

**City of New Castle Delaware
Board of Adjustment Hearing
Community Room-NCC Police Dept
1 Municipal Blvd, New Castle, DE 19720
Wednesday, May 13, 2026
6:30 p.m.**

Agenda

1. Roll Call

2. Public Comments (concerning agenda items)

3. New Business:

- 1) **An application has been filed by Bryan Shelton and Deborah Shane, (Owners & Applicants), for a property located at 106 The Strand, New Castle, DE 19720, Tax Parcel No. 21-015.00-164, seeking a variance to City Code §230-19 C to permit an 8'-6" reduction of the required rear yard of 25'-0' to allow construction of a rear addition to the existing residence.**
- 2) **Discussion and possible vote to set a future expiration date for the previously granted Special Exception for 610 W. 7th Street as decided at the September 30th, 2024 Board of Adjustment meeting.**

4. Adjournment

Posted: 4/14/2026

Note: This agenda as listed may not be considered in sequence, including executive sessions.

*You can also view the meeting online at the address below. A clickable link is available on the City website at www.newcastlecity.delaware.gov/events.

There will be no comments taken from the Zoom audience; comments may be submitted via email up to **3:00 p.m. on Wednesday, May 13, 2026** at info@newcastlecity.delaware.gov

Meeting Link:

<https://us02web.zoom.us/j/86092068070?pwd=qMbb9wZV1avoxQu9kE1M9jX6kmDU8B.1>
Enter Password: **435133**

You can also listen to the meeting via telephone by calling one of the phone numbers below and entering the meeting ID and password when prompted. (Long distance rates may apply.)

(301) 715-8592 or (646) 558-8656.

Webinar ID: 860 9206 8070 Passcode: **435133**

**CITY OF NEW CASTLE
BOARD OF ADJUSTMENT
NOTICE OF PUBLIC HEARINGS**

**Wednesday, May 13, 2026
6:30 p.m.**

EACH APPLICATION IS A SEPARATE PUBLIC HEARING
The agenda items listed may not be considered in sequence.

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- 2. Discussion and possible vote to set a future expiration date for the previously granted Special Exception for 610 W. 7th Street as decided at the September 30th, 2024 Board of Adjustment meeting.**

For the purpose of considering this application, the Board of Adjustment will hold a Public Hearing on Wednesday, May 13, 2026 at 6:30 p.m. at the Community Room of the New Castle Police Department, located at 1 Municipal Blvd., New Castle, DE 19720.

**Valarie Leary, Mayor
Chairman - Board of Adjustment
City Of New Castle
Posted – 04/14/2026**

BOA 2026-2– Bryan Shelton and Deborah Shane, 106 The Strand, New Castle, DE 19720, Tax Parcel No. 21-015.00-164



106

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BOARD OF ADJUSTMENT
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Valarie Leary, Mayor
Chairman - Board of Adjustment
City Of New Castle
Posted - 04/14/2026


BOA 2026-2- Bryan Shelton and Deborah Shane, 106 The Strand, New Castle, DE 19720, Tax Parcel No. 21-015.00-164



The Weekly

New Castle, DE 19720-4815
302-328-6005

Theresa Buchanan Gormley of *The Weekly*, a weekly newspaper published in the City of New Castle, County of New Castle, State of Delaware, who being duly sworn, states that the attached Notice was published in *The Weekly* on 4/15/26.



Publisher

Sworn to me this 15th of April, 2026. 

**CITY OF NEW CASTLE
BOARD OF ADJUSTMENT
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Valarie Leary, Mayor
Chairman - Board of Adjustment
City Of New Castle
Posted - 04/14/2026

BOA 2026-2- Bryan Shelton and Deborah Shane, 106 The Strand, New Castle, DE 19720, Tax Parcel No. 21-015.00-164




The Weekly

Jew Castle, DE 19720-4815
302-328-6005

COUNTY OF NEW CASTLE

Personally appeared before me this 22nd of April, 2026, Theresa Buchanan Gormley of **The Weekly**, a weekly newspaper published in the City of New Castle, County of New Castle, State of Delaware, who being duly sworn, states that the attached Notice was published in **The Weekly** on 4/22/26.



Publisher

Sworn to me this 22nd of April, 2026





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Publisher

Sworn to me this 29th of April, 2026.





CITY OF NEW CASTLE
BOARD OF ADJUSTMENT
APPLICATION FOR HEARING

CITY OF NEW CASTLE
23 MAR 13 AM 10:53

Bryan Shelton & Deborah Shane
Name of Applicant

Name of Owner (if different)

106 the Strand
Address

Address

New Castle, DE 19720

Subject property: 106 the Strand
Location/Address

/ HR
Zoning Classification

Tax parcel Number: 21-015.00-164
(found on Property Tax Bill or by calling City Tax Office at 322-9804)

Attach copy of the plot plan for the subject property showing the layout of structures or improvements on the lot, location of the subject property and the size and location of any structures proposed; include present and proposed use of the property.

Attach a copy of any Deed Restrictions which may apply to the subject property.

Attach the appropriate filing fee, payable to the City of New Castle, as shown on the fee schedule. (the current fee schedule may be obtained by calling the Mayor's Office at 322-9801.)

Has a previous application for this property for any action been filed with the Board?

Yes [] No [x] If yes, Application No. _____, Hearing Date _____

Has any prior action of the Board of Adjustment for this property been appealed to the Superior Court?

Yes [] No [x]

If yes, give Superior Court case number and status: _____

CHECK THE APPROPRIATE SECTION AND FILL IN THE REQUIRED INFORMATION PERTAINING TO THE TYPE OF RELIEF REQUESTED (USE ADDITIONAL SHEETS AS NECESSARY)

A. [] Appeal from Administrative Official's order, requirement, decision or determination, or

[] Appeal from Historic Area Commission's order, requirement, decision or determination

(summarize or attach written decision) _____

Dated: _____ For the following reasons (attach additional sheets as necessary.)

B. [] Special Exception for the following use: _____

State under what section of the City's ordinance this special exception is sought and the grounds on which it is requested. Include a plan for the proposed development showing location of buildings, parking areas, traffic access, open spaces and any other pertinent information necessary to determine if the proposal meets the City's Zoning Ordinance requirements. (Requests for Special Exception must be endorsed by the Planning Commission and/or the Historic Area Commission as appropriate. Letter(s) of endorsement must accompany this application at the time of filing this request to the Board of Adjustment

for consideration.) (Attach additional sheets as necessary.) _____

The applicant must provide testimony at the public hearing in support of the following standards: (a) that there is a need for this use in the community; (b) that the use will not be detrimental or injurious to the neighborhood or City and (c) any additional standards imposed by the Zoning Code.

C. Variance from Code requirements relating to: Lot Area ; Front Setback ;

Side Yard ; Rear Yard ; Bulk . State size of the variance being requested: (Attach additional sheets as necessary.) 8'-6" reduction of required 25'-0" rear yard

Demonstrate (1) that special conditions/circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures or buildings in the same zoning district; (2) that literal interpretation of the provisions of the City's Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district; (3) that the special conditions/circumstances do not result from actions of the owner or applicant; (4) that granting the variance requested will not confer on you any special privilege that is denied by the City Zoning Ordinance to other lands, structures or building in the same zoning district. (Attach additional sheets as necessary.) See attached letter

The standards the Board must apply in making its determination with respect to this variance request are: (a) the dimensional change being requested is minimal; (b) the effect of granting the requested relief upon neighboring properties; and (c) the harm to the applicant if the relief is not granted. The applicant must be prepared to present testimony and other evidence on these points to the Board at the public hearing.

D. Approval of structural alterations resulting in an enlargement or extension of a nonconforming structure or use. State under what section of the Code approval is sought and the grounds on which it is requested. Include a plan for the proposed development showing location of buildings, parking areas, traffic access, open spaces and any other pertinent information. (Requests for enlargement of nonconforming uses must be endorsed by the Planning Commission and/or the Historic Area Commission as appropriate. Letter(s) of endorsement must accompany this application at the time of filing this request to the Board of Adjustment for consideration.) (Attach additional sheets as necessary.)

THE UNDERSIGNED HEREBY CERTIFIES THAT AS LEGAL OWNER OF THE SUBJECT PROPERTY THE INFORMATION CONTAINED HEREIN IS CORRECT. (If the applicant is not the legal owner of the property, the legal owner or his authorized representative must sign this form).

 _____
Signature of Owner

Date: 3/18/2026
Telephone Number 302 293 1678

BOARD OF ADJUSTMENT USE ONLY:

File Number _____
Date Application Received _____
Date Fee Paid _____
Date Notice Published _____
Date of Hearing _____
Disposition _____

MAILING ADDRESS

Board of Adjustment
City of New Castle
220 Delaware Street
New Castle, Delaware 19720
Phone - 322-9801 FAX - 322-9814

March 18, 2026

City of New Castle
Board of Adjustment

RE: Application for 106 the Strand - Parcel 21-015.10-164

We are seeking relief from sections 230-19 Historic Residential District (HR) requirements as listed in the Schedule of District Regulations from Article V.

