



City of Dover
Board of Adjustment
June 20, 2024

V-24-01

Title: Legislative Hall Parking Garage Project – Application for Variances

Location: Southeast corner of Martin Luther King Jr. Boulevard South and East Avenue/E. Water Street

Addresses: 425 East Avenue and existing building addressed as 150 E. Water Street, Dover, DE

Owner: State of Delaware – OMB: Division of Facilities Management

Tax Parcel1: ED-05-077.10-01-02.00-000

Application Date: May 15, 2024

Present Zoning: IO (Institutional and Office Zone)
H (Historic District Zone)

Present Use: Existing Parking Lot and Office/Credit Union Building

Proposed Use: Parking Garage Structure, Parking Lot Area, and Office/Credit Union Building

Reviewed By: Dawn Melson-Williams, AICP, Principal Planner

Variance Type: Area Variances

Variances Requested: Variance Requests to allow some project development within the Flood Hazard Area. The project has requested variances from the *Zoning Ordinance*, Article 5 Section 11.21 pertaining to development within the Flood Hazard Area (1% Annual Chance Flood/100-year floodplain).

- Variance Request 1 is to decrease the required reduction of the impervious surface area of the predevelopment conditions on the lot from 15% to 5% (Article 5 Section 11.211a).
- Variance Request 2 is to recognize that 48.7% of the lot is within the flood hazard area which is greater than 33% that allows Planning Commission consideration of reductions in impervious surfaces (Article 5 Section 11.211b).

Project Description

The property is located at the southeast corner of Martin Luther King Jr. Boulevard South and East Avenue/E. Water Street. The Legislative Hall Parking Garage Project proposes redevelopment of the property for construction of a three-story Parking Garage and other site improvements with portions of the existing surface parking lot and an office/credit union building to remain. A Site Plan set shows the project (See Exhibit E).

The Applicant (State of Delaware) has requested variances from the *Zoning Ordinance*, Article 5 Section 11.21 pertaining to development within the Flood Hazard Area (1% Annual Chance Flood/100-year floodplain). Variance Request 1 is to decrease the required reduction of the impervious surface area of the predevelopment conditions on the lot from 15% to 5% (Article 5 Section 11.211a). Variance Request 2 is to recognize that 48.7% of the lot is within the flood hazard area which is greater than 33% that allows Planning Commission consideration of reductions in impervious surfaces (Article 5 Section 11.211b). These Variance Requests would allow for some project development within the Flood Hazard Area.

The new building (Parking Garage Structure) would be subject to a separate Site Development Plan review process with the Planning Commission. The project was reviewed by the Historic District Commission on May 16, 2024 for a recommendation on Architectural Review Certification for construction activities (architectural style, design, appearance, etc.) in the Historic District.

See the Applicant's description of the project given below (excerpt from their narrative submission).

Applicant's Description Project Background Information: The project is located at the corner of Water Street and Martine Luthé King Boulevard within the City of Dover limits, Kent County, Delaware. The existing site contains a three-story brick building with attached canopy that is approximately 10,536+/- S.F. The site also contains a striped parking lot with a capacity of 150 spaces.

The proposed development of the site consists of a new 133,776+/- three-story parking garage that will accommodate 338 parking spaces for public and private use. As shown on the plan, the existing parking lot will be removed, and the proposed parking garage will sit in a portion of the footprint. The remaining existing footprint will become pervious asphalt. This area will contain parking for Capital police and will house a proposed generator that will serve the parking garage as well as Legislative Hall.

Property and Adjacent Properties: Zoning and Land Use

The 5.28 acre +/- property is zoned IO (Institutional and Office Zone) and is subject to the H (Historic District Zone). The initial Building (now offices and credit union) and the surface parking lot on the property were constructed in the late 1950s-early 1960s (in place by 1961). The more recent applications at this site were for the expansions of the OMB/DFM DFCU surface parking lot in 2005 and 2006. Applications (HI-07-01 and S-07-19) in 2007 involved the Del-One Credit Union Drive-thru Expansion to the four lanes, an ATM, and a canopy.

