



City of Dover
Board of Adjustment
October 15, 2025
V-25-05

Title: Bayhealth Medical Center, Inc. Variance Request

Location: 640 South State Street (and 625 South Governors Avenue)
East of S. Governors Ave., West of S. State St.

Applicant/Owner: Bayhealth Medical Center Inc.
620 South State Street
Dover, Delaware 19901

Tax Parcel: ED-05-077.13-01-52.00-000

Application Date: September 12, 2025

Present Zoning: IO (Institutional Office Zone)
SWPOZ (Source Water Protection Overlay Zone) – Tier 3 (portion of site)

Present Use: Hospital/Medical Campus

Reviewed By: Savannah Edwards, AICP Planning Consultant (Rossi Group)
Dawn Melson-Williams, AICP, Principal Planner

Variance Type: Area Variance

Variance Requested: Request has been made for two variances from the requirements of *Zoning Ordinance*, Article 4 §4.15 to allow for an increase in height from 150 feet to 175 feet and for a reduction of the minimum 10-foot front yard setback to allow an eight-foot encroachment into the front yard on South Street.

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

Project Description:

The Property is located at 640 South State Street for the hospital facility known as the Bayhealth Medical Center – Kent Campus. A Request has been made for two Variances from the requirements of *Zoning Ordinance*, Article 4 §4.15 as associated with a proposed 10-story Hospital Bed Tower Building Addition.

- Variance Request #1 seeks to increase the allowable height from 150 feet to 175 feet for a new 10-story Hospital Bed Tower.
- Variance Request #2 seeks a reduction of the minimum 10-foot front yard setback to allow for building encroachment of the Bed Tower Elevators and Stairs where adjacent to South Street.

The property is zoned IO (Institutional and Office Zone) and partially subject to the SWPOZ (Source Water Protection Overlay Zone). The owner of record is Bayhealth Medical Center, Inc. Property Addresses: 640 South State Street and 625 South Governors Avenue, Dover DE. The Tax Parcel ID is ED-05-077.13-01-52.00-000.

Adjacent Land Uses and Zoning

The adjacent properties are zoned IO (Institutional and Office Zone) and are part of the Bayhealth campus. The property at the southeast corner of South Street and South State Street is zoned RGO and is also part of the Bayhealth campus; it is currently subject to a separate Rezoning Application Z-25-01 that requests it be rezoned to IO and subject to SWPOZ. Holy Cross Church and School, zoned IO, is located across South State Street; and medical offices, zoned IO and other commercial businesses in the C-3 (Central Commercial Zone), are located across South Governors Avenue. There are also residential uses across South State Street to the northeast that are zoned R-8 (One Family Residence Zone) that are part of the Elm Terrace community.

A Map Exhibit (Exhibit B) prepared by Staff is attached to this Report. It shows the subject property's location and the zoning classifications. Also, Exhibits D and E are Site Plans showing the subject property and its surroundings.

Previous Applications: Site Development Master Plan and Associated Administrative Plans

In June 2006, the Planning Commission approved a Site Development Master Plan (S-06-14) for the Bayhealth Kent Campus. Part of this Master Plan included a three-story podium building and a seven-story bed tower to be constructed above the podium building, culminating in a total of ten stories. In subsequent years, Administrative Site Plans were approved that allowed for the construction of components of the Site Development Master Plan improvements of the podium building, the parking garage, and other buildings and building additions. The Site Development Master Plan is now expired, as the approval for Site Development Master Plans is valid for five years. Future development activities will require appropriate plans and permit reviews.

Code Citations

IO (Institutional and Office Zone)

The subject project area is zoned IO (Institutional and Office Zone). *Zoning Ordinance*, Article 3 §10 lists the permitted uses, conditional uses, and other provisions of the IO zone. Institutional uses such as a hospital are allowable use in this zone.

The following are definitions in the *Zoning Ordinance* related to these variance requests:

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

Setback: The distance between the street line and the setback line.

Setback line: A line extending between the two side lot lines of a lot or a parcel of land, which is parallel to, and a stated distance from, a street line.

Street line: The dividing line between a lot and a street.