This project has been presented to the Historic Area Commission at their March 12th 2026 meeting and was approved by them, including a recommendation for the 8'-6" reduction in rear yard. The Historic Area Commission has approval for lot size, coverage, and side yards and they approved this project considering all of those factors.

The required rear yard for the HR district is 25 feet. The proposed rear addition will extend into the required rear yard approximately 7'-10" so we're seeking a 8'-6" reduction in the rear yard to ensure that the addition is fully clear of the setback line.

The required rear yard of 25 feet is slightly more than 25% of the existing lot. While there are no lot minimums in the HR district, this lot is considerably shorter than many of the neighboring lots in the area. Proportionally the 25 foot rear yard is a significant portion of the lot. The requested 8'-6" is less than a third of the existing 39 foot backyard.

Sincerely,



Willard F. Hurd, AIA

HISTORIC AREA COMMISSION
New Castle Police Community Room
1 Municipal Drive
March 12, 2026

Present: Tera Hayward-Olivas, Chairperson
Michael Westman
Carmella Longobardi
Mark Lorenz
Stephen Franklin, Planning Commission Liaison

Also Present: Leila Hamroun, City Architect
Jeff Bergstrom, City Building Official
Lisa Hatfield, City Solicitor
Willard F. Hurd, AIA – Footprint Architecture

Ms. Hayward-Olivas convened the meeting at 6:30 p.m. Roll call followed and a quorum to conduct business was declared.

Minutes

January 8, 2026 – A motion was made by Mr. Lorenz to approve the minutes of the January 8, 2026, meeting as amended. The motion was seconded by Mr. Westman and was passed unanimously.

New Applications

There were no new applications.

Consultations

There were no applications for consultation.

Old Business

106 The Strand – Bryan Shelton & Deborah Shane – New sunroom addition.

An application was submitted as a consultation to construct a 380 sq. ft. one-story sunroom addition to the existing 1-1/2 story home to accommodate an in-ground therapy pool. The pool is required for treating the homeowner's on-going disabling condition. The sunroom is sized to accommodate the clearances required for the pool and to also provide an accessible entrance to the house.

Mr. Willard explained the project, noting that the addition will be to the rear of a 1980's addition to the original house. The sunroom will burrow into the ground slightly due to the slope of the yard. The project will require a variance from the Board of Adjustment to allow for an encroachment into the rear yard setback. A landing will be added to the end of an existing brick walkway at the side of the house to the entrance to the sunroom. A concrete patio will be added. In the future, a concrete walkway is planned in the back yard. The preference is to use decorative concrete to accommodate the need for a walker and wheelchair. The sunroom will

Historic Area Commission Minutes
March 12, 2026

have its own heating and cooling system. A fiber-cement shingle panel is suggested. The windows on the north and south will be sliders. Two fixed picture windows will be on the west.

Ms. Hamroun stated that based on the Guidelines, the addition matches the scale of the adjacent structures. The addition is in the back so there is more flexibility to use alternate materials. Hardy Plank is typically approved and conforms to the Guidelines. Architectural shingles for the roof are also acceptable. Ms. Hamroun stated that fiberglass windows have been accepted in the past and conform to the Guidelines as well.

Ms. Hamroun stated that the design in terms of scale, massing, and proposed materials conforms to the Guidelines and Standards. She stated that with the level of detail within the plans, if there are no changes this could potentially be done as a consultation with conditional approval if the permit drawings match. Ms. Hamroun noted that the detail of the light fixtures is not shown, and if light fixtures are to be added she would need to see them. With respect to the hardscaping and landscaping Ms. Hamroun noted that it is in the back and not visible from the public right-of-way and stamped concrete would conform to the Guidelines. She opined that the addition does not overtake the whole yard and the encroachment into the 25' rear yard setback would be acceptable.

Ms. Hamroun stated she would recommend the concept as long as she receives information about the lighting.

Mr. Bergstrom recommended that if the HAC recommends the proposed plan the encroachment into the 25' rear yard setback should be identified in the motion. Mr. Bergstrom suggested using 8'6".

A motion was made by Mr. Westman to approve the application for Tier 1 approval provided that the architectural drawings match what has been presented in terms of design, massing, scale, setback, and materials, with lighting to be approved and a recommendation for a maximum 8'6" encroachment into the 25' rear setback. The motion was seconded by Mr. Lorenz and was unanimously passed.

142 E 2nd St – Charlie & Elen Kentnor – Addition to back of house.

An application was submitted to add an addition to the back of the house for additional living space.

Mr. Kentnor explained that nine (9) months ago they received HAC approval of a concept plan. They subsequently decided to change the plan to eliminate the breezeway and new plans were created. The new plan does not increase the footprint previously presented to HAC. The new plan was presented to the City and they filed for a Building Permit in September. They later learned that their contractor needed to be licensed and bonded with the City. Mr. Kentnor noted that the application states wood windows; however, learning that fiberglass windows may be acceptable he will speak again with his contractor.

Ms. Hamroun stated this was reviewed as a concept in June 2025 for design, scale, materials and massing, and could be reviewed as Tier 1 during the Building Permit process if the plans

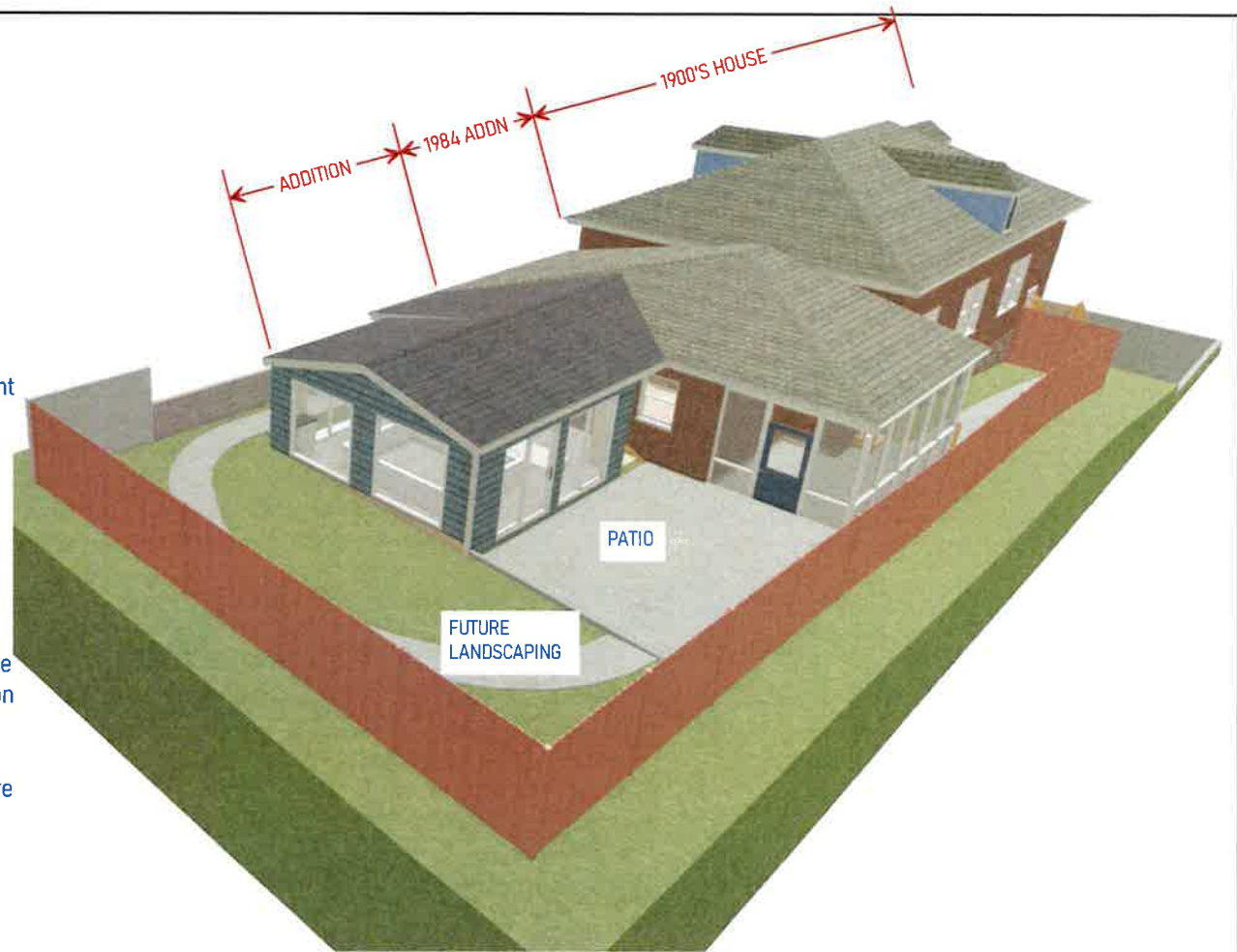
The Owners wish to construct a ~400 SF one-story sunroom addition to their existing 1-1/2 story home to accommodate a therapy pool and seating area. The pool is required for treating their on-going disabling condition. The sunroom is sized to accommodate the clearances required for the pool, a resting space alongside the pool, and an accessible entrance to the house. Currently there is no accessible path into the house and the owner must navigate the front steps with difficulty.

