to the COZ-1 (Corridor Overlay Zone). Tax Parcels: ED-05-076.08-01-40.00-000, ED-05-076.08-01-38.00-000, ED-05-076.08-01-39.00-000. The owners of record are Clean Cars Inc. and Melinda F. Giangrant.

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 August 4, 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. Swierczek gave a summary presentation of the Variance Application Request for a variance from the requirements of the *Zoning Ordinance*, Article 4 §4.15 pertaining to the maximum lot coverage in the C-3 (Service Commercial) Zone, and Article 3 §27.67 pertaining to the lot coverage, front, side and rear yard setbacks/landscaping requirements for the Corridor Overlay Zone (COZ-1). They are requesting the above variances to be able to utilize the entirety of the two lots addressed as 815 Forest Street and 726 West Division Street for their expanded car wash facilities, namely thirteen (13) new parking spaces with vacuum stations. The summary included references to the Staff Report on the Application.

Chairman Sheth asked Mr. Swierczek whether he had a prior meeting with the applicant? Mr. Swierczek replied that there was a Pre-application meeting with the applicant prior to today's meeting.

Chairman Sheth asked Mr. Swierczek if all the issues mentioned today were explained to the applicant? Mr. Swierczek replied no, not since receiving the material(s) subject to the application.

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

Representative: Mr. Victor Giangrant, Owner, Clean Cars Inc.

Mr. Giangrant testified that there have been radical changes in their industry. It seems like the trend is going away from full-service car wash which we are. This means vacuuming out the vehicles, wiping down the dashboard, windows and washing the exterior of the vehicle. Some days we have close to 30 employees. We currently employ a total of forty-two employees. Last year we had 120 employees on our books. That trend is coming to an end with the labor being the way that it is; everyone is going to what is called an Express Service. The Express Service for the size of his operation can be run by two persons. The Express Service offers free vacuums to customers, whereas, they vacuum their own vehicle. Then they sit in their vehicle and drive through the car wash. It eliminates a lot of jobs. They do not want to do that; they want to keep the full-service tradition alive. They have a lot of families depending on their operation. They need to get with the times and technology. They need to offer the flex service which consists of

the free vacuum as well as the full-service. This is the situation that we are in right now. In order for us to keep up with the competition, we need to offer this service.

Chairman Sheth mentioned that the Board of Adjustment tries to help the applicant as well as make the interpretation of the Ordinance. Mr. Swierczek expressed the Recommendation. Chairman Sheth asked the applicant if he asked any questions regarding the Recommendation. Mr. Giangrant replied that the first time he spoke with Mr. Swierczek in the office they discussed the application process. They have not spoken since that time. Evidently, there were some other suggestions made that he was not aware of until just now.

Colonel Ericson mentioned that if the Board voted on the application and the variance is disapproved then the applicant will have to wait one year before coming back before the Board. If the application is tabled, it will give the applicant the opportunity to talk with Staff to see if they could come up with an idea on how to meet the requirements of the Corridor Overlay Zone and the other plans that are restricting the use of this property. He may not need a variance.

Chairman Sheth asked the applicant if he understood that if the Board rejects the variance application, then he would not be able to come before the Board with the same variance until a year later.

Colonel Ericson stated that his recommendation is that the variance application be tabled and then looked at again in the future after the applicant has had a chance to talk with Staff to see if the property can be developed to meet the compliance of all requirements.

Chairman Sheth asked Solicitor Rodriguez if it was a good suggestion. Solicitor Rodriguez replied it was an appropriate suggestion.

Chairman Sheth asked the applicant if he understood the recommendation and he if agreed. Mr. Giangrant replied yes, he understood, and he agreed with the recommendation.

Chairman Sheth mentioned that the hearing will be continued at the next meeting. The persons that came today in the audience for the hearing will not have to come back, but they can come back if they want.

Mr. Hufnal stated that he agreed with Chairman Sheth and he thought that the Planners gave some good suggestions of what could be done to alter the Plans to bring it into conformity. If the applicant and Staff can sit down and discuss the suggestions, it would be beneficial for both sides.

Chairman Sheth asked Mr. Swierczek if it was okay if the applicant met with him. Mr. Swierczek replied that Staff would be happy to meet with the applicant and of course Staff would respect the Board's decision.

Colonel Ericson asked if the Board should continue this and the applicant comes up with a new Plan for the Board, would they have another chance to come forward and open up the hearing. Chairman Sheth replied yes, the public hearing will remain open.

Mr. Hufnal asked if the application still had to go before the Planning Commission to get the plan approved to demolish the two (2) houses and consolidate the three (3) Lots into one. Can they still continue to do that part of the process before the Board hears it again? Mr. Swierczek replied it is the practice of the Planning Office to wait until the Board of Adjustment makes any pertinent decision before going to the Planning Commission. The Planning Commission would not like to review a project that has not yet received approved variances if required.

Chairman Sheth asked Mr. Hufnal if that answered his question. Mr. Hufnal replied yes, but he did not think it was right.

Mr. Keller asked Mr. Hufnal if he did not think it was correct or if he did not necessarily approve of that procedure. Mr. Hufnal stated that he did not approve of the procedure. He would think the applicant would go before the Planning Commission and get that approval first. Because if they did not get approved at the Planning Commission then they would have spent the money on this variance application which they would not have needed to do.

Mr. Swierczek mentioned that it would work the other way as well if the applicant would go before the Board of Adjustment first and the proposed variances were denied while they were waiting for Planning Commission. They would have to go through an application process for Planning Commission as well. If that was approved and the variance was denied, then the application for the Planning Commission would subsequently not be permitted to proceed.

Colonel Ericson recommended that the Board continue with the case and talk about the procedure later.

Mr. Keller asked the applicant if he employed Elliott Surveying for the Plans that have been presented as an Exhibit with the submission for the variance application. Mr. Giangrant replied yes.

Mr. Keller mentioned that he had to agree and go along with the tone of what has transpired so far. Mainly, it appears that the applicant has some willingness to perhaps table the presentation for a subsequent presentation without interfering with the one-year delay if the application was to be denied.

Mr. Keller asked when Elliott Surveying was employed were other possibilities for the proposed layout considered other than the one presented on the Exhibit Plan. Mr. Giangrant replied they looked at a lot of possible ways, but this one made more sense as far as the traffic flow.

Mr. Keller mentioned that perhaps it is understood by virtue of his (Mr. Giangrant's) history at the car wash and he understood that, but there is no designated traffic flow pattern quite frankly. He questioned people exiting the new proposed vacuum station; there was no exiting strategy for them. He did not know if they circled around to then have their car washed or they exit directly into Division Street. Mr. Giangrant replied they come right around the building and get in line, there will be three (3) lanes.

Mr. Keller asked if he would not anticipate someone simply utilizing the vacuuming and not getting a car wash. Mr. Giangrant replied of course he is sure that is going to happen. There is an escape exit in the event that does happen. Mr. Keller mentioned that it was not shown, but he understood. Mr. Giangrant replied it is existing.

Mr. Keller mentioned that West Division Street and Forest Street are under State maintenance control. The applicant would require certain approvals for entrances and exits by virtue of redevelopment of the Lot. Mr. Giangrant replied he spoke with them and they stated that it was just a standard procedure since the egress and ingress is existing; it would be fine. As a matter of fact, Mr. Giangrant mentioned that he asked if he could slide the entrances and exits down, and they said yes.

Chairman Sheth asked the applicant that after the Board meeting is it possible that the entire Plan may be changed. Mr. Giangrant replied yes, of course. Chairman Sheth stated that the best thing would be to agree to have a meeting with the Planning Staff. Mr. Keller agreed.

Mr. Keller mentioned that the Board has a history of willingness to work with applicants. The burden of proof to gain approval for the application is upon the applicant, company and/or corporate entity. Mr. Keller mentioned that it is a good idea; and he would be in agreement to accept the tabling for further consideration on the part of possibilities with regards to this layout with City personnel.

Chairman Sheth mentioned the audience and the public hearing. Those speaking in favor of or against will be given a chance to speak in case a decision is not made today. When whatever future plan comes, the audience will be most welcome and invited to present their concerns whether in favor or against. At the current time, the Board is not going to discuss the same Plan. The Plan will be changed. He's not sure how it will be changed, but the audience will be invited to present their concerns. City Solicitor suggested a public hearing after Mr. Giangrant comes back with the changes and after meeting with Staff. Then the ladies and gentlemen will know exactly what is proposed and they are not going to know that today.

Mr. Keller questioned the possibility of members of the audience who would perhaps otherwise would like to elect to speak today in favor of or against. Would that weigh on the future proposal? Would there be benefits by hearing their comments, one way or another which could possibly guide the future production of a proposed change to this Plan?

Chairman Sheth mentioned his concern is what if those in favor or against comment it should not be prejudicial on the present understanding verses the future proposal that may be totally different.