Yard, front: An unoccupied ground area fully open to the sky between the street line and the setback line. The minimum width of the front yard is equal to the setback.

The IO (Institutional and Office Zone) zoning district of the City of Dover's *Zoning Ordinance* (Article 4§ 4.15) allows for a maximum building height of 10 stories and 150 feet. It also requires a minimum front yard of 10 feet. See the following summary chart of the bulk standards.

	IO
Minimum required:	
Lot area	10,000 sq. ft.
Lot width (ft.)	100
Lot depth (ft.)	100
Front yard (ft.)	10
Side yard (ft.)	10
Rear yard (ft.)	15
Side or rear yards which adjoin a residence zone (ft.)	30
Off-street parking	
Per 300 sq. ft. floor area or	1
Per employee (whichever is greater)	
Maximum permitted:	
Building height	
Stories	10
Feet	150
Floor area ratio	6.0
Lot coverage	85%

The IO zoning district is considered a nonresidential zone as defined in the *Zoning Ordinance* and as such has additional parameters related to height. See the following supplementary regulations excerpt from *Zoning Ordinance*, Article 5 §3.

Article 5

Section 3. - Supplementary regulations applying to nonresidential buildings.

3.1 Supplementary height regulations in nonresidential zones.

3.11 Except for one- or two-family dwellings, where a lot has frontage on two or more streets or other public ways, the height limitation shall apply only as measured from the curb level along the street or way with a higher elevation above sea level.

3.12 When penthouses, bulkheads, roof structures housing stairways, elevators, skylights, cooling towers, air-conditioning units, or other equipment, etc., are over 12 feet high and cover more than 20 percent of the roof area, measurements must be taken to the top of such elements.

3.13 An ornamental or decorative part of a building which is not used as a living or storage area, such as steeples, spires and the like may not be greater in height than the maximum height of the building to which the same is attached.

3.14 All penthouses, bulkheads, roof structures housing stairways, elevators, skylights, cooling towers, air-conditioning units, or other equipment, etc., must be ten feet back of the sidewalls, except that walls of elevators and stair enclosures may be built on the sidewall when required by the plan of the building.

SWPOZ (Source Water Protection Overlay Zone)

The subject property is partially located within the SWPOZ (Tier 3: Excellent Recharge Area) found in Article 3 Section 29.7 of the *Zoning Ordinance*. The SWPOZ does include a prohibition of certain uses where the activity may be harmful to water resources; see *Zoning Ordinance*, Article 3 §29.51. However, this subject property is within the Downtown Redevelopment Target Area which is exempted from the SWPOZ requirements and restrictions as per *Zoning Ordinance*, Article 3 §29.79 related to impervious surface coverage. The SWPOZ does not place limitations on height or front yard setbacks.

Applicant's Proposed Project and Variances Requested

The Applicant has submitted Site Plans (Exhibits D and E as presented in two plan sheet sizes for readability) and an Architectural Graphics Package (Exhibit F of Sheet 01-05). Site Plan Sheet 1 shows the overall subject property at 640 South State Street and annotates the location of the proposed Bed-Tower Overbuild consisting of floors 5 through 10 with its associated elevator and stair tower portion on its proposed encroachment into the front yard setback adjacent to South Street. Sheet 2 is a close-up of the Bed-Tower Overbuild for a more detailed view. The Architectural Graphics Package details the proposed building expansion in a site plan; a series of building elevations of the existing building with the proposed addition of the Bed-Tower topped with the enclosed mechanical penthouse and the Elevator and Stair Tower Expansion; 3-D views; and sections of the building including example rooms with mechanical and structural areas depicting variations in floor-to-floor height (15 feet to 18 feet).

The applicant is requesting two variances from the requirements of the *Zoning Ordinance*, Article 4 §4.15: Variance #1 - Increasing the maximum building height from 150 feet to 175 feet and Variance #2 - Allowing a 400-SF projection eight feet (8) into the Building Restriction Line (front yard setback line). The ten-story tower was approved by the City of Dover in 2006 as part of the campus Site Development Master Plan, and four stories have already been constructed. The proposed expansion is therefore consistent with prior approvals, existing zoning, and long-term planning for the site.