The original house at 106 the Strand is listed as a Contributing Building in the HAC Survey. There is also a 1980's bedroom and bath addition. The sunroom addition will be attached to the recent addition.

The addition will tie in with the existing roofline, and be set into the backyard, which slopes up away from the house. The backyard has fences or walls on all three sides.

The addition is proposed to be wood framing on a block foundation. Where the foundation is exposed above grade it will be covered with cement parging. The addition is proposed to have fiber cement shingle panels that will suit the scale of the addition and the bungalow style. The roof will have matching fiberglass architectural shingles. The exterior doors are proposed to be fiberglass full-lite doors. The windows and sliding patio doors are proposed to be Marvin's Essential line with fiberglass exterior and interior. The fiberglass doors and windows are to provide durability in the high-moisture environment of the pool. The exterior trim will be a 3-1/2" flat trim.

Per the HAC Guidelines for exterior siding, doors, and windows modern alternative materials are appropriate for additions to contributing buildings not visible from the public way.



 **Rear View of Sunroom Addition**
Scale:



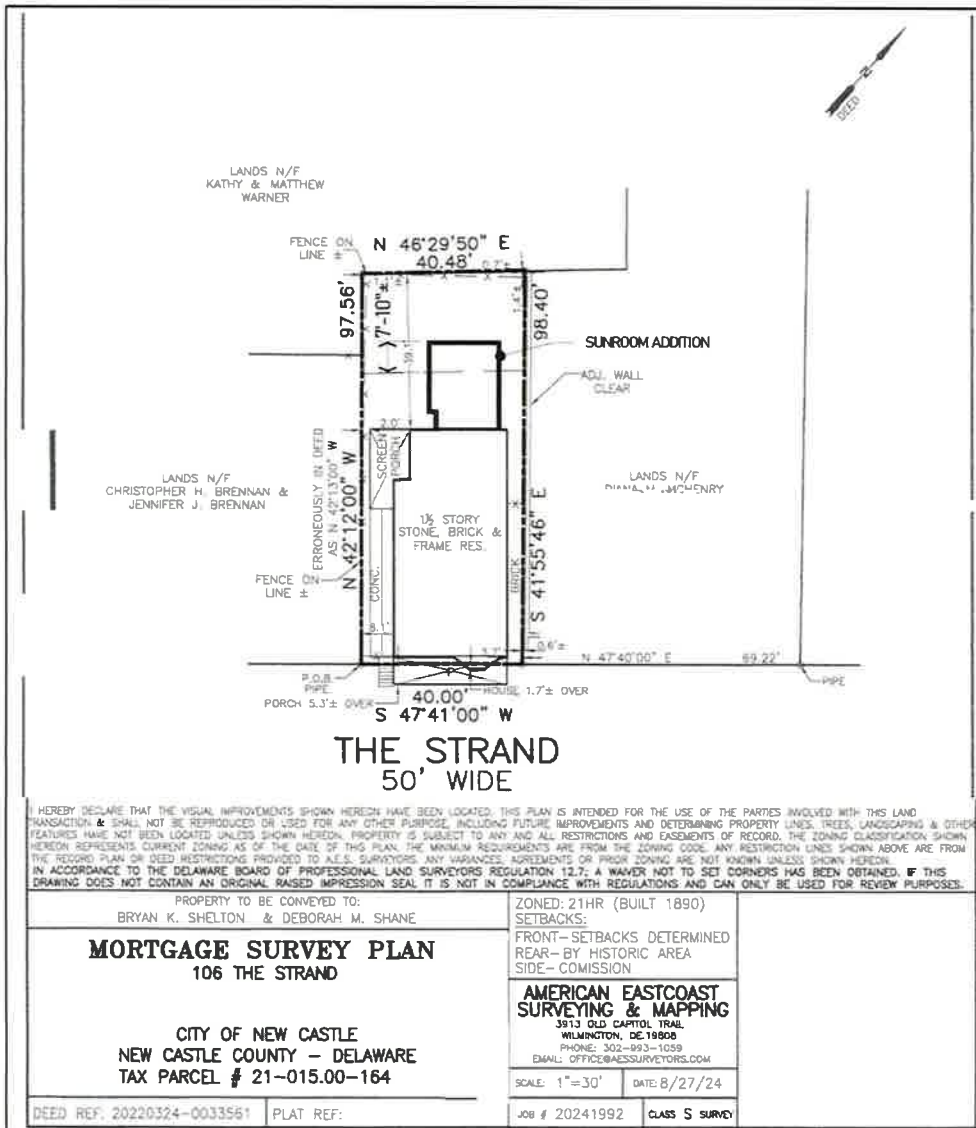
FRONT VIEWS - 1900'S ORIGINAL HOUSE



REAR VIEW - 1984 ADDITION



PANORAMIC VIEW OF BACKYARD

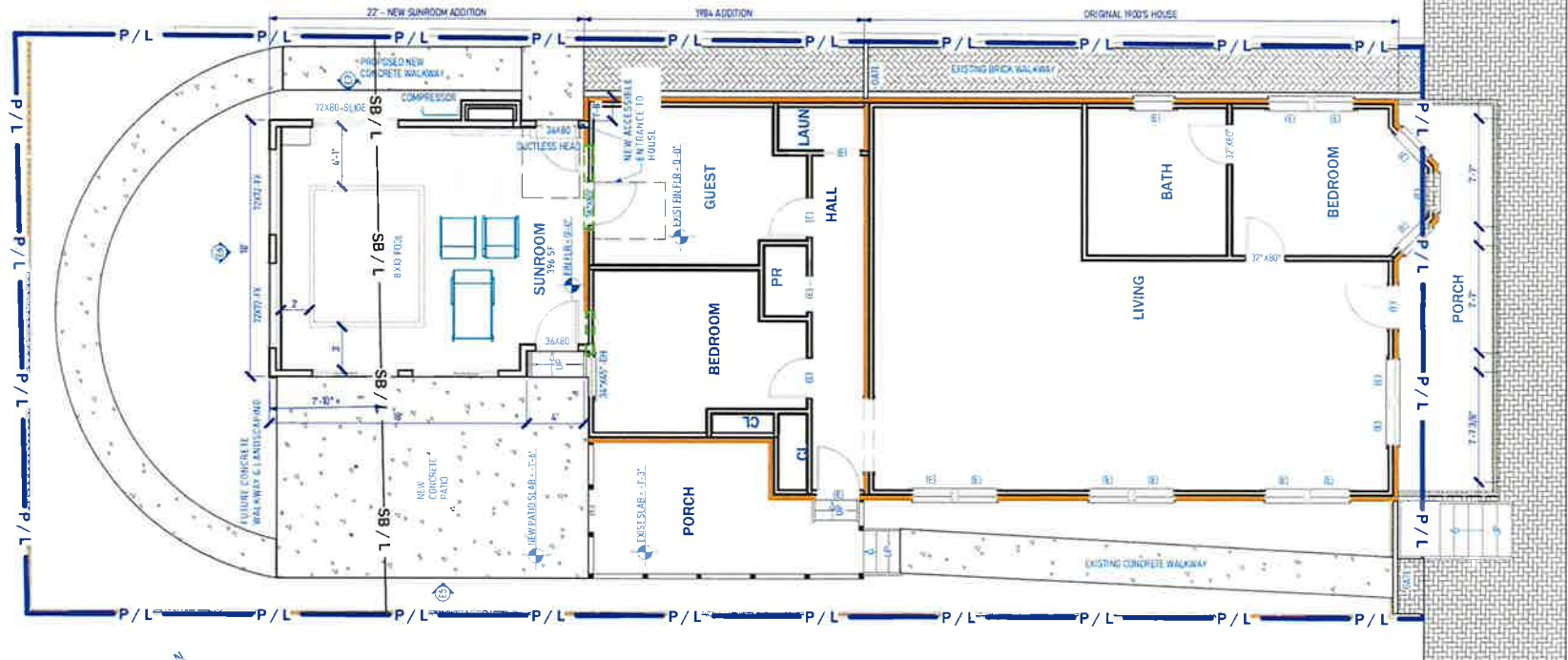


SUNROOM ADDITION to 106 the Strand
New Castle, DE 19720

BoA Submission - March 18, 2026

PAGE 5

Proj Num: 2545

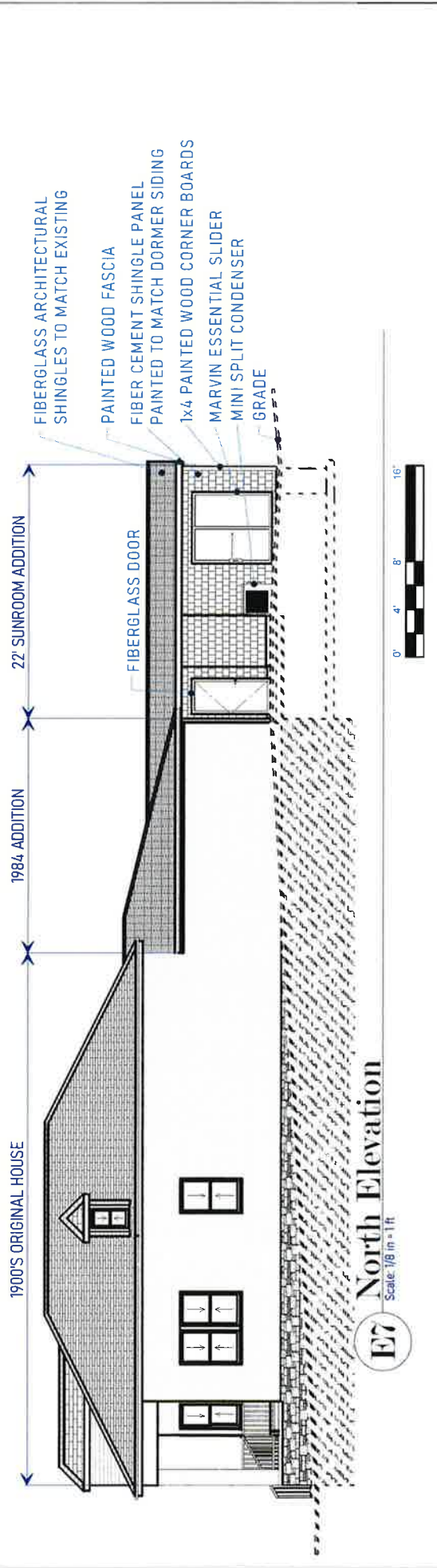
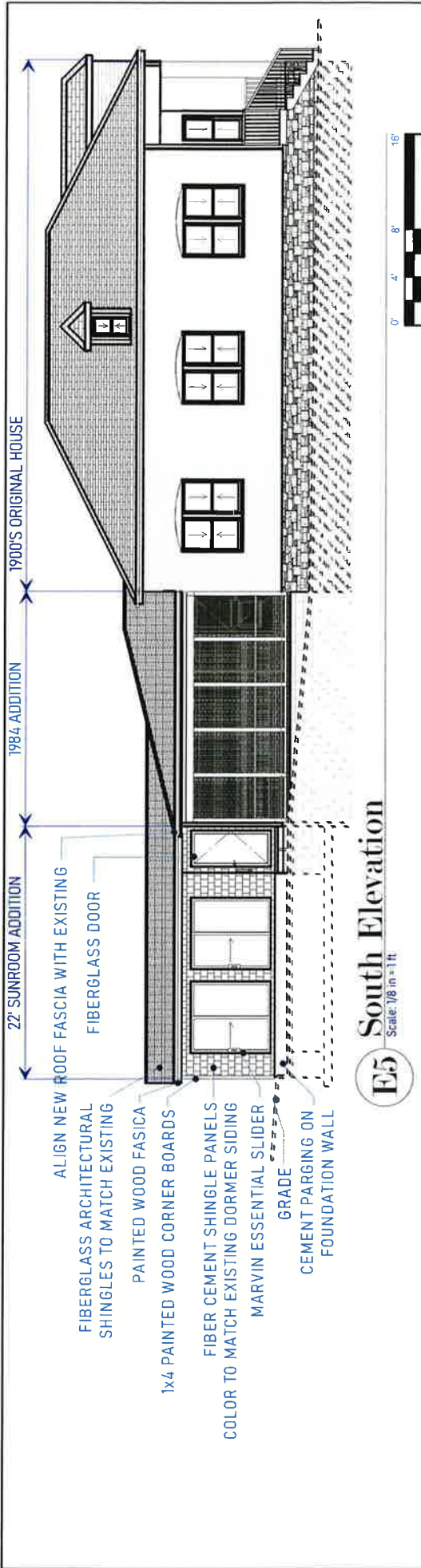


1 Floor Plan

Scale: 1/8" = 1 ft



Requesting 8'-6" relief of the rear setback to construct the new sunroom addition. This is the smallest we can make the addition as we have to provide equipment access clearance at the pool, clear space for the accessible entrance, and a modestly-sized seating area. The addition will take up less than 1/3 of the existing backyard.



Hardie® Shingle