Colonel Ericson mentioned that the public has taken their time to come to the meeting. They have position that they would like to express because they may not be able to attend the meeting the next time. The Board should have a Public Hearing now and keep in mind when it comes back. True, the Plan may change and the audience that are here today may come back again. At least we will have their thoughts on record; and it will also help the owner meet their interests and affect the final decision.

Chairman Sheth and Solicitor mentioned that they agreed with Mr. Keller and Colonel Ericson.
Chairman Sheth opened the public hearing.

Mr. Hector Stevenson Green who lives at 830 Forest Street was sworn in by Mr. Rodriguez.
Mr. Green mentioned that his main concern with the expansion of the Car Wash is the traffic flow. We need a one-way entrance to the Car Wash. If you are coming from Saulsbury Street towards Loockerman Street, the cars are making a left-hand turn. It puts a hardship on the neighbors trying to back out of their driveways. With the State and DelDOT being in Phase 1 of the bike path, Division Street will become a one lane road going towards Saulsbury Road. Therefore, you will be losing half of Division Street. We have not heard anything regarding the exits or entrances to the new Phase of the Car Wash. Traffic flow is our main concern because it is busting at the seams at the current time. Plus, school is getting ready to start back up; it will get worse. The expansion project is probably good for the business, but it is bad/negative for the community and people that live near the Car Wash unless we can work with a traffic flow in and out of the Car Wash. The expansion is also a hazard, children walking and with one sidewalk being totally eliminated because of the Phase I Project construction near Bennie Smith Funeral Home. He noticed a proposal to the Car Wash that was going to be built on DuPont Highway. He had the same complaint regarding the water and sewer system, tire shine chemicals that is used, drainage system, etc. The neighbors need to know all that information with the EPA and what the impact will be in their neighborhood. Chairman Sheth replied that those questions will be addressed at the Planning Commission meeting. Mr. Green also mentioned the neighbors was also concerned about safety.

Mr. Keller asked Mr. Green if the street construction currently on Division Street was part of what he was referring to regarding the sidewalk reconstruction. Mr. Green replied he was referencing the Bike Path Phase I that is supposed to go from Subway on Saulsbury Road to St. Jones River/Silver Lake extension. It will eliminate half of the road on Division Street.

Ms. Amelia Howard who lives at 814 Forest Street, directly across from the Car Wash was sworn in by Mr. Rodriguez.

Ms. Howard mentioned that her concern was the same as Mr. Green's concern. The traffic is currently horrendous. There are times when she needs to come out of her driveway; she will have to go east and go around to go west. It is a serious accident waiting to happen. Years ago, there were vacuums on the opposite side of the Car Wash, she wanted to know why they could not put the vacuums on the right side instead of demolishing the houses in our neighborhood. As mentioned by Mr. Green, the children are getting ready to go back to school and the traffic is terrible. If you have ever gone to the Car Wash, you are aware the traffic is terrible. DelDOT or someone has to do something to protect the children. Again, as previously mentioned it is going to be a serious accident because the traffic flow is horrible. She asked that the neighbors be considered when making plans because they live there. The owners do not live in the neighborhood, they just have their business and work there.

Mr. Hugg mentioned as a reminder that the Board is only committed to have one public hearing on an application; and he recommended that the Board suspend or whatever the proper legal term is to keep the hearing open so that at the next meeting the hearing will continue and the Board will not violate the Code.

Chairman Sheth mentioned that it will be part of the motion to keep the public hearing open.

Colonel Ericson moved to keep the public hearing open until the next meeting. The motion was seconded by Mr. Keller. The motion unanimously carried 4-0.

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

Colonel Ericson moved to table variance application V-19-07. The motion was seconded by Mr. Hufnal. The motion unanimously carried 4-0.

The meeting was adjourned by Mr. Keller and seconded by Mr. Hufnal at 9:43 A.M.

Sincerely,

Maretta Savage-Purnell
Secretary

1) To allow an increase in the maximum permitted number of stories from 2 to 3, and to increase the maximum height in feet permitted for a building in the COZ-1 from 35 feet to 39 feet
2) A reduction in the landscaped buffer area required between the building and the parking lot and drive areas from 12 feet to 10 feet, and a reduction in the required width of the sidewalk in the buffer area from 6 feet to 5 feet
3) A reduction in the minimum 5 feet of landscaped open space to 0 feet along the western side yard property line to accommodate a fire lane
4) A variance from the requirement that no parking space is to be located within 3 feet of a Side Yard lot line

For the property addressed as 801 West Division Street:

1) A reduction in the landscaped buffer area required between the building and the parking lot and drive areas from 12 feet to 8.5 feet, and a reduction in the sidewalk in the minimum required sidewalk width in the landscaped buffer area from 6 feet to 4 feet.
2) A reduction in the minimum required 5 feet of landscaped open space along the side property lines to 0 feet along the eastern side yard property line, and 3.3 feet along the western side yard property line
3) A reduction in the minimum 3 feet required between parking spaces and the side yard property lines, a reduction in the minimum required distance between parking spaces and the rear property line from 3 feet to 9 inches

Project Description

The applicant proposes to maintain the existing building on the property addressed as 801 West Division Street and re-establish its use as an Emergency Shelter. The applicant also plans to demolish the existing (one-family residence) building on the property addressed as 731 West Division Street and construct a new multiple dwelling-unit (apartment style) building. This development is proposed as a Charitable Institution whose activities are permitted uses in this zone. The applicant has indicated that they do NOT intend to combine the two (2) separate parcels. Therefore, to develop these two parcels, the applicant is requesting several variances.

First, for the property addressed as 731 West Division Street, the applicants are seeking variances from the provisions of the *Zoning Ordinance,* Article3 §27 pertaining to the zoning and bulk standards of the COZ-1 (Corridor Overlay Zone), so as to be able to increase the maximum height of the building from 35 feet to 39 feet; to increase the maximum number of stories permitted from two to three stories; reduce the landscaped buffer area required between the building and the parking lot and drive areas from 12 feet to 10 feet; and a reduction in the required width of the sidewalk in the buffer area from 6 feet to 5 feet. For the property addressed as 731 West Division Street, the applicant is further seeking a variance from Article 6 §5 pertaining to supplementary parking regulations. Specifically, from the requirement that no parking space is to be located within 3 feet of a side yard lot line.

In relation to the property addressed as 801 West Division Street, the applicant is also seeking variances from *Zoning Ordinance,* Article 3 §27 pertaining to the zoning and bulk standards of the COZ-1 (Corridor Overlay Zone). They are again asking to be permitted to reduce the landscaped buffer area required between the building and the parking lot and drive areas from 12 feet to 8.5 feet; a reduction in the required width of the sidewalk in the buffer area from 6 feet to 4 feet; a reduction in the minimum required 5 feet of landscaped open space along the side property lines to 0 feet along the eastern side yard property line, and 3.3 feet along the western side yard property line.

Finally, for the property addressed as 801 West Division Street the applicant is seeking a variance from the *Zoning Ordinance,* Article 5 §5.3 which requires that no parking be located within 3 feet of a side or rear property line. The applicant has indicated that parking will be located within 3 feet along both the side and rear property lines. They have indicated that it will be only (9) inches from the rear property line, they have not specified how far it would be from the side yard property lines. The Site Plan submitted by the applicant (Exhibit C) would seem to suggest the side yard setback for parking would similarly be approximately 9 inches.

A Site Plan of the proposed layout of the two properties is provided by the applicant in Exhibit C.

This project has not yet been reviewed by the Planning Commission as any Code requirements seeking variances must first be considered by the Board of Adjustment. The submission and review of a Site Development Plan application is required. An application

filing of the Site Development Plan has been received and will begin the review process in anticipation of being scheduled to go to the Planning Commission for a review at their October 21, 2019 meeting.

Adjacent Land Uses
The properties are zoned IO (Institutional and Office Zone) and subject to the requirements of the COZ-1 (Corridor Overlay Zone). The subject properties are located on the north side of West Division Street, west of Ridgley Street. The properties are addressed as 731 and 801 West Division Street. There is an unnamed alley that runs along the north of the property addressed as 801 West Division Street. Along West Division Street to both the east and west of the subject site are properties zoned C-2A (Limited Central Commercial Zone), containing a mix of uses, primarily commercial. The properties to the north along Weston Drive are zone M (Manufacturing Zone) and the properties to the south across West Division Street are zoned C-1A (Limited Commercial Zone) and C-3 (Service and Commercial Zone) containing a mix of commercial and service uses. Properties along both sides of Division Street to the east and west are also subject to the requirements of the COZ-1 (Corridor Overlay Zone).

A Zoning Map Exhibit (Exhibit A) showing the property and adjacent zoning districts can be found in the attachments to this Report.