Exceptional Practical Difficulties Tests

Zoning Ordinance, Article 9 §2 dictates the specific powers and duties of the Board of Adjustment with regard to granting variances. Specifically, the Board must determine:

2.1 Variance – The board shall have the authority to authorize variances from provisions of the Zoning Ordinance that are not contrary to public interest where the board determines that a literal interpretation of the Zoning Ordinance would result in undue hardship or exceptional practical difficulties to the applicant. In granting variances, the board shall determine that the spirit of the Zoning Ordinance is observed and substantial justice is done.

2.11 Area Variance. A variance shall be considered an area variance if it relates to bulk standards, signage regulations, and other provisions of the Zoning Ordinance that address lot layout, buffers, and dimensions. In considering a request for an area variance, the board shall evaluate the following criteria and document them in their findings of fact:

- (a) the nature of the zone in which the property lies;
- (b) the character of the immediate vicinity and the contained uses therein;
- (c) whether, if the restriction upon the applicant's property were removed, such removal would seriously affect neighboring properties and uses; and
- (d) whether, if the restriction is not removed, the restriction would create unnecessary hardship or exceptional practical difficulty for the owner in his efforts to make normal improvements in the character of that use of the property that is a permitted use under the provisions of the Zoning Ordinance.

Review of Application

As part of the Application, the applicant was asked to summarize how the requested Variance relates to the above criteria. The applicant's responses are provided in Exhibit C – Written Narrative and are listed below. The Staff assessment of the application in accordance with the required criteria is provided below.

Applicant Responses:

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

Applicant Response:

The subject property is located within the Institutional Office (IO) zoning district, which expressly permits hospital use. Bayhealth Kent Campus Hospital has continuously operated on this site since the early 1900s and has served as the primary hospital and healthcare institution for the region.

Since the original hospital building opened in 1927, the campus has experienced significant growth to meet the needs of a growing community. This growth resulted in the acquisition of numerous surrounding properties and the development of a multi-building, horizontally oriented facility. The current campus layout includes four separate elevator banks serving multiple patient bed towers and long, winding corridors that are difficult for patients, particularly the elderly, to navigate.

The proposed project will construct the remaining six stories of a previously approved ten-story bed tower, consolidating patient care vertically. This design will simplify wayfinding, improve operational efficiency, and reduce internal travel distances for patients, staff, and visitors.

The project will also eliminate outdated dual-occupancy patient rooms and replace them with single-patient rooms, consistent with current privacy standards, best practices in patient care, and applicable regulations. To meet community demand, approximately 100 additional beds will be added, helping to alleviate emergency department backups caused by insufficient inpatient capacity.

The ten-story tower was approved by the City of Dover in 2006, and four stories have already been constructed. The proposed expansion is therefore consistent with prior approvals, existing zoning, and long-term planning for the site. The Central Utility Building (CUB) located to the

north will continue to support the tower by handling materials and supply deliveries via the existing bridge over South Street.

Staff Response:

The property is zoned IO (Institutional and Office Zone), which allows for the hospital and medical offices and the related parking facilities. The IO zone allows for a ten-story building, but it limits building height to 150 feet. The applicant is looking to build ten stories at a total of 175 feet. The request for a reduced front yard setback is along South Street, which cuts through the Bayhealth campus as both properties are zoned IO. A bridge connecting the Central Utility Building to the main hospital building already exists over South Street. The reduction of the front yard is in the vicinity of this bridge is to accommodate the building addition for the Bed Tower Elevator and Stair Tower.

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

Applicant's Response:

The immediate vicinity of the subject property is characterized by a mix of institutional, commercial, and medical uses. The majority of surrounding parcels are owned by Bayhealth and directly support hospital operations.

- **North:** All property to the north is Bayhealth-owned, IO-zoned, and used for parking and support functions, including the CUB. Two Bayhealth office buildings are also located in this area.
- **East:** Across South State Street, two IO-zoned properties exist. One is Bayhealth-owned and used for staff parking, a surgery center, and a daycare facility. The other is Holy Cross Church and School, which has coexisted with Bayhealth for decades in a mutually supportive relationship.
- **South:** Across Hope Street are three IO-zoned parcels: a Bayhealth parking facility serving a one-story outpatient building, a doctor's office, and a Bayhealth-owned residence for relocating staff.
- **West:** Across South Governors Avenue are five C3-zoned commercial properties. Two are occupied by Bayhealth offices, while the remainder house long-standing commercial businesses compatible with hospital operations.