This subject property location at the corner of East Avenue/E. Water Street and Martin Luther King Jr. Boulevard South is part of the Capital Complex where multiple State buildings and offices are located. The Del-One Credit Union Building with its drive-thru is located south of the

project site but on the same property. Across the street to the north is Legislative Hall and to the west across the street is the Tatnall Building (offices). Surrounding properties are zoned IO (Institutional and Office Zone) with other open space areas like the Legislative Mall area zoned ROS (Recreational and Open Space Zone). The surrounding properties on the west side of the St. Jones River are also within the H (Historic Zone).

The eastern property line of the property is the St. Jones River. The eastern portions of the property are located within the Special Flood Hazard Area (100-year floodplain/ 1% Annual Chance Flood) where development and impervious surface is limited by the provisions of the *Zoning Ordinance*. The 100-year floodplain location is labeled as FP-AE (Zone AE) in the applicant's Site Plan set. The information on the Flood Hazard Areas (floodplain areas) is shown on FEMA FIRM Panel 10001C167H effective May 5, 20023 and Panel 10001C169J effective July 7, 2014. See Exhibit D for the National Flood Hazard Layer FIRMette.

A series of Map Exhibits (Exhibit B-D) prepared by Staff is attached to this Report. It shows the subject property's location and the surrounding zoning and the Special Flood Hazard Areas.

Code Citations

IO (Institutional and Office Zone)

The subject project area is zoned IO (Institutional and Office Zone). *Zoning Ordinance*, Article 3 Section 10 lists the permitted uses, conditional uses, and other provisions of the IO zone. The IO zone allows the use for public and institutional building and makes the development subject to provisions of regulations the IO zone. A parking structure would be considered an allowable use.

H (Historic District Zone)

The entire project site is located in the H (Historic District Zone) and subject to the provisions of the *Zoning Ordinance*, Article 3 §21 and referenced sections. *Zoning Ordinance*, Article 10 §3.2 outlines the review process for Architectural Review Certification and related building height, bulk, and setback standards for development in the Historic District.

Regulations for Flood Hazard Areas (Floodplains)

Compliance with the floodplain provisions of the *Zoning Ordinance* is required. The access drive to the remaining/redeveloped portion surface parking lot area appears to be planned within the Special Flood Hazard Area. The *Zoning Ordinance* limits development in the Special Flood Hazard Area (100-year floodplain) with the standards as found in *Zoning Ordinance*, Article 5 Section 11. The two standards in *Zoning Ordinance*, Article 5 Section 11.211a and b are the two variances requested.

Article 5 Section 11. – Environmental Protection

11.1 *Purpose*. The purpose of this section is to protect public health and safety by ensuring that environmental standards for water, air, and soil in the City of Dover adequately address current practices in the realm of environmental protection. Further, it is the intent of this section to protect environmentally sensitive land as well as the plants and animals that reside on that land.

11.2 *Environmentally sensitive areas and scarce resources*. All land areas which contain one of the following natural features or combination of these features shall be considered to be an environmentally sensitive area or an area of scarce resources subject to specific requirements for environmental protection and conservation: flood hazard areas, steep

slopes, water bodies and wetlands, wet soils, woodlands, significant wildlife habitats, prime agricultural soils, designated scenic areas, and natural areas and nature preserves identified in the comprehensive plan.

11.21 *Flood hazard areas.* All flood hazard areas shall remain as natural open space, except for the construction of roads authorized by the City of Dover and/or the Delaware Department of Transportation.

a) For the purposes of this section, natural open space is defined as an area of land that excludes buildings, structures, and impervious surface from being constructed on or located within the area. For evaluating flood hazard areas, patios, cement slabs, sidewalks, and other similar constructs are considered to be structures and are similarly prohibited.

11.211 *Redevelopment.* Existing uses or buildings located within a flood hazard area are considered to be nonconforming structures and are subject to the following requirements if redevelopment occurs on properties within the flood hazard area.

a) Nonresidential uses existing in a flood hazard area seeking to redevelop a property under the requirements of Appendix B—Zoning, Article 10—Planning Commission, are required to reduce impervious surfaces for the lot by 15 percent from the preredevelopment conditions.

b) For nonresidential uses where less than 33 percent of the total lot area is located within a flood hazard area, the planning commission may waive or reduce the amount of required reduction in impervious surfaces. For projects being reviewed under administrative site plan review, the city planner may waive or reduce the amount of required reduction in impervious surface for projects where less than 33 percent of the total lot area is located within a flood hazard area.

c) New residential building construction or additions of impervious surface are not permitted in pervious areas of the flood hazard area.