Code Citations
The subject properties are both zoned IO (Institutional and Office Zone), having both been rezoned under application Z-19-06 which was recommended for approval by the Planning Commission at their May 2019 meeting. The Rezoning to IO was then approved by the Dover City Council at their June 2019 meeting. The application to rezone was submitted in preparation for this project. The subject properties are also subject to the COZ-1 (Corridor Overlay Zone).

According to *Zoning Ordinance,* Article 3 §10, both Emergency Shelters and Charitable Institutions are permitted uses in the IO Zone. The proposed development at the property addressed as 731 West Division Street is being built as a multi-dwelling unit building (Apartments). The existing building at 801 West Division Street is proposed to be utilized as an Emergency Shelter. The proposed development of apartment-style units could be considered as permitted in the IO zone only when clearly documented and established as part of a philanthropic or charitable institution. The *Zoning Ordinance* offers the following definitions:

> *Emergency Shelter*: A facility providing temporary housing to homeless or transient persons in a dormitory style setting; such facility may also provide or facilitate other social services including counseling and vocational training.
>
> *Dwelling, multiple:* A building, or portion thereof, containing more than two dwelling units
>
> Dwelling unit : A building or entirely self-contained portion thereof containing complete housekeeping facilities for only one family, including any domestic servants employed on the premises, and having no enclosed space (other than vestibules, entrance or other hallways or

> porches) or cooking or sanitary facilities in common with any other dwelling unit. A boarding[house] or roominghouse, convalescent home, dormitory, fraternity or sorority house, hotel, inn, lodging, nursing, or other similar home, travel trailer, recreational vehicle, or other similar structures or vehicles shall not be deemed to constitute a dwelling unit.

The format of the building currently existing on the parcel addressed as 801 West Division Street is considered to be a Dormitory and does not meet the definition of a multiple dwelling-unit facility. The proposed building to be erected at the property addressed as 731 West Division Street is in the format of a multiple dwelling unit (Apartment) building. This building is part of the overall shelter facility and program; it is considered a Charitable or Philanthropic Use. Both uses are permitted in the IO (Institutional and Office Zone).

The subject properties and surrounding properties are within the COZ-1 (Corridor Overlay Zone). This overlay zone includes additional provisions related to building design, landscaping, parking layout, and height among other criteria. The provisions of the COZ-1 are found in the *Zoning Ordinance* Article 3 Section 27.

Supplementary regulations for parking and loading facilities are found in the *Zoning Ordinance* Article 6 Section 5. Specifically, *Cod*e states:

> *Supplementary parking regulations for multiple dwellings.* No parking space shall be located in any front yard or within three feet of any lot line in side or rear yards. The parking of motor vehicles within 15 feet of any wall or portion thereof, is prohibited. Except for electric vehicle charging stations, no automobile service shall be permitted to be extended to users of the lot, including sales, repair or fueling, and no gasoline, oil, grease, or related supplies shall be stored or sold in any such lot or in any garage on such lot.

As with parking regulations, there are instances where bulk standards or other dimensional criteria (such as height) are stated in various sections within the *Zoning Ordinance,* such as in the base zoning, overlays, or supplemental regulations. In cases where multiple standards are given, the more stringent standard applies.

Table 1 on the following page summarizes the requirements applying to both properties as described in Code and as relates to the applicant's variance requests. The standards requiring a variance are provided by address with the variance.

Table 1:

	Most stringent as described in *Code*	As proposed in Applicant's Project
731 W. Division Street		
Standard:	**Requirements**	**Proposed**
Landscaped Buffer Area width between Building and Parking Lot	12 feet	10 feet
Minimum required sidewalk width in the Landscaped Buffer Area	6 feet	4 feet
Minimum required depth of Landscaped Open Space along side yard property line	5 feet	0 feet (west)
Minimum distance for parking spaces from Side Yard Lot Line	3 feet	0 feet (west)
Maximum permitted in COZ-1:		
Building Height (stories)	2 story	3 story
Building Height (ft.)	35 feet	39 feet
801 W. Division Street		
Landscaped Buffer Area width between Building and Parking Lot	12 feet	8.5 feet
Minimum required sidewalk width in the Landscaped Buffer Area	6 feet	4 feet
Minimum required depth of Landscaped Open Space along the side property lines	5 feet	0 feet (east) property line 3.3 feet (west) property line
Minimum required distance between parking spaces and the side yard property lines	3 feet	9 inches

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:
   "Both parcels, Parcel 32 & 34 are zoned IO (Institutional and Office) which permits the proposed use of the transitional housing. The proposed site is bordered on the northeast, east and west by parcels that are currently zoned Limited Central Commercial (C-2A), on the northwest by a parcel that is zoned Manufacturing (M). All of the surrounding parcels are owned by Bennie Smith Real Estate, LLC and are primarily used to support the Bennie Smith Funeral Home business located at 717 W. Division Street."

   Staff Response: The IO Zone permits Business, professional, or governmental offices; Banks; Research, design, and development laboratories; Public and institutional uses including hospitals, medical clinics, libraries, police stations, courthouses, transit centers, schools, colleges, universities, places of public assembly, **philanthropic and charitable institutions**, parks, playgrounds, public indoor recreation centers, athletic fields; Public utility rights-of-way and structures necessary to serve areas within the city; Child day care centers, provided they are established in accordance with all applicable state regulations pertaining to child care and provided that they are established and maintained in accordance with article 5, section 14; **Emergency shelters** and transitional housing; Adult day care facilities provided they are established in accordance with all applicable state regulations pertaining to adult care and provided that they are established and

maintained in accordance with article 5, section 22. It also conditionally permits Firearm ranges, prisons, and correctional facilities; Public incinerators; and Hotels and restaurants. The proposed uses are considered as an Emergency Shelter and Charitable/ Philanthropic Institution.

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

Applicant Response:
"Besides the adjacent dwelling located at 721 W. Division Street, this portion of Division Street is industrial/ commercial in nature. The property to the northeast is primarily used as limousine parking for the existing Bennie Smith Funeral Home business located at 717 W. Division Street. The adjacent parcel that is located to the west, zoned C-2A, is mostly a vacant lot with a small single story garage located in the back corner of the lot. The existing Capitol Cleaners – Emerald City Wash World Laundromat is located along the south side Division Street directly across from the proposed site. There are also several office buildings, a car wash and an automotive repair business located along the south side of Division Street in the vicinity of the proposed site."

Staff Response:
The character of the immediate vicinity is predominately commercial with a variety of commercial and service establishments in the immediate vicinity. There is only one one-family residence in the vicinity located at 721 West Division Street. Immediately across the street is a Car Wash and Laundromat, and adjacent to the properties to the north is zoned M (Manufacturing Zone).

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

Applicant Response:
"Please refer to Exhibit A. The Central Delaware Housing Collaborative intends to redevelop the subject properties, Parcel 32 and 34 into a 3-story 12-unit transitional housing apartment building. The existing single family dwelling located on Parcel 32 that has approximately 8 bedrooms that will also be used as transitional housing. Removing the restrictions that are requested in this application will not seriously affect or impact the neighboring properties. Both parcels located to the east and west are mostly vacant lots. The parcel located to the east, 723 W. Division Street, is currently a vacant parcel and the parcel located to the west, 811 W. Division Street, is mostly a vacant parcel except for the 1-story garage located in the back of the lot. Except for the building height restriction, all of the other restrictions that we have requested are internal to the proposed development and will not be visible from the neighboring properties. In order to meet the perimeter access fire marshal code we have provided a 15' side yard buffer along the east side of the proposed building which is 5' greater than the required side yard setback of 10'."

Staff Response:

Staff does not think that removing these restrictions would have any adverse effect on the neighboring properties or uses. As noted, the proposed uses are permitted. The main obstacle faced by the applicant for redevelopment of the properties is the COZ-1 (Corridor Overlay Zone) provisions. On larger parcels of land stringent requirements of the COZ-1 for setbacks, landscaping and open space are more easily applied. The applicant is proposing this development on two (2) parcels of land that will share a common entrance drive. Staff believes the applicant has done well to mitigate any impact that the requested variances may have on the exterior of the site. Instead, they are proposing a development that would utilize the variances on the interior of the sites as much as possible, specifically to minimize any impact on neighboring properties. Additionally, the building at 801 West Division Street is to remain and its current building placement and existing site improvements (parking areas) are legal nonconforming to a number of COZ-1 provisions.

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 at 731 West Division Street has the potential to further the first, second and fifth objectives on this list.

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 Central Delaware Housing Collaborative's building would be in keeping with the goals of the Plan.

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:
   "If the restrictions are not removed there will be unnecessary hardship on the equitable owner by severely limiting the size and number of transitional housing units that would be permissible on the subject parcels. Exhibit A is currently showing the minimum number of units on Parcel 34 that are needed in order to make the project economically feasible. If the owners are required to reduce the building width in order to meet certain landscape buffer requirements the proposed number of apartment units will be severely reduced thereby severely reducing the viability of the project."