Overall, the immediate vicinity is a well-established medical and commercial corridor that has evolved with Bayhealth's growth and remains consistent with the intent of the IO zoning district.

Staff Response:

The subject property is the main hospital block which is bounded by streets and surrounded by associated institutional facilities of the hospital including surface parking lots, medical office and service buildings, and a separate institutional use of a place of worship with school. The applicant's narrative and plans submission describes the nearby uses in greater detail. The nearby residential neighborhoods are over a block away from the location of the proposed Bed Tower Overbuild building addition location. The requested variances are consistent with the character of the immediate vicinity and the uses within this area. The proposed variances are fully surrounded by properties that are part of the Bayhealth campus.

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

Applicant Response:

Granting the requested variances (1) increasing the maximum height from 150 to 175 feet and (2) allowing a 400-square-foot projection into the Building Restriction Line (BRL) will not adversely impact neighboring properties.

The tower's ten-story height was previously approved by the City of Dover in 2006, and four stories have already been completed. Surrounding property owners have been aware of this development for years. Nearly all adjacent properties are Bayhealth-owned and used for hospital operations. The few remaining properties are IO- or C3-zoned commercial uses that have coexisted compatibly with the hospital for decades.

The tower is centrally located within the Bayhealth campus, with the nearest off-site building more than 320 feet away. The additional height is primarily for mechanical and HVAC systems necessary for a 24-hour hospital operation, requiring redundancy that exceeds the code's 20% rooftop mechanical equipment allowance.

The requested BRL projection will accommodate a second stairwell and elevator bank required by life-safety codes. This will improve emergency egress by reducing travel distances, facilitating faster patient evacuation, and allowing vertical transport of materials arriving via the South Street bridge without disrupting patient areas. Because the bridge already projects into the BRL, the visual impact of the new construction will be minimal.

Staff Response:

The requested increase in maximum height for the building to 175 feet and to allow eight-foot encroachment (approximately 400 SF in area) into the front yard on South Street would not seriously affect the neighboring uses and properties. As previously stated, the IO zone allows ten stories. The variance request would increase the height from 150 feet to 175 feet to accommodate the increase floor-to-floor height necessary for hospital rooms/spaces with needed mechanical and building structure areas and the roof mounted mechanical systems. While it will be the tallest building in larger southern Downtown Dover area, there are topographic changes in the land in the area that also minimize the overall height appearance. The likely placement of building elevation detailing and window systems will likely emphasize the ten floors (stories) and not the actual measurement in feet of the building height. The encroachment into the front yard on South Street is in the area where a bridge connecting the Central Utility Building to the main hospital already crosses South Street through the front yard. The Elevator & Stair Tower element is an addition to the existing building in a location related to interior function and life safety egress requirements. These variances are in the middle of the Bayhealth campus and are completely surrounded by Bayhealth property. They will not seriously affect the neighboring properties or uses.

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:

Strict enforcement of the current height and BRL restrictions would result in significant hardship and exceptional practical difficulty for Bayhealth in carrying out permitted hospital uses.

Although the project complies with the ten-story limit, hospitals require greater floor-to-ceiling heights (15–18 feet) than typical commercial buildings to accommodate heavy medical equipment, redundant HVAC systems, medical gas lines, data infrastructure, and other life-safety features. In addition, hospital equipment such as MRI machines, robotics and other apparatuses are extremely heavy requiring a larger structure that needs extra clear space. Gases, computers, monitors, etc. are also needed on hospital rooms, all of which are run in the spaces below and above the rooms requiring more height than typical buildings. Without the variance, entire floors and beds would need to be eliminated, preventing Bayhealth from meeting community demand and defeating the project's purpose.

The vertical expansion is also essential to address current wayfinding challenges caused by the existing horizontal layout, which includes four widely separated elevator banks. The new tower will provide direct elevator access from the main entrance, simplifying navigation for patients and visitors.