Additionally, the following definitions are part of the *Zoning Ordinance*:

Flood hazard area: Land areas delineated on the Federal Emergency Management Agency's (FEMA's) Community Flood Insurance Rate Map as being within the limits of the 100-year floodplain, and any lands subsequently identified by FEMA as being within the limits of the 100-year floodplain as a result of any revision to the community flood insurance rate map approved by FEMA, or by issuance of a conditional letter of map revision issued by FEMA.

Hazard areas: Areas subject to flood hazard, including alluvial soils, as defined and mapped by the Federal Emergency Management Agency. Where mapping from this source is not available, the Kent County soil survey shall be used to determine the extent of flood hazard areas.

Impervious surfaces: "Impervious surfaces" are those that do not absorb rain. All buildings, parking areas, driveways, roads, sidewalks, and any areas in concrete and asphalt shall be considered "impervious surfaces" within this definition. In addition, other areas determined by the engineer to be impervious within the meaning of this definition will also be classed as "impervious surfaces."

Lot coverage: The percent of a lot which is covered, or planned to be covered, with impervious surfaces. [The term] "lot coverage" shall include off-street parking areas and driveways, but not public streets.

Applicant's Proposed Project and Variances Requested

The Applicant has submitted a Site Plan Set (Exhibit E). These plans/drawings depict the proposed demolition activities, building placement, and other site improvements as currently proposed. Also included are the locations of the Flood Hazard Areas (Floodplain) and the associated lot area and impervious surfaces. The Variance Requests are to allow some project development within the Flood Hazard Area. The project has requested variances from the *Zoning Ordinance*, Article 5 Section 11.21 pertaining to development within the Flood Hazard Area (1% Annual Chance Flood/100-year floodplain).

- Variance Request 1 is to decrease the required reduction of the impervious surface area of the predevelopment conditions on the lot from 15% to 5% (Article 5 Section 11.211a).
- Variance Request 2 is to recognize that 48.7% of the lot is within the flood hazard area which is greater than 33% that allows Planning Commission consideration of reductions in impervious surfaces (Article 5 Section 11.211b).

Exceptional Practical Difficulties Tests

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

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

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

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

Review of Application

As part of the Application, the applicant was asked to summarize how the requested variance relates to the above criteria. The applicant's response along with a Staff assessment of the

application in accordance with the required criteria is provided below. The applicant provided responses to each variance request (Variance 1 and Variance 2).

Variance 1

Variance Request 1: Variance from City of Dover Code, Appendix B, Article 11, Section 11.211a

Variance Requested 1: Variance to not have a reduction of impervious surface area of 15% from existing conditions to proposed conditions.

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

Applicant Response: “The subject parcel is currently zoned IO (Institutional and Office). The current and proposed use is a permitted use within the IO zone.”

Staff Response:

The subject property is zoned IO (Institutional and Office Zone) and subject to the H (Historic District Zone). The IO zone allows uses for public and institutional buildings. The H (Historic District Zone) does not regulate use, but how development and construction activities are to occur to be in harmony with the neighboring structures and architectural character of the Historic District.

Related to the Flood Hazard Area (floodplain), a portion of the property is located in floodplain Zone AE known as Special Flood Hazard Area (1% Annual Chance Flood/ 100-year floodplain) where there are additional restrictions and certain limitations and requirements for development/redevelopment.

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

Applicant Response: “The property currently holds 10,536± S.F. building with a parking facility that has 150 parking spaces. The existing building houses the Del-One credit union. The character of the area is in the historic district of the city. Various state buildings surround the site making the parking garage a much-needed facility as parking is limited when legislatures are in session.”

Staff Response:

This area is part of the Capital Complex where a number of State Office buildings, Legislative Mall (open space area), and Legislative Hall are located. There are some other office buildings to the southeast along East Water Street. The majority of the land area is owned by the State of Delaware. The eastern boundary of this property is the St. Jones River and includes open grass lawn areas and trees and other vegetation along the immediate banks of the river. The property slopes toward the St. Jones River.