   Staff Response:
   Staff acknowledges that the applicant has communicated that the number of units is needed at twelve (12) to make this overall project financially viable for the group. The applicant has also further communicated that the only way to accommodate that number of units to increase the height of the building to 3 stories. As with any residential development within the City of Dover, the number of dwelling units provided demands a requisite number of parking spaces to be accommodated. Therefore, the number of dwelling units needed to make the project financially viable for the applicant directly relates to the variances requested. Staff believes that the applicant is asking for the minimum variances necessary in order to achieve this. In most instances they are providing the required elements of sidewalks, landscaped buffer areas and open spaces with just reductions in widths. Staff also acknowledges that some of the variances are related to existing building placement, the location of a shared entrance drive/ fire lane, and the need to keep the two properties as separate parcels due to project ownership and financing.

Variance Recommendations
Staff recommends approval of the variances as described above for reasons as follows:

- The proposed use for an Emergency Shelter and Charitable/ Philanthropic institution is in keeping with the nature and allowable uses in the IO Zone.
- The properties are currently vacant and in poor condition and this redevelopment (reuse of an existing building and a new building) would constitute a significant 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, building height or setback and buffer widths were not granted, the applicant would be greatly restricted in the

availability of floor space to provide for their needs and subsequent parking requirements.

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.

GUIDE TO ATTACHMENTS

Exhibit	Description/Author	# Pages
A	Zoning Map Exhibit (Staff)	1
B	Applicant Responses to Criteria	3
C	Site Plan of Existing Properties (Applicant)	1

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

_____ Area Variance
_____ Use Variance
_____ Appeal
_____ Pre-App Date

Board of Adjustment Application

Application Information

Property Address: 731 & 801 West Division Street, Dover , DE 19904

Tax Parcel Number: 2-05-076.08-01-34.00-00001 & 2-05-076.08-32.00-00001

Owner Name: Central Delaware Housing Collab

Property Zoning: Institutional and Office (IO)

Variance (s) Requested: See detailed description pages 1-3 attached

*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

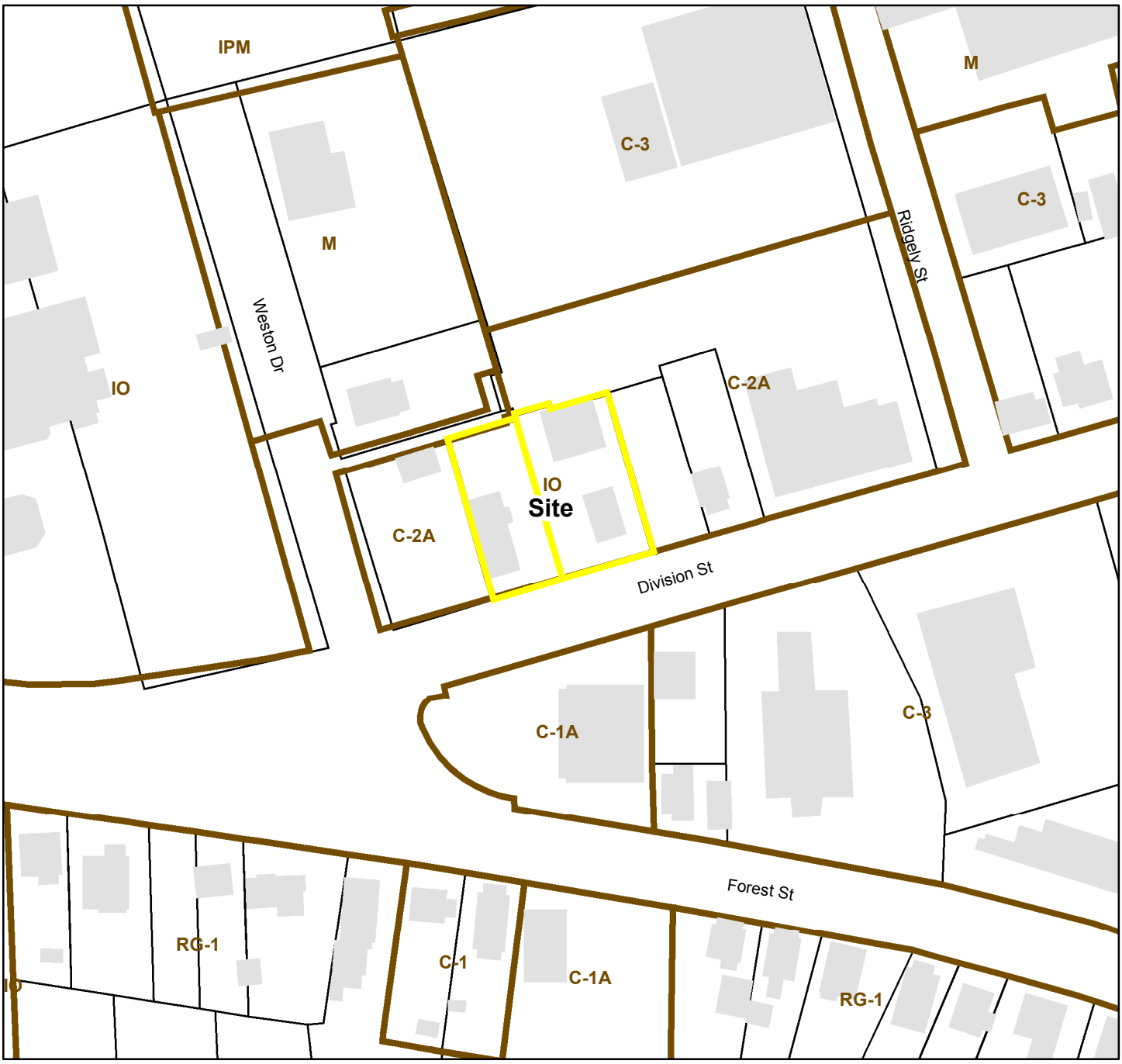
I Dan Houghtaling do affirm that I am the property owner on which the variance is sought and that all the information provided in this application is accurate to the best of my knowledge and belief.

Signature Title Date

City of Dover

Department of Planning & Inspections

Exhibit A
Application No.: V-19-08



Title: Central Delaware Housing Collaborative
Address: 731 and 801 West Division Street
Parcel IDs: ED-05-076.08-01-34.00-000
ED-05-076.08-01-32.00-000
Zoning: IO (Institutional and Office Zone)
COZ-1 (Corridor Overlay Zone)
Owner: Delaware Housing Collaborative
Date: 09/11/2019

Legend

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

N
W E
S

0 75 150 300 Feet

Office Location
103 South Bradford Street
Dover, DE 19904

Mailing Address
P.O. Box 558
Dover, DE 19903

Phone: 302-744-9875
Fax: 866-672-6428
www.mountainconsultinginc.net

mountain consulting

Kim I. Adams
President

Troy L. Adams, P.E.
Vice President

VARIANCES REQUESTED

The following variances are requested for the property located at 731 W. Division Street, parcel 2-05-076.08-01-34.00-00001 (Parcel 34).

1. An "Area Variance" for relief from the requirement of the Zoning Ordinance, Section 27 – Corridor Overlay Zone 1 (COZ-1), Section 27.66 Building Height, requires that buildings be limited in overall height to 35 feet and shall not exceed two stories. We are proposing a 12-unit, 3-story apartment building be constructed on Parcel 34 with an approximate height of 39 feet.

2. An "Area Variance" for relief from the requirement of the Zoning Ordinance, Section 27 – Corridor Overlay Zone 1 (COZ-1), Section 27.63 Parking, Paragraph C, sub-section (ii), requires that there be a landscaped buffer area of at least 12 feet in width between the building and the parking lot and drive areas. The buffer area shall include provisions for a sidewalk of at least 6 feet and no greater than 8 feet in width. We are seeking a reduction in the buffer area between the building and the drive isle area from a required 12 foot width down to a width of 10 feet and a reduction in the sidewalk width from 6 feet to 5 feet.

3. An "Area Variance" for relief from the requirement of the Zoning Ordinance, Section 27 – Corridor Overlay Zone 1 (COZ-1), Section 27.67 Open Space and Landscaping, Paragraph C, Side and rear yards, requires a minimum of five feet of landscaped open space shall be provided along all side and rear lot lines when abutting a nonresidential use. Along the western side yard/property line we are seeking a variance from the requirement to provide an area for landscape open space. The area along the western side yard will be paved and will be part of the required fire lane.

4. An "Area Variance" for relief from the requirement of the Zoning Ordinance, Article 6, Section 5, paragraph 5.3 that no parking space shall be located in any front yard or within three feet of lot line in side or rear yards. The parking space that is located adjacent to the dumpster is within three feet of the side yard.