Restore the look of your grand Cape Cod home or add distinction to your handsome bungalow. Hardie® Shingle embodies the enchanting look of cedar shingles with lower maintenance. You can create your perfect exterior style using Hardie® Shingle around your entire home, or place it in accent areas for an added boost of charm you'll love.

Better than the real thing, Hardie® Shingle resists rotting, curling, warping and splitting.



Hardie® Shingle
Straight Edge Panel



Hardie® Shingle
Staggered Edge Panel

PROPOSED FIBER CEMENT SHINGLE PANEL
HARDIE SHINGLE STRAIGHT EDGE PANEL



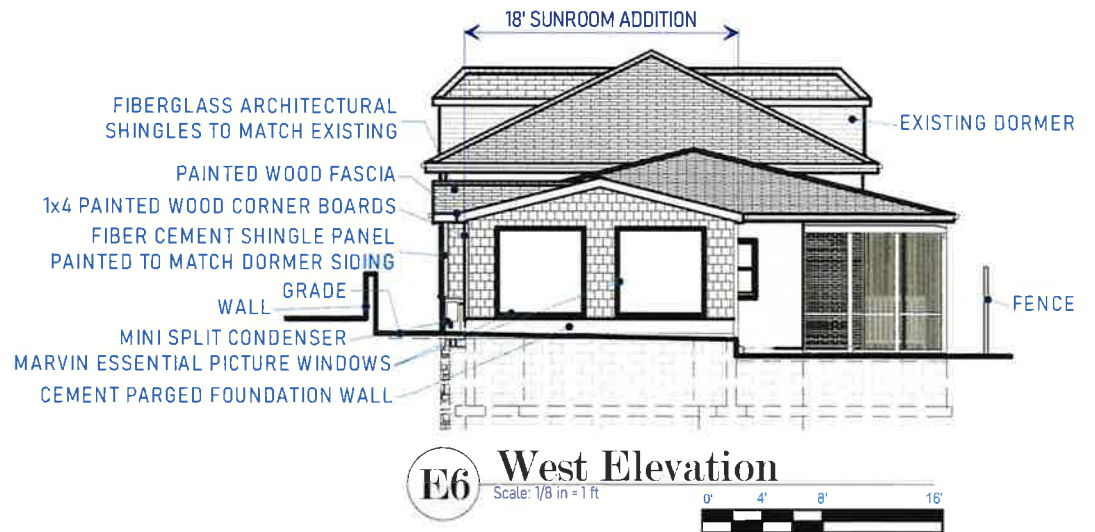
PROPOSED STAMPED CONCRETE FOR
PATIO AND WALKWAYS

Lite Clear Classic External Grilles
Primed Fiberglass Smooth Prehung
Front Door

★★★★☆ 100% Questions & Answers



PROPOSED EXTERIOR DOOR



610 W 7th St

New Castle City Board of Adjustment Meeting Minutes
September 30, 2024 – 6:30 p.m.
1 Municipal Boulevard, New Castle, DE

Members Present: Mayor Valarie W. Leary, Chair
Steve Zorrer
Assunta Scarpitti
Angel Ramos

Absent: Robert Irwin

Also Present: Max Walton, Esq., City Solicitor
Christopher Rogers, City Planner
Antonina Tantillo, City Administrator

Mayor Leary convened the meeting at 6:30 p.m. Roll call followed and a quorum to conduct business was declared.

HEARING #1 – BOA-2024-04: 428, 430, 432, 434, 438, 440 and 442 W. 7th St

An application has been filed by Ward and Taylor, LLC Ryan D. Jornlin, Esq, 55 W. 8th St., (Applicant), and John DiMondi Enterprises, LLC (Owner), for properties located in the DG Zoning District at 428, 430, 432, 434, 438, 440 and 442 W. 7th St, New Castle, DE 19720, Tax Parcel Nos. 21-014.00-566 through 572, seeking a Special Exception per Section 230-21.1B.(2) of the City Zoning Ordinance for religious institutions and their ancillary uses and a Variance to Section 230-28.A.(15)(c)[4][c] of the City Zoning Ordinance to allow 4,000 feet of walking distance to the off-street parking spaces in lieu of the required 1, 200 feet maximum distance.

The City Solicitor stated that the application is for a special exception and a variance and explained the procedure that will be followed.

Ryan Jornlin, Esquire, representing the applicant, explained that the applicant is seeking approval of a special exception to construct a church in the DG Zone and a variance for the distance for off-site parking.