Finally, the requested BRL projection is critical for life safety. The additional stairwell and elevator cannot reasonably be located elsewhere given that the first four stories of the tower are already in place. These features will enhance emergency evacuation and operational efficiency, thereby serving the best interests of patients, staff, and the broader community.

Staff Response:

If the restriction is not removed, it would create an exceptional practical difficulty for the hospital in its efforts to make normal improvements to the campus. As the applicant has stated, Bayhealth Medical Center (Kent General Hospital) is a regional hospital serving the population of north and central Kent County. The proposed building height complies with the maximum number of stories, but because of the specific needs of hospitals, the floor to ceiling height is greater than other uses, requiring 15 feet -18 feet of floor-to-ceiling area. The location of roof mounted mechanical systems are part of this increased height scenario.

The encroachment into the front yard is also necessary to allow for a stairwell and elevator necessary for life safety as required by Building Codes and Fire Codes. With the additional floors of patient rooms and other medical services areas, this additional Elevator and Stair Tower is required. It will be closer to the front property line but is estimated to only be 400 SF of encroachment area as the existing building does not sit at a right angle to the street. If the variances are not granted, it would make it difficult for Bayhealth to make necessary improvements to the existing campus to serve the healthcare needs of the community.

Variance Recommendations

Staff recommends **approval** of the Variances that would allow for the increase the allowable height from 150 feet to 175 feet for a new 10-story Hospital Bed Tower (Variance #1) and for a

reduction of the minimum 10-foot front yard setback to allow for building encroachment of the Bed Tower Elevators and Stairs where adjacent to South Street (Variance #2).

Staff recommends **approval** of the two variances for reasons as follows:

- Staff believes that the applicant has provided appropriate justification to support the requested variances as presented in their Narrative, Site Plan, and Architectural Graphics package.
- The ten stories proposed are permitted within the IO (Institutional and Office Zone) zone by the *Zoning Ordinance*, but additional vertical height (floor-to floor/ceiling) is needed to support the hospital use of room space with mechanical and structural systems. This increases the Bed Tower's height from 150 feet to 175 feet while the number of stories is ten stories.
- The building encroachment into the front yard on South Street is also justified to accommodate the Elevator and Stair Tower as this encroachment is in a location where a bridge crosses South Street and where the surrounding area on South Street is part of the overall Bayhealth campus. The area of encroachment of approximately 400 SF is a very small area of the hospital building footprint.
- These variances of *Zoning Ordinance* are necessary for building construction to meet Building Code and Fire Code provisions of the hospital use/function and life safety requirements for egress.
- The applicant has demonstrated that the granting of these variances would be consistent with the IO zone; consistent with the character of the immediate area and uses contained therein; that they would not adversely affect neighboring properties; and that exceptional practical difficulty exists for the hospital in making improvements to the property without the variances.

Advisory Comments to the Applicant

- If granted, the variance becomes null and void if work has not commenced within one (1) year of the date the variance was granted. At present there is no provision for extension.
- The Applicant should be aware that whenever the Board of Adjustment denies an application for a variance, such application for a variance, or an application on the same property, which is substantially similar, shall not be accepted for reconsideration by the Board of Adjustment sooner than one year from the date of denial (*Zoning Ordinance*, Article 9 §3.8).
- This project for a proposed building addition/expansion of the hospital is subject to a separate Site Development Plan/ Site Development Master Plan review process with the Planning Commission. The applicant should contact the Planning Staff to determine the appropriate application and review process for any proposed projects.
- The applicant shall be aware that approval of any variance application does not represent a Building Permit, Demolition Permit, Sign Permit, or other construction activity permit approval. A separate application submission is required before issuance of permits by the City of Dover.

GUIDE TO ATTACHMENTS

Exhibit	Description/Author	# Pages
A	BOA Application Form	1
B	Zoning Map Exhibit (Staff)	1
C	Applicant's Written Responses: Narrative	3
D	Site Plan (size 11 x 17)	2
E	Site Plan (size 24 x 36)	2
F	Architectural Graphics Package (Sheet 01-05)	5