The following variances are requested for the property located at 801 W. Division Street, parcel 2-05-076.08-01-32.00-00001 (Parcel 32).

5. An "Area Variance" for relief from the requirement of the Zoning Ordinance, Section 27 – Corridor Overlay Zone 1 (COZ-1), Section 27.63 Parking, Paragraph C, sub-section (ii), requires that there be a landscaped buffer area of at least 12 feet in width between the building and the parking lot and drive areas. The buffer area shall include provisions for a sidewalk of at least 6 feet and no greater than 8 feet in width. Concrete curbing is also required to be installed between the sidewalk and the parking lot. We are seeking a reduction in the buffer area between the building and the parking spaces from a required 12 foot width down to a width of 8.5 feet and a reduction in the sidewalk width from 6 feet to 4 feet. We are also requesting relief from the requirement to install concrete curb on Parcel 32.

6. An "Area Variance" for relief from the requirement of the Zoning Ordinance, Section 27 – Corridor Overlay Zone 1 (COZ-1), Section 27.67 Open Space and Landscaping, Paragraph C, side and rear yards, requires a minimum of five feet of landscaped open space shall be provided along all side and rear lot lines when abutting a nonresidential use. Along the western side yard/property line we are seeking a variance from the requirement to provide any landscape open space. The existing single family dwelling is located 3.3' from the western property line therefore there is limited space to provide a five foot landscaped buffer. We are also requesting a variance from providing five foot of landscape open space along the eastern property line and the rear property line. These areas are shown as paved vehicle parking areas on the preliminary site plan.

7. An "Area Variance" for relief from the requirement of the Zoning Ordinance, Article 6, Section 5, paragraph 5.3 that no parking space shall be located in any front yard or within 3 feet of lot line in side or rear yards. All of the proposed parking spaces shown on Parcel 32 are located within three feet of the eastern and rear property lines. The existing parking spaces located along the rear property line are currently 3.9 feet over the rear property line. The proposed parking located along the rear property line will be approximately 9 inches inside the rear property line. We are also seeking an area variance from the section of paragraph 5.3 that prohibits the parking of motor vehicles within 15 feet of any wall for multiple dwellings. The existing single family dwelling will be used as temporary apartment housing and the proposed parking is located 8.6 feet from the eastern exterior wall. Therefore we are seeking an additional variance to construct the proposed parking 8.5 feet from the eastern exterior wall of the existing dwelling.

RESPONSES TO CRITERIA

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

   Both parcels, Parcel 32 & 34, are zoned IO (Institutional and Office) which permits the proposed use of transitional housing. The proposed site is bordered on the northeast, east and west by parcels that are currently zoned Limited Central Commercial (C-2A), on the northwest by a parcel that is zoned Manufacturing (M). All of the surrounding parcels are

owned by Bennie Smith Real Estate, LLC and are primarily used to support the Bennie Smith Funeral Home business located at 717 W. Division Street.

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

   Besides the adjacent dwelling located at 721 W. Division Street, this portion of Division Street is industrial/commercial in nature. The property to the northeast is primarily used as limousine parking for the existing Bennie Smith Funeral Home business located at 717 W. Division Street. The adjacent parcel that is located to the west, zoned C2-A, is mostly a vacant lot with a small single story garage located in the back corner of the lot. The existing Capitol Cleaners - Emerald City Wash World Laundromat is located along the south side Division Street directly across from the proposed site. There are also several office buildings, a car wash and an automotive repair business located along the south side of Division Street in the vicinity of the proposed site.

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

   Please refer to Exhibit A. the Central Delaware Housing Collaborative intends to redevelop the subject properties, Parcel 32 and 34 into a 3-story 12-unit transitional housing apartment building. The existing single family dwelling located on Parcel 32 that has approximately 8 bedrooms that will also be used as transitional housing. Removing the restrictions that are requested in this application will not seriously affect or impact the neighboring properties. Both parcels located to the east and west are mostly vacant lots. The parcel located to the east, 723 W. Division Street, is currently a vacant parcel and the parcel located to the west, 811 W. Division Street, is mostly a vacant parcel except for the 1-story garage located in the back of the lot. Except for the building height restriction, all of the other restrictions that we have requested are internal to the proposed development and will not be visible from the neighboring properties. In order to meet the perimeter access fire marshal code we have provided a 15' side yard buffer along the east side of the proposed building which is 5' greater than the required side yard setback of 10'.

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.

   If the restrictions are not removed there will be an unnecessary hardship on the equitable owner by severely limiting the size and number of transitional housing units that would be permissible on the subject parcels. Exhibit A is currently showing the minimum number of units on Parcel 34 that are needed in order to make the project economically feasible. If the owners are required to reduce the building width in order to meet certain landscape buffer requirements the proposed number of apartment units will be severely reduced thereby severely reducing the viability of the project.

10' WIDE ALLEY

AREA VARIANCE REQUEST #6
RELIEF FROM PROVIDING A 5' WIDE LANDSCAPE OPEN SPACE ALONG THE EASTERN, WESTERN & REAR PROPERTY LINE OF PARCEL 32.

AREA VARIANCE REQUEST #7
RELIEF FROM THE REQ. THAT NO PARKING SPACES BE LOCATED WITHIN 3 FT FROM THE SIDE & REAR PROPERTY LINE (PARCEL 32)

AREA VARIANCE REQUEST #4
RELIEF FROM THE REQ. THAT NO PARKING SPACES BE LOCATED WITHIN 3 FT FROM THE SIDE & REAR PROPERTY LINE (PARCEL 34)

CRF N 74°02'23" E 60.00'

CRF N 74°02'33" E 30.00'

IPF 5.00' S 16°08'27" E

N 74°02'33" E 50.00' CRF

GARAGE

REAR YARD 15.0'

18' 9' (TYP.) 7

PROP. 12'x12' CONC. DUMSTER ENCLOSURE

24'

15.0' REAR YARD

N 16°08'27" W

SIDE YARD 10.0'

3.3'

S 16°08'27" E

AREA VARIANCE REQUEST #3
RELIEF FROM PROVIDING A 5' WIDE LANDSCAPE OPEN SPACE ALONG THE WESTERN PROPERTY LINE OF PARCEL 34.

PROPOSED THREE-STORY BUILDING 1ST FLOOR SF 3,456 SF

S 16°08'27" E

10.0' SIDE YARD

AREA VARIANCE REQUEST #6
RELIEF FROM PROVIDING A 5' WIDE LANDSCAPE OPEN SPACE ALONG THE EASTERN, WESTERN & REAR PROPERTY LINE OF PARCEL 32.

AREA VARIANCE REQUEST #2
RELIEF FROM PROVIDING A 12' WIDE BUFFER BETWEEN BLDG & DRIVE ISLE & A 6' WIDE SIDEWALK. PROPOSED BUFFER WIDTH IS 10' W/ A 5' WIDE SIDEWALK

AREA VARIANCE REQUEST #1
CONSTRUCT BLDG IN COZ W/ THREE STORIES & MAX HEIGHT OF 39 FEET

EXISTING TWO STORY DWELLING

6

10.0' SIDE YARD 10.0' SIDE YARD

140.00'

AREA VARIANCE REQUEST #5
RELIEF FROM PROVIDING A 12' WIDE BUFFER BETWEEN BLDG & DRIVE ISLE & A 6' WIDE SIDEWALK. CURBING IS ALSO REQ. BETWEEN THE SIDEWALK AND THE PARKING AREA. PROPOSED BUFFER WIDTH IS 8.6' W/ A 4' WIDE SIDEWALK AND NO CURB

18' 24' 140.00'

5.5' 4.5' 10'

4.6' 4.0' 8.6'

6' (TYP.)

15' WIDE DELDOT PERMANENT EASEMENT

NEW RIGHT-OF-WAY LINE AN ADDITIONAL 10.22' +/- OF R.O.W. WILL BE DEDICATED TO DELDOT

ONE STORY DWELLING

AREA VARIANCE REQUEST #6
RELIEF FROM PROVIDING A 5' WIDE LANDSCAPE OPEN SPACE ALONG THE EASTERN, WESTERN & REAR PROPERTY LINE OF PARCEL 32.