Mr. Jornlin stated how the criteria of the standards have been met:

Special Exception

- The proposed off-site parking is at the Harvest Christian Academy (HCA), which is reasonably close to the site of the proposed church.
- The church will run two (2) para-style busses between the off-site parking and the church.
- A large percentage of the parishioners are expected to walk via the Jack Markell Trail, and there is a bus stop across the street.
- Dr. Raymond Williams of HCA has agreed to allow the church to utilize the Harvest Christian Academy parking lot. The Academy only operates Monday through Friday, and church will use the parking lot when HCA is not in session.

- The church will have 150 seats in the sanctuary. With five (5) seats per parking space, a total of 30 parking spaces are required. The church property can accommodate 13-17 on-site parking spaces and HCA has a total of 40 parking spaces.

Variance

- The applicant is seeking a variance to allow 4,000 feet of walking distance to the off-site parking spaces in lieu of the required 1,200 feet maximum distance. The off-site parking area is approximately 3,100 feet from the church.
- With regard to the exceptional practical difficulty, the building takes up 5,000-6,000 square feet, and the site only allows for 13-17 on-site parking spaces; and a minimum of 30 parking spaces is required.

Mr. Walton stated for the record that the special exception is solely for a church and its ancillary uses. Other potential uses, i.e., daily school or daily day care, would be part of the site plan review. Mr. Jornlin clarified that conducting church services is the primary use and any child care would be during church service hours.

In response to questions from Mr. Walton, Mr. Jornlin testified that:

- The site has been largely empty and the applicant believes the proposed use is in line with the DG Zone; it is a contribution to the community as a whole; the appearance will be an improvement; and will not detract from neighboring properties or the character of the neighborhood.
- There are other properties in the area that are complimentary to the church, i.e., housing and retail.
- The property will be used as a church, which will contribute to the public welfare.
- The church is aware that they will have to go to public utilities and New Castle County for approval of sewer use, but there should not be a large impact.
- The church is approximately 5,000-6,000 square feet with 13-17 parking spaces on-site.
- Mr. Jornlin had no comment regarding subdivision and land development practices.

In response to questions from the Board, Mr. Jornlin testified that:

- Regarding a question as to the congregation Mr. Jornlin deferred to Dr. Smith, who testified that the congregation will probably hold at around 120 parishioners.
- In response to concerns raised by Mayor Leary with the number of on-site parking spaces, the shuttle busses, and the safety of potential for parishioners crossing the road on foot, Mr. Jornlin testified that Dr. Smith runs a congregational Facebook page and regularly communicates with the parishioners, and the busses have been running for some time.
- The applicant will have a legal agreement executed with HCA regarding the use of their parking lot. Mr. Jornlin also noted that Mr. John DiMondi has offered additional off-site parking and stated that a legal agreement could be executed with him as well.

Mr. Walton entered Exhibits A and B into the record.

Public Comment

Michael Platt

- Mr. Platt spoke in favor of the church.
- Mr. Platt raised a procedural question regarding individuals sitting at the table with the Board (Messrs. Walton and Rogers and Ms. Tantillo) and why Mr. Walton appeared to be presenting evidence vs. the Board Chair. Mr. Walton stated that in his capacity as outside counsel he is often asked to deal with procedural matters. Mr. Walton added that he would respond further to Mr. Platt's concerns after the meeting.

Mr. Walton explained that the Board would make two votes: One for the special exception and one for the variance. He added that the Board may condition that there be a legal agreement that guarantees the church's ability to use off-site parking.

Mayor Leary closed the Public Hearing and opened the floor to Board discussion on the special exception.

Mr. Zorrer

Mr. Zorrer stated that he is in favor of the church; however he expressed his concern with the off-site parking and safety. He opined that congregants will walk across the street and asked if perhaps the State could add a cross-walk and/or signage. During discussion it was noted that addressing a cross-walk and signage is beyond the scope of the Board. Mr. Rogers noted that the project still has to go through the Site Plan process and a full set of engineering plans will be submitted to the Planning Commission for review and approval.

Ms. Scarpitti

Ms. Scarpitti expressed her concern with traffic and pedestrian safety. She concurred that a legal agreement for off-site parking for HCA and Mr. DiMondi needs to be executed.

Mr. Ramos

Mr. Ramos also had concerns about traffic and pedestrian safety.

A motion to approve the special exception to allow a church to be built in the DG Zone was made by Mr. Zorrer. The motion was seconded by Ms. Scarpitti.

Mr. Zorrer stated that he votes favor of the motion on the special exception for the following reasons:

- a) A church is consistent with the use and spirit of the property. The neighborhood consists of housing and commercial and there are numerous churches in and around New Castle.**
- b) The church is a fine use of the property; it will not cause injury to any neighbors; and it fits with the character of the area.**
- c) A church will definitely benefit the community and public welfare.**
- d) A church should not be a heavy drain on public utilities or services.**

- e) **There should not be a problem with traffic; however, there may be some pedestrian movements that should be adequately addressed.**
- f) **Several parcels are being combined to accommodate the church and parking, which is a sound decision.**
- g) **The church is a small entity and should not generate excessive trash or other hazardous elements.**

Ms. Scarpitti stated that she votes in favor of the special exception for the reasons stated by Mr. Zorrer, and that she incorporates those reasons into her vote.

Mr. Ramos stated that he votes in favor of the special exception for the reasons stated by Mr. Zorrer, and that she incorporates those reasons into his vote.

Mayor Leary stated that she votes in favor of the special exception for the reasons stated by Mr. Zorrer and that she incorporates those reasons into her vote.

The motion passed unanimously.

The Board then entered into a discussion on the requested variance.

Mayor Leary stated that she would like to condition a motion on a legal agreement with Harvest Christian Academy and Mr. John DiMondi.

A motion to approve the variance on the condition that Harvest Christian Academy and John DiMondi sign a binding legal agreement for allowing parking acceptable to the City was made by Mr. Ramos. The motion was seconded by Ms. Scarpitti.

Mr. Zorrer stated that she votes in favor of the variance for the following reasons:

- a) **The size of the lot is fairly small for the size of the building, which makes off-site parking necessary; and the solution is sufficient and satisfies the intent of the Code.**
- b) **There are a number of other churches in and around the town; the community is a mix of residential and commercial; and a church will add another use to the community.**
- c) **The church will not adversely affect the area. There may be issues with parking, but that is an issue the church should address.**
- d) **The practical difficulty of the property is that the size of the site does not permit building a church of the size proposed and also have adequate on-site parking; and satellite parking resolves that issue.**

Ms. Scarpitti stated that she votes in favor of the variance for the reasons stated by Mr. Zorrer and that she incorporates those reasons into the record as part of her vote.

Mr. Ramos stated that he votes in favor of the variance for the reasons stated by Mr. Zorrer and that he incorporates those reasons into the record as part of his vote.

Mayor Leary stated that she votes in favor of the variance for the reasons stated by Mr. Zorrer and that she incorporates those reasons into the record as part of her vote.

The motion passed unanimously.

The Board took a five (5) minute break before the 2nd Hearing.

HEARING #2 – BOA-2024-05: 610 W 7th St & 700 Larkin St, New Castle, DE 19720

An application has been filed by Freedom Development, LLC. (Applicant) and J H Fisher Inc., (Owner), for properties located in the DG Zoning District at 610 W 7th St & 700 Larkin St, New Castle, DE 19720, Tax Parcel Nos. 21-014.00-132 & 21-017.00-127, seeking a Special Exception per Section 230-21.1B. (2) of the City Zoning Ordinance for multi-family dwellings.

The City Solicitor stated that the application for a special exception was properly advertised and posted.

Shawn Tucker, Esquire, representing the applicant, introduced individuals in attendance that may be called on to testify. He noted that the applicant's environmental engineer, Douglas Seavey, as unable to attend the hearing due to COVID; however, he had provided the applicant with an email with pertinent data.

Mr. Tucker reviewed the site and the need for its redevelopment; and the need for affordable housing in New Castle. He noted in particular that:

- The site is made up of 2 parcels for a total of 16.6 acres.
- It is a Brownfield clean-up site.
- The proposed development includes a preserved open-space buffer on the west side.

Mr. Thomas McKenna, Landscape Architect with Bernardon, LLC, distributed two additional Exhibits for the record. Mr. McKenna testified that:

- The layout and design of the buildings is in accordance with the Downtown Gateway District.
- The project consists of 10 buildings: Three 4-story buildings and seven 3-story buildings.
- The development does not exceed the maximum height as stated in the Code.
- The project is compatible with other development projects in the area.
- The design and materials of the buildings was reviewed.
- The development consists of 396 apartments: 264 1-bedroom units and 132 2-bedroom units.
- 594 parking spaces are proposed, which is the minimum required. There is no parking along 7th Street.
- The development includes a 1-story community center and a small commercial component on the end-cap of one building along 7th Street.

- The impervious area of the site is approximately 56%.

Mr. McKenna was sworn in by the City Solicitor.

In response to a question from Mayor Leary, Mr. McKenna stated that the 1-bedroom units are 777 square feet and the 2-bedroom units are 1,087 square feet. Mr. Tucker added that the applicant has considered affordability. He added that the price point for the units is not yet set.