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

Applicant Response: “Removing the requirement of a reduction of the impervious area would not have an impact on neighboring properties. The proposed conditions will place the

parking garage within a portion of the existing impervious parking lot; the remaining portion of asphalt will be removed and replaced with a pervious pavement. The reduction from existing to proposed is 5%.”

Staff Response:

Planning Staff acknowledges that the neighboring State parcels are already developed or are zoned for open space. The eastern portion of this property is encumbered by a Special Flood Hazard Area (100-year floodplain) just as other parcels that have frontage along the St. Jones River. The proposed redevelopment areas on the property are located adjacent to the East Avenue/E. Water Street and Martin Luther King Jr. Boulevard South street network. And the improvements (access drive and parking lot area) are internal to the subject property located some distance from the adjacent properties. The project does propose a reduction in the amount of impervious surfaces within the Flood Hazard Area (floodplain area); the reduction is 5% rather than 15%. While project still proposes areas of pavement within the floodplain, their intent to utilize pervious paving materials would likely allow for the infiltration of water and not increase flood levels along the St. Jones River. Therefore, the requested variance should not impact neighboring lands.

- 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 variance would not be approved, the proposed garage would hold fewer parking spaces for the constituents and legislatures of the state. Replacing the impervious pavement with a pervious pavement allows for a small reduction in lot coverage. The master plan for the Legislative Hall complex is to expand the existing Legislative Hall; with this expansion, 46 parking spaces are being eliminated. The parking garage is designed to include the eliminated spaces.”

Staff Response:

Planning Staff notes that based on review of the information submitted, the applicant has made efforts to minimize the amount of redevelopment in the Flood Hazard Area (100-year floodplain). The main building of the Parking Garage Structure is proposed to address parking space displacement in the nearby area and for future building additions to State facilities (i.e. Legislative Hall); the Parking Garage Structure is not within the Flood Hazard Area. While they are reducing the amount of impervious surface in the Flood Hazard Area (floodplain) as required for redevelopment by the *Zoning Ordinance*, the ability to provide some secure and services areas related to the building requires some development within the Flood Hazard Areas due to the available development area location on the property and the existing office/credit union building that will remain.

Variance 2

Variance Request 2: Variance from City of Dover Code, Appendix B, Article 11, Section 11.211b.

Variance Requested 2: Variance to have more than 33% of the lot within the floodplain.

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

Applicant Response: “The subject parcel is currently zoned IO (Institutional and Office). The current and proposed use is a permitted use within the IO zone.”

Staff Response:

The subject property is zoned IO (Institutional and Office Zone) and subject to the H (Historic District zone). The IO zone allows uses for public and institutional buildings. The H (Historic District Zone) does not regulate use, but how development and construction activities are to occur to be in harmony with the neighboring structures and architectural character of the Historic District.

Related to the Flood Hazard Area (floodplain), a portion of the property is located in floodplain Zone AE known as Special Flood Hazard Area (1% Annual Chance Flood/ 100-year floodplain) where there are additional restrictions on certain limitations and requirements for development/redevelopment.

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

Applicant Response: “The property currently holds 10,536± S.F. building with a parking facility that has 150 parking spaces. The existing building houses the Del-One credit union. The character of the area is in the historic district of the city. Various state buildings surround the site making the parking garage a much-needed facility as parking is limited when legislatures are in session.”

Staff Response:

This area is part of the Capital Complex where a number of State Office buildings, Legislative Mall (open space area), and Legislative Hall are located. There are some other office buildings to the southeast along East Water Street. The majority of the land area is owned by the State of Delaware. The eastern boundary of this property is the St. Jones River and includes open grass lawn areas and trees and other vegetation along the immediate banks of the river. The property slopes toward the St. Jones River.

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

Applicant Response: “Removing the required 33% required would allow the state to develop the site for the parking garage within no adverse effect on the surrounding properties. The proposed parking garage is being placed in a portion of the existing footprint of the current parking lot.”