24.00'

FRONT YARD 20.0'

REGULATIONS

10.22'

IPF S 74°02'33" W 60.00' DHF S 74°02'33" W 80.00' CMF

40.0'

29.8'

W. DIVISION STREET

STATE ROUTE 8 – 60' WIDE R.O.W. – MINOR ARTERIAL

DATA COLUMN:

1. OWNER: CENTRAL DELAWARE HOUSING COLLABORATIVE
   684 FOREST STREET
   DOVER, DE 19903

2. ENGINEER OF RECORD:
   MOUNTAIN CONSULTING, INC.
   103 S. BRADFORD ST.
   DOVER, DE 19904
   302-744-9875

3. TAX PARCEL NUMBERS:
   02-05-076.08-01-32.00-00001
   ADDRESS: 801 WEST DIVISION STREET
   DOVER, DE 19904

   02-05-076.08-01-34.00-00001
   ADDRESS: 731 WEST DIVISION STREET
   DOVER, DE 19904

4. ZONING CLASSIFICATION:
   "IO" 02-05-076.08-01-32.00-00001

   "IO" 02-05-076.08-01-34.00-00001

5. TOTAL ACREAGE WITHIN EACH PARCEL:
   PARCEL "32": 8,400 SF (0.19 ACRES)
   PARCEL "34": 11,350 SF (0.26 ACRES)

PRELIMINARY SITE PLAN – EXHIBIT 'A'
FOR
CENTRAL DELAWARE HOUSING COLLABORATIVE

OWNER: CENTRAL DELAWARE HOUSING COLLABORATIVE

TAX PARCELS: 2-05-076.08-01-34.00-00001
2-05-076.08-01-32.00-00001

CITY OF DOVER-EAST DOVER HUNDRED-KENT COUNTY
STATE OF DELAWARE

REVISIONS	CHECKED BY

mountain consulting
103 S. BRADFORD ST.
DOVER, DE 19904
P.O. BOX 558
DOVER, DE 19903
T-302-744-9875
F-866-672-6428

0 5 10 20
GRAPHIC SCALE

SCALE: 1" = 10'		DRAWN BY: BGT	
DESIGNED BY: BGT	CHECKED BY: TLA	DRAWING NAME: W.DIVST BASE-CON.DWG	
DATE: 8-06-19	COMM. NO. 2019052EM	FILE NO.	SHEET NO. 1 OF 1

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City of Dover
Board of Adjustment

September 18, 2019

V-19-09

Location:	1203-1209 Walker Road (1205 Walker Road)
Applicant:	MJ Stone, Inc.
Owner:	Michael Stone and Jessica Stone
Tax Parcel:	ED-05-067.18-01-76.00-001-01
Application Date:	August 12, 2019
Present Zoning:	R-8 (One Family Residence Zone)
Present Uses:	Assisted Living Facility, Conditional Use approval for a Church, and a Radio Tower
Reviewed By:	Tracey Harvey
Variance Type:	Area Variance
Variance Requested:	To increase the height of a structure by 11 feet for an existing 150 foot high existing radio tower with a 14 foot antenna.

Project Description:
The applicant is requesting a variance from the *Zoning Ordinance* of Article 4 Section 4.1 Zoning Bulk and Parking Regulations. Specifically, they are requesting a variance to allow a structure to exceed the maximum height requirement by 11 feet for an overall height of 164 feet. The existing 150 foot high radio tower 3 foot antenna is considered legal non-conforming; however, the recent replacement with a 14 foot antenna has increased the height of the tower by 11 feet. The existing land where the Radio Tower lies consist of multiple uses located on one parcel with various owners. Dover Place is an assisted living facility and is the main building on the property. A vacant building that was previously a radio station recently received Conditional Use approval for a potential church at the July 15, 2019 Planning Commission meeting (C-19-04), and the existing Radio Tower are all located on the same tract of land.

Adjacent Land Uses

Adjacent uses on other properties include townhouses zoned RG-3 (Group Housing Zone) along Old Forge Drive to the north, one-family detached residences zoned R-8 along Hitching Post Drive and Kent Circle to the east, and a nursing home known as Cadia Healthcare zoned IO (Institutional and Office Zone) to the west. Large woodland areas lie between the radio tower and the neighboring uses on the east and west. Two lines of trees separate it from the townhouses to the north.

Code Citations

There are no specific *Zoning Ordinance* provisions related to communications towers and antennae. "Code Interpretation Memo #4 Telecommunications Antennae - Permits and Review Procedures" is followed. The previous zoning interpretation has held that such structures are within the definition of a "building" and therefore such structures must meet the bulk standards zone.

Building: Any combination of materials forming a construction. The term "building" is not intended to include underground construction which permits the use of the ground above as if no construction existed. The term "building" shall include the term "structure," as well as the following as it relates to antennae:

- Radio and television antennae, except for such antennae installed on the roof of a building and extending not more than 15 feet above the highest level of the roof of such building; and porches, carports, bins and other similar structures

The *Zoning Ordinance* provides the height limitations as part of Article 4 Section 4.1.

Article 4 Section 4.1
Bulk and parking regulations for one-family residence zones [are as follows]:

	R-8
Minimum required:	
Lot area	8,000 SF
Lot width (ft.)	70
Lot depth (ft.)	100
Front yard (ft.)	25
Side yard (ft.)	10
Total Side yard (ft.)	20
Rear yard (ft.)	30
Off-street parking	
Per dwelling unit	2
Maximum permitted:	
Building height	
Stories	2½
Feet	35
Lot coverage	35%

Applicant's Proposed Project

The applicant has submitted two (2) pages illustrating the changes to the structure found in **Exhibits D and E attached.**

Exhibit D outlines the existing tower with the old antenna attached to the tower. **Exhibit E** outlines the new antenna attached to the tower.

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. In order to grant a variance the Board must determine in that exceptional practical difficulties exists.

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 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 criteria.

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

   Applicant Responses:
   This property is currently zoned R8. On the property is a 150 foot radio tower which is considered a legal nonconforming structure under the zoning ordinance. The tower was permitted and installed in 1999 (Permit #99-2019) replacing an existing 180 foot tower.

   Staff Response:
   The structure is located in the R-8 (One Family Residence Zone). Permit #99-2019 was issued and approved by the City on December 21, 1999 for a 150 foot Radio Tower to replace the existing 180 foot Radio Tower on the property. A final inspection for the new tower was completed June 19, 2000; it is a guyed tower. The main building on the property, an assisted living facility then known as Capitol Place Assisted Living, was originally conditionally approved by the Planning Commission on February 16, 1998 under Application C-98-2. See **Exhibit B:** Site Plan - Capitol Place Assisted Living (dated

8/3/98) which shows the locations of the improvements on the property including the tower location. On July 15, 2019, Conditional Use on the northwest corner of the site was granted by the Planning Commission for a potential church to be located in a building that was previously used as the offices of a radio station. The radio station building and Radio Tower predate the development of the assisted living facility. The assisted living facility was reviewed and approved as a Planned Neighborhood Design-Senior Citizen Housing Option (PND-SCHO) and as a Conditional Use.

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

Applicant Responses:
The structure has not been changed. An antenna has been replaced.

Staff Response:
Staff concurs that the Radio Tower structure has not changed since 1999. The character of the vicinity is a mixture of institutional, residential and office uses. On the property, the rear area surrounding the tower area is bounded by a wooded area. To the north and east of the property is the Hamlet Subdivision that includes a mixture of single family homes zoned R-8 and townhouses zoned RG-3 (Group Housing Zone). There is a tree lined area that separates the Hamlet Subdivision from the Radio Tower. The Cadia Healthcare Nursing Home is zoned IO (Institutional Office) and is located to the west of the subject property.

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

Applicant Responses:
There is no negative impact to neighboring properties. This replacement was nothing more than an equipment upgrade not affecting the structure. The sole purpose of the radio tower is for antenna placement on the top.

Staff Response:
The tower structure remains as it exists in location and height. The change is to the equipment installed; it increased the height. The additional 11 feet in height would not impact surrounding uses. The site is surrounded by woodlands. The location of the radio tower is at the rear of the property and has woodlands between it and adjacent properties which assist in screening it. However, the tower is likely taller than the nearby trees /woodlands.

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 Responses:
Antenna replacement on a tower is normal required maintenance. Any change to the current antenna will adversely affect **mission critical** communications. This would negatively impact both our customers and our business.

Staff Response:
The applicant notes denial of the variance requested would create an exceptional practical difficulty as this could impact the quality of service and the ability to provide adequate service by the company.

Variance Recommendations:

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

- Provided the applicant can demonstrate what type of service is provided and how their services will be impacted if not approved, staff would be inclined to recommend approval of the variance.
- The variance would not negatively impact the neighborhood as there are no other structures within the neighborhood that are taller than the radio tower with an antenna. The site is surrounded by woodlands that would partially block the structure from visibility.
- The existing 150 foot radio tower was previously considered legal non-conforming. It is not uncommon to replace the antenna of a structure for better frequency.

Advisory Comments to the Applicant

- Improvements to the property are subject to review processes and appropriate permits from the City of Dover Planning Department and other agencies. An application for a Building Permit is required for placement of the antenna.
- 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 of variance approvals.