Mr. Tucker stated that an analysis by Mr. Bill Ganc supported the applicant's belief that the market will not support additional retail in this location at this time; and that based on the lack of foot traffic and the inability of other developments in the area to lease retail space, one commercial space is sufficient. Mr. Tucker added that the proposed development will help provide some foot traffic for retail located at The Garrison.

Mr. Tucker stated that the City Code is silent on the subject of density or unit limit of a multi-family development; and the applicant used a previous Board recommendation as a benchmark when determining the total number of units for the development.

Mr. Gary Burcham, Landscape Architect, was sworn in by Mayor Leary.

Mr. Burcham testified that:

- The landscape plan is Code compliant; it complies with the Downtown Gateway requirements and the parking standards for the City of New Castle.
- Along 7th Street, there are ample street trees; the landscaping surrounds the buildings and compliments the architecture; and the landscaping also hides the interior parking space.
- The parking lot is set back a minimum of 90 feet from the sidewalk on 7th Street.
- A landscaped buffer already has trees and dense plantings.
- The parking lot is articulated with 120 trees.

Mayor Leary noted that there is no playground on the proposed plan. Mr. Tucker noted that there is a community center proposed in the project, and Battery Park is a short distance away.

Mr. Tucker briefly reviewed the Code requirements and noted that:

- The traffic study met all DelDOT standards and requirements.
- The applicant met Chief McCabe, who voiced concerns about flooding on Rt. 9; and the applicant has voluntarily offered to install automated flood signage that can be controlled by emergency services to warn vehicles well in advance of flooding so traffic can divert along a side street.
- The applicant met with Chief Majewski of Good Will Fire Company and he did not raise any concerns. Chief Majewski will also review safety features during the site plan review.
- In response to a question from Mr. Zorrer regarding emergency access, Mr. Tucker stated that there is only one entrance/exit to the development; and stated that would be discussed later in the presentation.

- Redevelopment of the site addresses a goal in the Comprehensive Plan.
- Mr. Tucker reviewed other goals in the Comprehensive Plan that the proposed development addresses.
- The applicant is looking into an additional pedestrian cross-walk in front of the property.
- The design of the buildings meets the Downtown Gateway standards.
- Landscaping and lighting is consistent with the character of the district.
- A modest effort is being made to include a commercial aspect to the development.

Mr. McKenna reviewed the five Standards of the Downtown Gateway and explained how the development meets those standards in terms of building character, building orientation, windows, roofs and façade. Mr. McKenna stated that he is satisfied that the requirements of §230 have been met.

Mr. Tucker stated that Larkin Street is proposed to be closed to minimize the number of curb cuts, which is a Comprehensive Plan Goal; but it could be used for emergency access to some degree. Mr. Tucker invited Mr. Mark Ziegler to address emergency access.

Mr. Ziegler was sworn in by Mayor Leary and testified that:

- There are currently three (3) buildings that were serviced by Larkin Street; and there is a parking area that could be connected into Larkin Street to provide emergency access.

Mr. Tucker invited Ms. Nicol Kline-Elsier, Certified Professional Transportation Operations Engineer with McMahon & Bowman to testify regarding emergency access. Ms. Kline-Elsier was sworn in by Mayor Leary and testified that:

- DelDOT did not comment in its traffic review on the need for additional access points.
- She opined that it is better to have it closed and opened only for emergency access.

Ms. Kline-Elsier also testified as to the traffic study that:

- A traffic impact study was required by DelDOT, including a study of five (5) intersections that surround the site for existing traffic counts, projected traffic analysis, general levels of expected traffic growth, and trips to be generated by the project. Ms. Kline-Elsier explained how the study was conducted.
- After review, DelDOT issued a Review Letter with recommendations.
- The results of the traffic study passed DelDOT standards.
 - No intersection improvements were required.
 - The entrance will have a dedicated left-turn lane and a dedicated right-turn lane.
 - There is a shared use 10' path with a 5' buffer and a dedicated bike lane.
 - General frontage improvements will meet all DelDOT standards for roadway conditions.
- Per DelDOT requirements, The Battery was one of the developments included in the traffic study. A development that was proposed to be built across from the applicant's project on 7th Street that does not have an active plan or approvals to be constructed was not on the DelDOT list of developments to include for the traffic study; however, should

that property develop, the applicant's entrance is situated where it could tie into the development across the street.

- Traffic counts were conducted according to DelDOT standards for residential projects; with counts conducted on Tuesdays, Wednesdays or Thursdays from 7-9 in the morning and from 4-6 in the afternoon. Mayor Leary stated that the study did not include some key traffic days/times/seasons when 7th Street has extremely high traffic volume. Ms. Kline noted that the traffic study looks at the impact from the applicant's development; and if the area traffic volumes are higher the impact from a project becomes even more diluted. Discussion of the issues on 7th Street ensued. The traffic study received a Level of Service (LOS) grade of D. Ms. Kline-Elsier listed the intersections DelDOT required to be included in the study:
 - 7th and Washington Streets
 - 7th and South Streets
 - Rt. 273 and Washington Street
 - Rt. 273 and Rt. 13 – DelDOT has a project at this location, and per their written recommendation, applicant is not required to do anything additional to this location.
- At Mr. Rogers' request, Ms. Kline-Elsier addressed the planned bicycle and pedestrian facilities noted in the McCormick Taylor letter of July 3, 2024, which states on page 14 that "a 10' path is requested." Ms. Kline-Elsier stated that request became a requirement and will be included in the entrance plans. She added that the existing sidewalk along the north side of the West 7th Street from the site to South Street will be repaired or replaced; the existing faded cross walks at the intersection of 7th and Washington Streets will be refreshed and the existing curb ramps will be reconstructed to eliminate ponding; and the cross walks at the intersection of 7th and South Streets will be refreshed. Mr. Tucker stated that unless the applicant acquires right-of-way DelDOT will expect this to be done as a condition of the entrance permit.

Ms. Kline-Elsier also testified as to the flood signs:

- DelDOT has a flood remediation project in place for the area on 7th Street at Deemer's Beach / Army Creek.
- The applicant proposes installing signage with solar powered flashing lights at a location where drivers could make a choice to turn off the flooded roadway. The signs can be turned on/off by emergency personnel via text. A variety of locations are being considered that will be reviewed and approved by DelDOT.

In response to a question from Mayor Leary as to whether the applicant had considered restoring the brick building at the corner of 7th and Larkin Streets, the applicant explained the reasons that several buildings, including the brick building, would be demolished.

Mr. Tucker addressed flooding and sea level rise, noting that the site will be raised above the 2050 projected sea level elevation. Mr. Ziegler added that in accordance with FEMA Flood Plain Regulations the site will be above any future impacts by the Delaware River rising; and will be a minimum of 18" above the flood plain.

Mr. Tucker invited the applicant to testify and to speak to information in an email supplied by Douglas Seavey, Environmental Engineer with Landmark Engineering. Mr. John Juffe was sworn in by Mayor Leary and testified:

- Mr. Juffe read Mr. Seavey's email, which stated that:
 - In 2009, Landmark collected 86 shallow soil samples, 79 deep soil samples, 15 ground water samples and 8 surface water samples.
 - In 2024, to compliment and confirm the 2009 sampling Landmark collected 27 surface soil samples, 27 shallow soil samples, 26 deep soil samples, 5 ground water samples, and 4 surface water samples.
 - The samples generally showed elevated metals across the site and some small areas of fuels.
 - In order to prevent human health impacts, the site needs to be capped with 1' or more of soil to prevent long term contact with the soil.
- The applicant is proposing to cap the site with 2' of soil.
- The site has not been remediated because there is no need for targeted hot spot removal as contamination is general across the entire site.
- DNREC approved the Conceptual Model and Sampling Plan.
- The Site Sampling Risk Sampling was completed.
- The Brownfield Development Agreement with DNREC was executed.
- The Remediation Plan will be updated and implemented according to DNREC standards.
- In response to a question from Mr. Walton, Mr. Juffe explained that all DNREC approvals will be obtained prior to the Site Plan approval, or approval will be conditioned on obtaining required DNREC approvals.
- Filling the wetlands is in process. The Army Corps of Engineers inspected the site and there are no issues filling in the old wetlands.
- All approvals will be obtained prior to the recordation of the Site Plan.

Mr. Juffe explained other projects that Freedom Development is currently doing in the City of New Castle.

In response to a question from Mr. Ramos, Mr. Tucker explained that one 2,400 square foot dedicated commercial space is proposed in the end cap of one of the two buildings fronting 7th Street.

In summary, Mr. Tucker reviewed the conditions from the Planning Commission that have been met by the applicant:

- Traffic Impact Study
- Adequate Remediation Plan
- Approval of the DNREC Plan
- Possibility of affordable housing is considered

In response to a question from Mayor Leary regarding PLUS Comments relative to DTC and DART in a June 28th letter, Ms. Kline-Elsier stated that those items were addressed in DelDOT's letter as well and will be part of the entrance plan design process. Ms. Kline-Elsier added that DelDOT's final recommendation states "to coordinate the site plan development with DTC to determine what transit facilities will be needed within the DelDOT right-of-way or internal to the site to accommodate future service requests."