Staff Response:

Planning Staff acknowledges that the neighboring State parcels are already developed or are zoned for open space. The eastern portion of this property is encumbered by a Special Flood Hazard Area (100-year floodplain) just as other parcels that have frontage along the St. Jones River. The proposed redevelopment areas for the project are located adjacent to the East Avenue/E. Water Street and Martin Luther King Jr. Boulevard South street network. And the improvements (access drive and parking lot area) are internal to the subject property located some distance from the adjacent properties. This variance

request recognizes that a larger area (48.7%) of the subject lot is within the floodplain/Flood Hazard area in order to allow the Planning Commission to consider alternative impervious surface reductions. Therefore, the requested variance should not impact neighboring lands.

- 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: “With the current mapping of the floodplain, 48.7% of the lot is within the Floodplain AE. To reduce area to the required 33%, a flood study would be required to be performed. If the variance would not be approved, the study would cause a delay in the construction of the parking garage and lead to continued parking issues within the city.”

Staff Response:

The Planning Staff recognizes that the applicant has provided information on the location of the Flood Hazard Area on their subject property and made an effort to minimize the amount of redevelopment in the Flood Hazard Area (100-year floodplain) with their proposed project. The aspects of the project to be located in the Flood Hazard Area (floodplain) enhance the ability to provide some security and services areas related to the building. The location of these security and service areas requires some development within the Flood Hazard Area (floodplain) areas due to the available development area location on the property and the existing office/credit union building that will remain. The areas are proposed as an access drive and parking spaces but not buildings.

Planning Staff does note that there is a process whereby a property owner may study the existing conditions of their land and the floodplain and seek a Map Amendment or Map Change to the FEMA designated Special Flood Hazard Areas. This Flood Study involves data collecting and engineering analysis which takes time and may not result in any changes to the location of the floodplain/flood hazard area on the property.

Variance Recommendations

Staff recommends approval of the Variance 1 and the Variance 2 that would allow for some project development within the Flood Hazard Area on this property at 425 East Avenue/150 E. Water Street based on the applicant’s response statements and our earlier findings outlined in this report and as noted below. Approval of Variance 1 would decrease the required reduction of the existing impervious surface area from 15% to 5% which the proposal appears to accomplish with its design. Approval of Variance 2 would recognize that the subject property contains a Flood Hazard Area of 48.7% as an existing condition and allow the Planning Commission to further evaluate and consider reductions in the impervious surfaces for the project as the design is refined in the Site Development Plan review process.

Planning Staff finds that the development that taken steps to minimize the redevelopment in the Flood Hazard Area with the proposed location of the Parking Garage Structure outside of the Flood Hazard Area and also with the proposed use of pervious paving in areas of parking lot and

access drive in order to reduce that level of impervious surfaces in the Flood Hazard Area. A significant portion of the property will remain as open space with no development in the floodplain areas especially located along the St. Jones River.

Advisory Comments to the Applicant

- If granted, variances become null and void if work has not commenced within one (1) year of the date the variance was granted. At present there is no provision for extension.
- If the requested variances are granted, the Applicant must still obtain the appropriate Site Development Plan and construction activity Permits approvals for construction of a Building on the property. A Site Development Plan for a building of this size requires an application and review process involving the Planning Commission. Contact the Planning Office to discuss steps for application submission.
- The Applicant should be aware that whenever the Board of Adjustment denies an application for a variance, such application for a variance, or an application on the same property, which is substantially similar, shall not be accepted for reconsideration by the Board of Adjustment sooner than one year from the date of denial (*Zoning Ordinance*, Article 9 §3.8).
- The project must also ensure compliance with the requirements of all codes related to construction within the Flood Hazard Area (100-year floodplain) including *Dover Code of Ordinances*, Chapter 50 – Floods.

GUIDE TO ATTACHMENTS

Exhibit	Description/Author	# Pages
A	BOA Application Form	1
B	Planning & Inspections View Map - Zoning Map Exhibit (Staff)	1
C	Planning & Inspections View Map showing Floodplains (Staff)	1
D	National Flood Hazard Layer FIRMette (Staff using FEMA Map Service Center tool)	1
E	Applicant's Written Responses: Narrative	2
F	Site Plan set: Sheets C100 Cover Sheet, C101 Legend, C102 Existing Conditional & Demolition, C103 Site Layout, C104 Construction Details, C105 Existing Site Breakdown, C106 Proposed Site Breakdown, C107 Fire Marshal Plan	8