GUIDE TO ATTACHMENTS

Exhibit	Description/Author	# Pages
A	Zoning Map Exhibit (Staff)	1
B	Site Plan- Capitol Place Assisted Living 9dated 3/3/98)	1
C	Applicant Responses to Criteria	1
D	Plot Plan of Property with old antenna (Applicant)	1
E	Plot Plan of Property with new antenna (Applicant)	1

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

RECEIVED
AUG 12 2019
CITY OF DOVER
PLANNING & INSPECTIONS

_____ Area Variance
_____ Use Variance
_____ Appeal
_____ Pre-App Date

Board of Adjustment Application

Application Information

Property Address: 1203-1209 Walker Road (1205)

Tax Parcel Number: 2-05-06718-01-7600-00101

Owner Name: MJ Stone, Inc

Property Zoning: R8

Variance (s) Requested: Antenna replacement on top of existing tower structure

*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

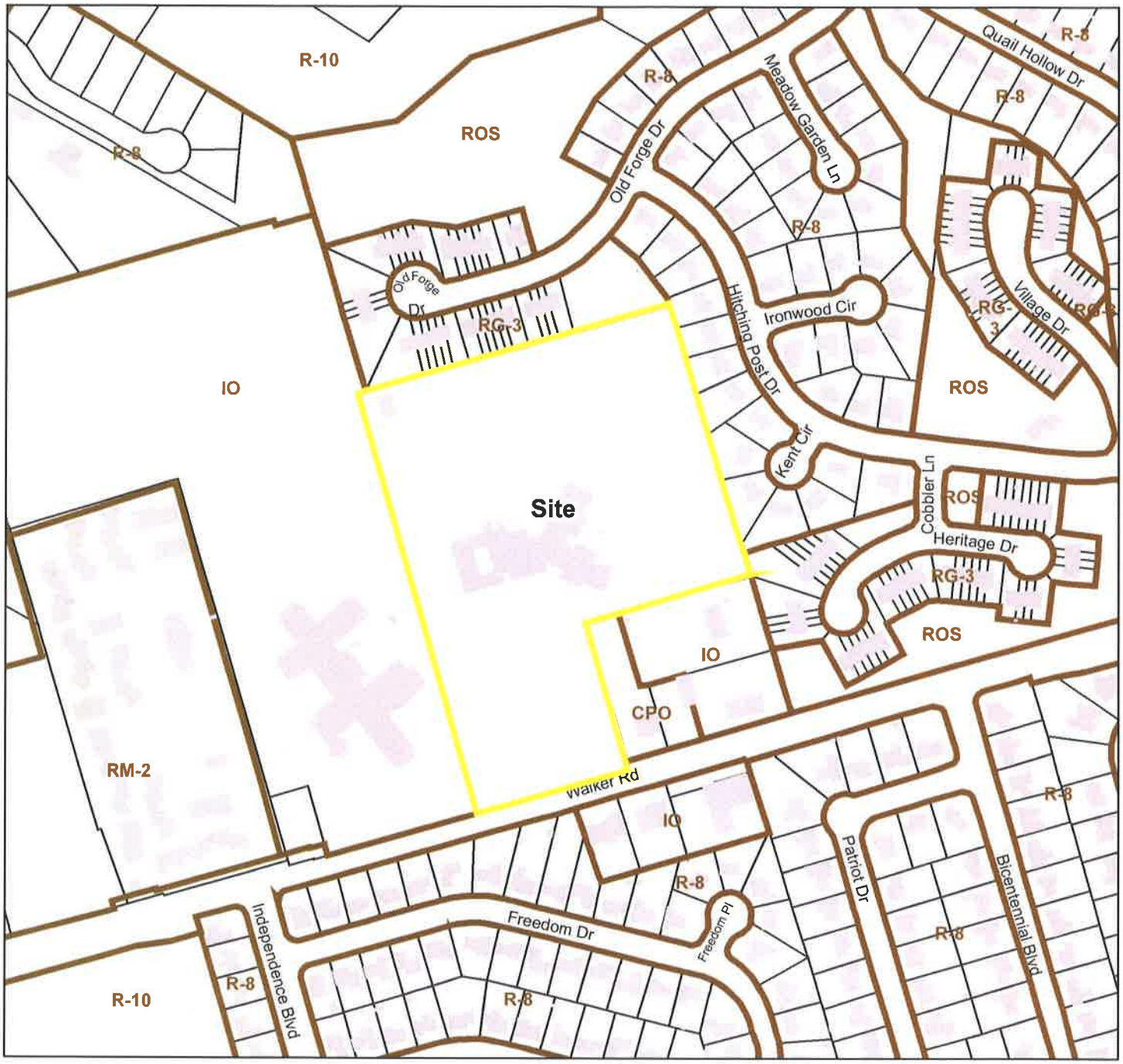
I Michael Stone do affirm that I am the property owner on which the variance is sought and that all the information provided in this application is accurate to the best of my knowledge and belief.

Signature — Owner (Title) — 8-12-19 (Date)

City of Dover

Department of Planning & Inspections

Exhibit A
Application No.: V-19-09



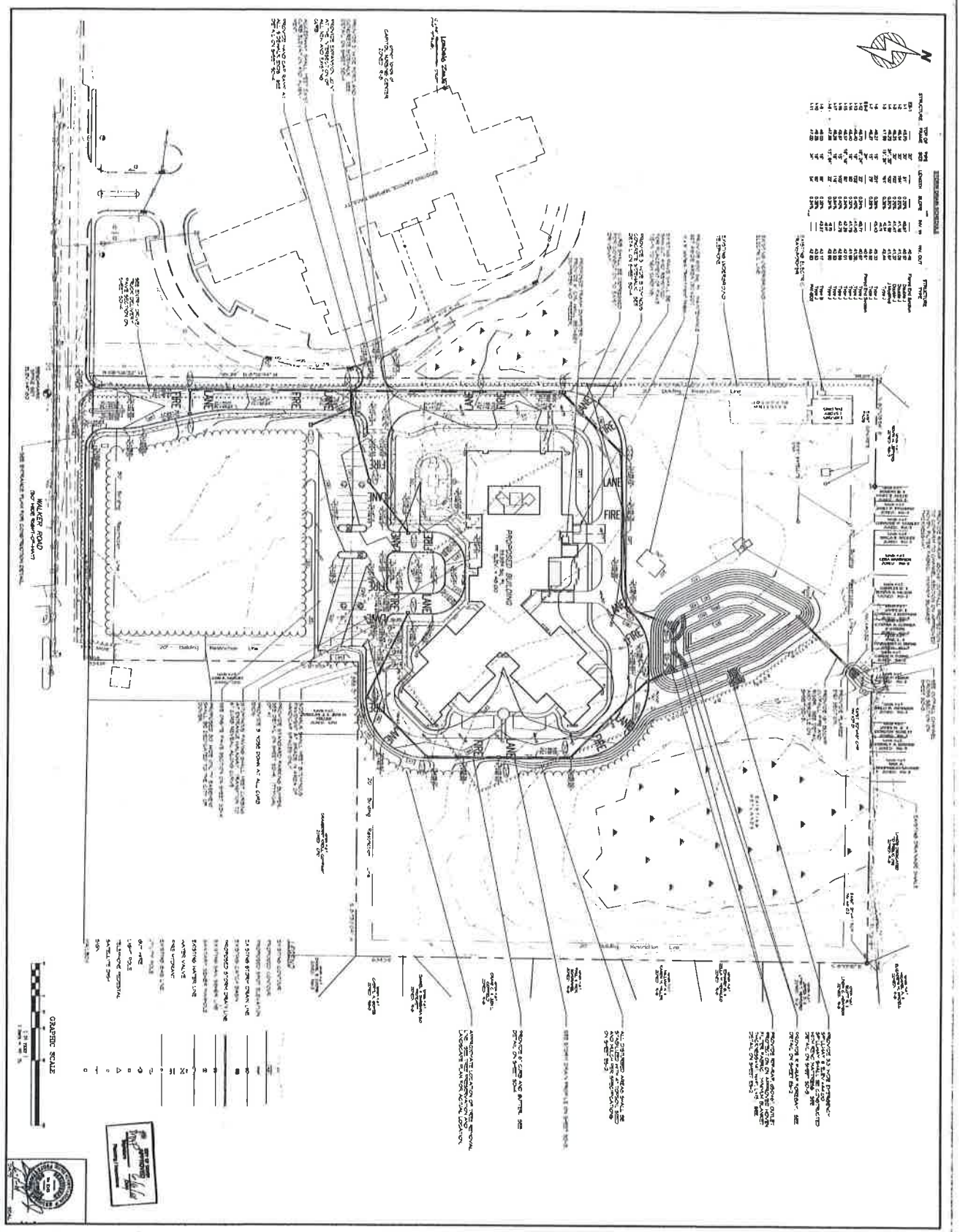
Title: Telecommunications Tower
Address: 1203-1209 Walker Road
Parcel ID: ED-05-067.18-01-76.00-001-01
Zoning: R-8 (One- family Residence Zone)
Owner: MJ Stone, Inc.
Date: 09/11/2019

Legend

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

0 200 400 800 Feet

EXHIBIT # B



SD-1

PROJECT:
CAPITOL PLACE
ASSISTED LIVING
WALKER ROAD
DOVER, DELAWARE

A JOINT VENTURE BY
HARBOR MGMT. SERVICES
AND
GENESIS ELDER CARE DEVELOPMENT GROUP

CONSTRUCTION MANAGEMENT/CONTRACTOR
WOHLSEN CONSTRUCTION CO.
CIVIL ENGINEER
LARSON ENGINEERING, INC.