In response to a question from Mayor Leary, Mr. Ziegler stated that dumpster locations and screening will be part of the site plan.

Mr. Juffe stated that Freedom Developer is an owner-operator and intend to create and maintain a good project.

In response to a question from Mr. Walton, Mr. Tucker stated that unless DelDOT would not permit it, the applicant would have no objection to a secondary entrance if required by Good Will Fire Company.

In response to a question from Mayor Leary, Mr. Juffe stated that the plan includes consideration for EV charging stations within the site.

Public Comment

There were no comments from the public.

Mayor Leary closed the hearing and moved the Board into discussion.

Ms. Scarpitti stated that the development is needed in that location and it will increase the value of the area. However, she stated that she has serious concerns with the number of apartments, the fact that it is on Rt. 9, with the traffic, and the fact that it has only one entrance/exit.

Mayor Leary allowed the applicant to address Ms. Scarpitti's concerns.

Mr. Juffe addressed Ms. Scarpitti's concerns, stating that he does not want to build a problem and wants a development that is safe and will not create traffic issues. Ms. Kline-Elsier explained the criteria of the traffic study, how it is modeled, and the data that is collected and reviewed. She also explained the impact of traffic in terms of vehicles exiting the development.

Mr. Ramos did not have any questions; but suggested that the addition of a playground in the community would be good.

Mr. Walton explained that the role of the Board is to determine whether to approve a special exception that allows apartments and commercial in this area.

Mr. Walton recommended adding the following conditions:

1. That the DNREC Brownfield Program planning will be completed before the site plan is approved.
2. That addressing the wetlands issues and approvals thereon will be completed before the site plan is approved.
3. That secondary access to emergency vehicles will be provided on the Site Plan if recommended by Good Will Fire Company; subject to the caveat of if DelDOT does not give approval.
4. That an advance warning system will be installed as noted in the presentation.

Mr. Walton stated all of the Kwik-Check Standards for approving the special exception can be met by incorporating the September 30th letter and the PowerPoint presentation, which are already part of the record, into a vote. If a vote is to deny the special exception the factor(s) that were not met must be stated and explained.

Mr. Rogers stated that some of the other concerns noted by the Board will be addressed during the Site Plan process.

A motion was made by Mr. Ramos to approve the special exception with the four (4) conditions as outlined by the City Solicitor. The motion was seconded by Ms. Scarpitti.

Mr. Walton asked that Mr. Ramos and Ms. Scarpitti withdraw the motion and second to offer a rephrasing of the motion, which they did.

A motion to approve the special exception with the conditions outlined by the City Solicitor (Wetlands, Brownfield, Secondary Access and Warning Lights) was made by Mayor Leary. The motion was seconded by Mr. Zorrer.

Mr. Zorrer stated that he votes yes on the motion based on the reasons outlined in the September 30th letter and the PowerPoint presentation given.

Ms. Scarpitti stated that she votes yes on the motion based on the reasons outlined in the September 30th letter and the PowerPoint presentation, and that reasoning is incorporated by reference in her vote.

Mr. Ramos stated that he votes yes on the motion based on the reasons outlined in the September 30th letter and the PowerPoint presentation.

Mayor Leary stated that she votes yes on the motion based on the reasons set forth in the September 30th letter and the PowerPoint presentation to be incorporated into the record.

The motion passed unanimously.

There being no further business to discuss, Mayor Leary called for a motion to adjourn.

New Castle City Board of Adjustment
September 30, 2024

A motion to adjourn was made was seconded. The motion passed unanimously and the meeting adjourned at 9:03 p.m.

Respectfully submitted,

Kathleen R. Weirich
Stenographer

BOARD OF ADJUSTMENT – CITY OF NEW CASTLE DELAWARE

IN RE: VARIANCE APPLICATION OF)
610 W. 7th Street)
New Castle, DE 19720)
-and-)
700 Larkin Street) BOA-2024-05
New Castle, DE 19720)
)
CITY OF NEW CASTLE, DELAWARE)
PARCEL NO: 21-014.00-132)
-and-)
PARCEL NO: 21-014.00-127)
)

Introduction

The City of New Castle Board of Adjustment (the “Board”) held a hearing on September 30, 2024 (the “Hearing”) in The City of New Castle (the “City”) at the New Castle County City Police Conference Room regarding the above-captioned case. The following members of the Board were present at the Hearing representing a property constituted quorum:

Present:	Valarie Leary (Mayor)	Chair
	Steve Zorrer	Board Member
	Assunta Scarpitti	Board Member
	Angel Ramos	Board Member

Also present were:

Max Walton	City Solicitor
Christopher Rogers	City Planner
Antonina Tantillo	City Administrator

Background

The Board considered an application filed by Freedom Development, LLC. (Applicant) and J H Fisher Inc., (Owner), for properties located in the DG Zoning District at 610 W 7th St & 700 Larkin St, New Castle, DE 19720, Tax Parcel Nos. 21-014.00-132 & 21-017.00-127, seeking a Special Exception per Section 230-

21.1B. (2) of the City Zoning Ordinance for multi-family dwellings. The applicants were represented by Shawn Tucker, Esquire.

Standard of Review

The standard applied for a special exception is set forth in the City of New Castle Code. In approving or denying a special exception, the Board is required to:

- Consider the suitability of the property for the use desired. Assure itself that the proposal is consistent with the spirit, purpose, and intent of this chapter, the Comprehensive Plan, and other relevant plans.
- Determine that the proposal will not substantially injure or detract from the use of neighboring property or from the character of the neighborhood and that the use of the adjacent property is adequately safeguarded.
- Determine that the proposal will serve the best interests of the City, the convenience of the community, and benefit the public welfare.
- Consider the effect of the proposal upon the public services and facilities, such as public water, sewers, police and fire protection, and public schools.
- Consider the probable effects upon highway traffic and pedestrian movements, and assure adequate access and circulation arrangements in order to protect major roads from undue congestion and hazard.
- Be guided in its decision by sound standards of subdivision and land development practice where applicable.

City of New Castle Code § 230-57B.(2)(a)-(g).

The Board may also prescribe conditions and safeguards in addition to those otherwise required by the City Code as are necessary to assure that the intent of the zoning code is complied with, which conditions may include (but are not limited to) harmonious design of buildings, planting and its maintenance as a sight and sound screen, the minimizing of noxious, offensive or hazardous elements, and adequate standards of parking, loading and sanitation. City of New Castle Code § 203-57B.(2)(h).

Testimony Presented

Mr. Tucker introduced individuals in attendance that may be called on to testify. He noted, among other things, that site is made up of 2 parcels for a total of 16.6 acres, it is a Brownfield clean-up site, and the proposed development includes a preserved open-space buffer on the west side.

Mr. Thomas McKenna, Landscape Architect with Bernardon, LLC, distributed two Exhibits for the record. Mr. McKenna testified that the layout and design of the buildings is in accordance with the Downtown Gateway District. The project consists of 10 buildings: three 4-story buildings and seven 3-story buildings. The development does not exceed the maximum height as stated in the Code. The project is compatible with other development projects in the area. The design and materials of the buildings was reviewed. The development consists of 396 apartments: 264 1-bedroom units and 132 2-bedroom units. 594 parking spaces are proposed, which is the minimum required. There is no parking along 7th Street. The development includes a 1-story community center and a small commercial component on the end-cap of one building along 7th Street. The impervious area of the site is approximately 56%. In response to a question from Mayor Leary, Mr. McKenna stated that the 1-bedroom units are 777 square feet, and the 2-bedroom units are 1,087 square feet. Mr. Tucker added that the applicant has considered affordability. He added that the price point for the units is not yet set.

Mr. Tucker stated that an analysis by Mr. Bill Ganc supported the applicant's belief that the market will not support additional retail in this location at this time; and that based on the lack of foot traffic and the inability of other developments in the area to lease retail space, one commercial space is sufficient. Mr. Tucker added that the proposed development will help provide some foot traffic for retail located at The Garrison.

Mr. Tucker further stated that that the City Code is silent on the subject of density or unit limit of a multi-family development; and the applicant used a previous Board recommendation as a benchmark when determining the total number of units for the development.

Mr. Gary Burcham, Landscape Architect, testified that the landscape plan is Code compliant; it complies with the Downtown Gateway requirements and the parking standards for the City of New Castle. Along 7th Street, there are ample street trees; the landscaping surrounds the buildings and compliments the architecture; and the landscaping also hides the interior parking space. The parking

lot is set back a minimum of 90 feet from the sidewalk on 7th Street. A landscape buffer already has trees and dense plantings. The parking lot is accentuated with 120 trees.

Mr. Tucker briefly reviewed the Code requirements and noted that the traffic study met all DelDOT standards and requirements. The applicant noted that they met Chief McCabe, who voiced concerns about flooding on Rt. 9; and the applicant has voluntarily offered to install automated flood signage that can be controlled by emergency services to warn vehicles well in advance of flooding so traffic can divert along a side street. The applicant also met with Chief Majewski of Good Will Fire Company and he did not raise any concerns. Chief Majewski will also review safety features during the site plan review. In response to a question from Mr. Zorner regarding emergency access, Mr. Tucker stated that there is only one entrance/exit to the development; and stated that would be discussed later in the presentation. Redevelopment of the site addresses a goal in the Comprehensive Plan.

Mr. Tucker then reviewed other goals in the Comprehensive Plan that the proposed development addresses and noted that the applicant is looking into an additional pedestrian cross-walk in front of the property. He stated that the design of the buildings meets the Downtown Gateway standards and landscaping and lighting is consistent with the character of the district. He also stated that a modest effort is being made to include a commercial aspect to the development. Mr. McKenna then reviewed the five Standards of the Downtown Gateway and explained how the development meets those standards in terms of building character, building orientation, windows, roofs and façade. Mr. McKenna stated that he is satisfied that the requirements of §230 have been met.

Mr. Tucker stated that Larkin Street is proposed to be closed to minimize the number of curb cuts, which is a Comprehensive Plan Goal; but it could be used for emergency access to some degree. Mr. Tucker invited Mr. Mark Ziegler to address emergency access. Mr. Ziegler testified that there are currently three (3) buildings that were serviced by Larkin Street; and there is a parking area that could be connected into Larkin Street to provide emergency access.

Ms. Kline-Elsier, traffic engineer, also testified. She stated that a traffic impact study was required by DelDOT, including a study of five (5) intersections that surround the site for existing traffic counts, projected traffic analysis, general levels of expected traffic growth, and trips to be generated by the project. Ms. Kline-Elsier explained how the study was conducted. After review, DelDOT issued a Review Letter with recommendations.

The results of the traffic study passed DelDOT standards.

- No intersection improvements were required.
- The entrance will have a dedicated left-turn lane and a dedicated right-turn lane.
- There is a shared use 10' path with a 5' buffer and a dedicated bike lane.
- General frontage improvements will meet all DelDOT standards for roadway conditions.

Per DelDOT requirements, The Battery was one of the developments included in the traffic study. A development that was proposed to be built across from the applicant's project on 7th Street that does not have an active plan or approvals to be constructed was not on the DelDOT list of developments to include for the traffic study; however, should that property develop, the applicant's entrance is situated where it could tie into the development across the street.

Traffic counts were conducted according to DelDOT standards for residential projects; with counts conducted on Tuesdays, Wednesdays or Thursdays from 7-9 in the morning and from 4-6 in the afternoon. Mayor Leary stated that the study did not include some key traffic days/times/seasons when 7th Street has extremely high traffic volume. Ms. Kline noted that the traffic study looks at the impact from the applicant's development; and if the area traffic volumes are higher the impact from a project becomes even more diluted. Discussion of the issues on 7th Street ensued. The traffic study received a Level of Service (LOS) grade of D. Ms. Kline-Elsier listed the intersections DelDOT required to be included in the study:

- 7th and Washington Streets
- 7th and South Streets
- Rt. 273 and Washington Street
- Rt. 273 and Rt. 13 – DelDOT has a project at this location, and per their written recommendation, applicant is not required to do anything additional to this location.

Ms. Kline-Elsier also addressed the planned bicycle and pedestrian facilities noted in the McCormick Taylor letter of July 3, 2024, which states on page 14 that "a 10' path is requested." Ms. Kline-Elsier stated that request became a requirement and will be included in the entrance plans. She added that the existing sidewalk along the north side of the West 7th Street from the site to South Street will be

repaired or replaced; the existing faded cross walks at the intersection of 7th and Washington Streets will be refreshed and the existing curb ramps will be reconstructed to eliminate ponding; and the cross walks at the intersection of 7th and South Streets will be refreshed. Mr. Tucker stated that unless the applicant is required to acquire right-of-way, DelDOT will expect this to be done as a condition of the entrance permit.

Ms. Kline-Elsier also testified as to the flood signs and noted that DelDOT has a flood remediation project in place for the area on 7th Street at Deemer's Beach / Army Creek. The applicant proposes installing signage with solar powered flashing lights at a location where drivers could make a choice to turn off the flooded roadway. The signs can be turned on/off by emergency personnel via text. A variety of locations are being considered that will be reviewed and approved by DelDOT.

Mr. Tucker addressed flooding and sea level rise, noting that the site will be raised above the 2050 projected sea level elevation. Mr. Ziegler added that in accordance with FEMA Flood Plain Regulations the site will be above any future impacts by the Delaware River rising; and will be a minimum of 18" above the flood plain.

Mr. Tucker invited the applicant to testify and to speak to information in an email supplied by Douglas Seavey, Environmental Engineer with Landmark Engineering. The e-mail was read into the record, and it was noted that in 2009, Landmark collected 86 shallow soil samples, 79 deep soil samples, 15 ground water samples and 8 surface water samples. In 2024, to compliment and confirm the 2009 sampling Landmark collected 27 surface soil samples, 27 shallow soil samples, 26 deep soil samples, 5 ground water samples, and 4 surface water samples. The samples generally showed elevated metals across the site and some small areas of fuels. In order to prevent human health impacts, the site needs to be capped with 1' or more of soil to prevent long term contact with the soil. The witness also stated:

- The applicant is proposing to cap the site with 2' of soil.
- The site has not been remediated because there is no need for targeted hot spot removal as contamination is general across the entire site.
- DNREC approved the Conceptual Model and Sampling Plan.
- The Site Sampling Risk Sampling was completed.
- The Brownfield Development Agreement with DNREC was executed.
- The Remediation Plan will be updated and implemented according to DNREC standards.

- In response to a question from Mr. Walton, Mr. Juffe explained that all DNREC approvals will be obtained prior to the Site Plan approval, or approval will be conditioned on obtaining required DNREC approvals.
- Filling the wetlands is in process. The Army Corps of Engineers inspected the site and there are no issues filling in the old wetlands.
- All approvals will be obtained prior to the recordation of the Site Plan.

Mr. Tucker reviewed the conditions from the Planning Commission that have been met by the applicant: the Traffic Impact Study; Adequate Remediation Plan; Approval of the DNREC Plan; and Possibility of affordable housing is considered.

In response to a question from Mayor Leary regarding PLUS Comments relative to DTC and DART in a June 28th letter, Ms. Kline-Elsier stated that those items were addressed in DelDOT's letter as well and will be part of the entrance plan design process. Ms. Kline-Elsier added that DelDOT's final recommendation states "to coordinate the site plan development with DTC to determine what transit facilities will be needed within the DelDOT right-of-way or internal to the site to accommodate future service requests."

In response to a question from Mr. Walton, Mr. Tucker stated that unless DelDOT would not permit it, the applicant would have no objection to a secondary entrance if required by Good Will Fire Company.

Decision

After reviewing the record, hearing testimony, and receiving comments from all persons attending the Hearing, the Board APPROVED the special exception by a unanimous vote for the reasons stated on the record by the Board members at the time of their vote (all such reasons are incorporated herein and made part of this written decision by reference).¹ The Board finds that the Applicant has met its burden for the grant of the variances requested and GRANTS the application's request for a special exception, as all requirements in City of New Castle Code § 230-57B.(2)(a)-(g). The reasons for the Board's decision are set forth in the Sept. 30, 2024 letter of the applicant, which each board member incorporated into his or her vote when articulating the reasons for their vote. The letters is attached hereto as Exhibit A. Each Board member also incorporated the applicant's power point as

¹ At the Hearing, a Motion was made, seconded, and discussion followed. The Motion carried by a vote of 4-0 that the special exception sought be APPROVED, and each board member articulated the reasons for his or her vote on the record.

the reason for their vote, and the power point is incorporated herein by reference. These incorporated documents confirm that all required tests for the grant of the special exception have been satisfied.

The grant of the special exception, however, has the following conditions:²

1. That the DNREC Brownfield Program approval will be completed before the site plan is approved.
2. That plans addressing the wetlands issues and approvals on the site will be completed and approved before the site plan is approved.
3. That secondary access to emergency vehicles will be provided on the Site Plan if recommended by Good Will Fire Company; subject to the caveat of if DeIDOT does not give approval, secondary access cannot be provided.
4. That an advance warning system will be installed as noted in the presentation.

For these reasons, and for the reasons stated on the record at the Hearing, the variance requested and the special exception requested in the application are APPROVED with conditions.

A copy of this written decision shall be mailed to the Applicant, and all persons requesting a copy of the written decision in writing, on the date it is filed.



The Honorable Valarie Leary, Mayor/Chair
On Behalf of the Board

Date of Decision: September 30, 2024

Date of Written Decision/Date Filed: November 12, 2024

² These conditions were unanimously adopted by the Board, and are express conditions of the special exception approval.

Note: This decision may be appealed to the Superior Court by any person aggrieved by it within thirty (30) days of this filing in the Office of the Board of Adjustment at Town Hall, 220 Delaware Street, City of New Castle, Delaware, 19720.