Date	3/3/08	Drawn	YAY
Scale	1"=40'	Job	07-036
REVISION		Date	Drawn
PER 5/30 COMMENTS FROM CITY OF DOVER COMMENTS		5/29/08	YAY
		6/20/08	YAY
		6/1/01	YAY

KITCHEN & ASSOCIATES
ARCHITECTURAL SERVICES, PA
276 Haddon Avenue, Suite 205
Westmont, New Jersey 08108
856.854.1888 Fax 856.854.3642
1725 Pine Street
Philadelphia, Pennsylvania 19103
215.985.0111 Fax 215.545.1118

Keep with Permit Plans

EXHIBIT # C

MJ Stone, Inc.
Area Variance

1. This property is currently zoned R8. On the property is a 150 foot radio tower, which is considered a legal nonconforming structure under the zoning ordinance. The tower was permitted and installed in 1999 (Permit #99-2019) replacing an existing 180 foot tower.

2. The structure has not been changed. An antenna has been replaced.

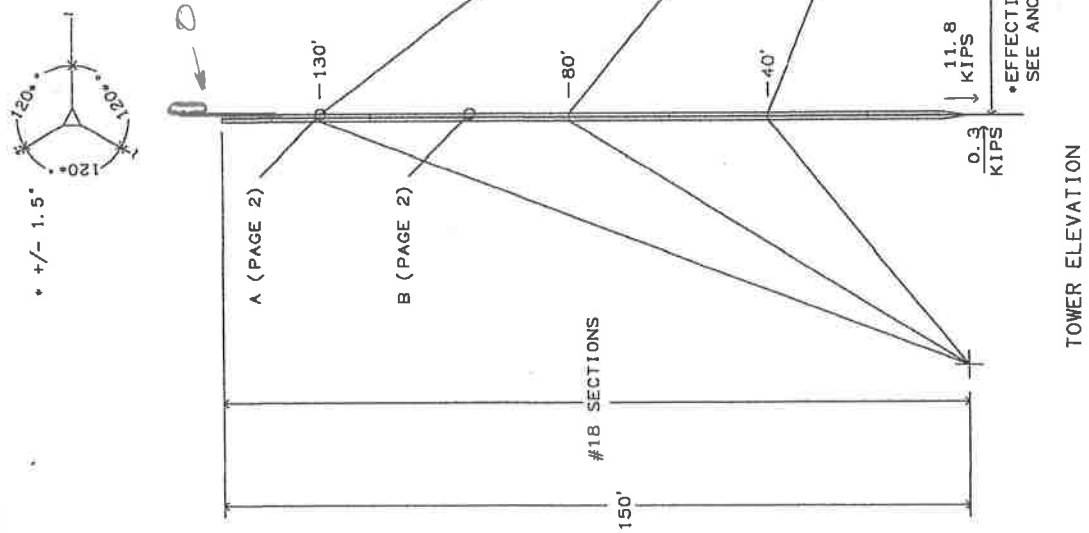
3. There is no negative impact to neighboring properties. This replacement was nothing more then an equipment upgrade not affecting the structure. The sole purpose of a radio tower is for antenna placement on the top.

4. Antenna replacement on a towers is normal, required maintenance. Any change to the current antenna will adversely affect **mission critical** communications. This would negatively impact both our customers and our business.

EXHIBIT # D

OCD ANTENNA

OCD ANTENNA @ 3' ABOVE TOWER



TOWER ELEVATION

WQVL-AM
DOVER, DELAWARE
18 X 150' GUYED TOWER

REV	DESCRIPTION OF REVISIONS	INI	DATE
A	ADDED FOUNDATIONS	WBR	05/19/2000

APPROVED/ENG.	WBR	5/19/2000
APPROVED/FOUND.	WBR	5/19/2000
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ENG. FILE NO.	A-117071-F-1000264	
ARCHIVE		

PIRON INC.
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Plymouth, IN 46563-0126
219-936-4221

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PAGE 1 OF 9

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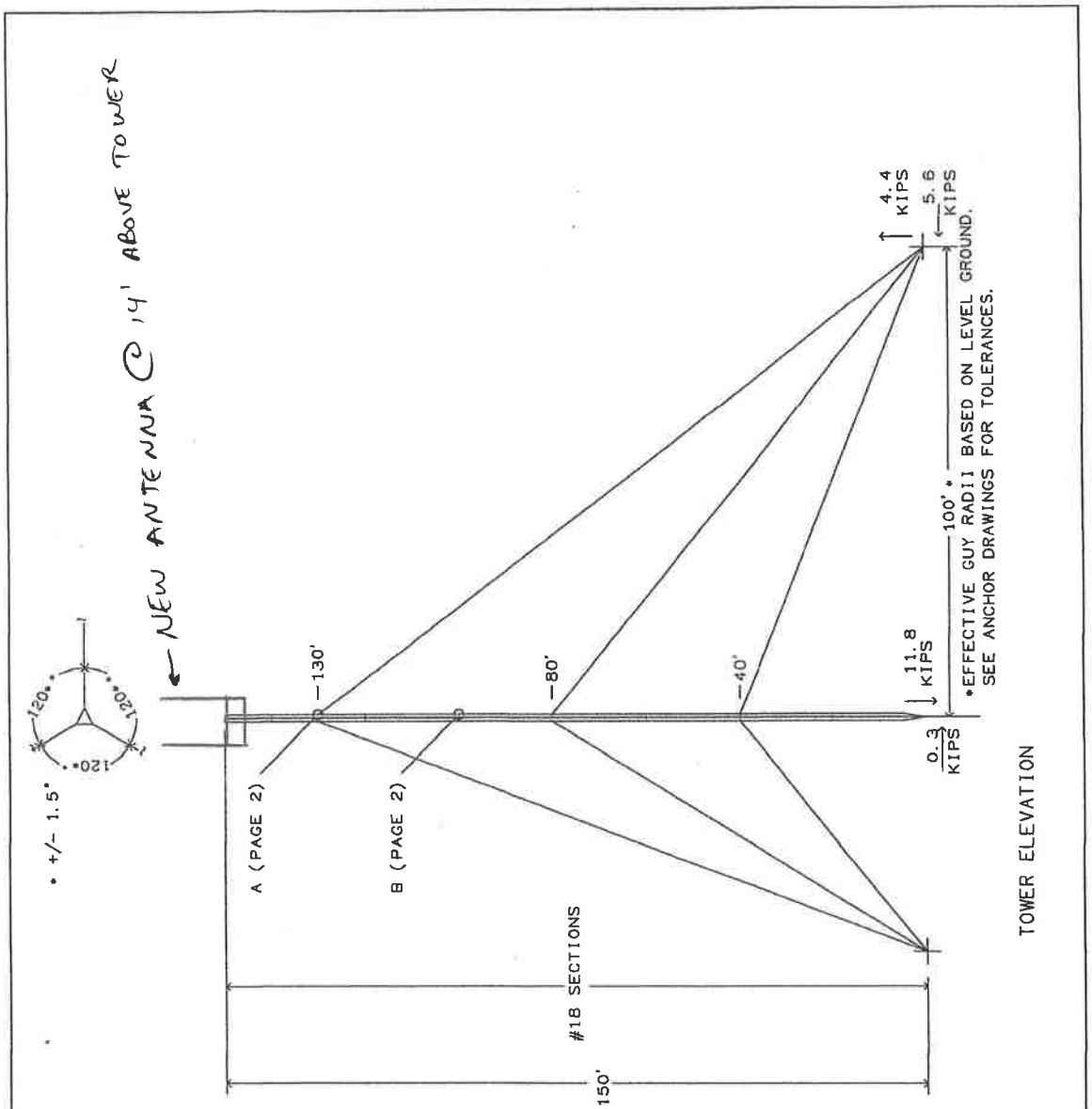
EXHIBIT # E

NEW ANTENNA



WQVL-AM
DOVER, DELAWARE
18 X 150' GUYED TOWER

REV	DESCRIPTION OF REVISIONS	INI	DATE
A	ADDED FOUNDATIONS	WBR	05/19/2000

APPROVED/ENG.	WBR	5/19/2000
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