



City of Dover

Board of Adjustment

October 18, 2023

V-23-05

Location: Lot 8 – Garrison Oak Business and Technology Center, Dover DE
451 Garrison Oak Drive, Dover, DE

Owner: City of Dover
Equitable Owner: SLS Equity Partners

Tax Parcel1: LC-05-068.00-02-08.00-000

Application Date: September 15, 2023

Present Zoning: IPM-2 (Industrial Park Manufacturing - Business and Technology Center)
SWPOZ (Source Water Protection Overlay Zone: Tier 2 Primary Wellhead Protection Area)

Present Use: Vacant

Reviewed By: Katherine Oehmke, Planner I
Dawn Melson-Williams, AICP, Principal Planner

Variance Type: Area Variance

Variances Requested:

- Reduce the setbacks as it relates to building height allowing a portion of the building to be up to 100 feet in height when only setback 88 feet (front yard) or 60 feet (side yard) from the property lines.
- Allow an increase in the maximum lot coverage from 65% to 71%.

Project Description

The Applicant (Equitable Owner: SLS Equity Partners) is requesting two area variances from the requirements of Article 4 §4.16 of the *Zoning Ordinance*. The first Variance Request is to reduce the setbacks as it relates to building height allowing a portion of the building to be up to 100 feet in height when only setback 88 feet (front yard) or 60 feet (side yard) from the property lines. The second Variance Request is to allow an increase in the maximum lot coverage from 65% to 71%.

The subject location at 451 Garrison Oak Drive consists of a single parcel known as Lot 8 in the Garrison Oak Business and Technology Center (previously known as the Garrison Oak Technical Park). The proposed building will be a bulk cold storage and distribution facility with associated parking and stormwater management improvements. The new building would be subject to the Site Development Plan review process with the Planning Commission.

Property and Adjacent Properties: Zoning and Land Use

The subject property totals 11.53 acres (502,145 SF) in land area and is zoned IPM-2 (Industrial Park Manufacturing-Business and Technology Center). This parcel is in the northeastern portion of the Garrison Oak Business and Technology Center (GOBTC) which is a fifteen (15) lot subdivision for industrial, business, and technology related development.

The Lots in the GOBTC are likewise zoned IPM-2 (Industrial Park Manufacturing-Business and Technology Center) except for along the subject parcel's southern property line, which is a tract owned by the City of Dover. It is zoned ROS (Recreational and Open Space Zone) and serves as an open space area within the overall GOBTC with tree plantings and also protects a floodplain and drainage system in the area. Only certain lots have been developed within the GOBTC. These include the Dover Sun Park and the Garrison Energy Center located across Garrison Oak Drive to the north. Uzin Utz (a dry mortar plant facility on Lot #12), Advantech (office and light manufacturing facility on Lot #13), and a proposed City of Dover Electric Substation are in the southwest portion of GOTBC. And in the easter portion of GOTBC a proposed warehouse facility as Byler's Warehouse is completing the Site Plan review process for development on Lot #2.

The eastern half of the subject property (Lot 8) is subject to the SWPOZ (Source Water Protection Overlay Zone: Tier 2 Primary Wellhead Protection Area. It is subject to the provisions of *Zoning Ordinance*, Article 3, Section 29.8. Certain uses are prohibited in the SWPOZ. The SWPOZ Tier 2 - Primary Wellhead Protection Area Lands are additionally subject to specific rules for protection of potable water supply well fields. Specific requirements are for areas immediately surrounding the actual wellhead location; there is not a wellhead on or within 500 feet of this property. There are provisions related to management of stormwater runoff and its discharge requiring use of sheet flow through grassland areas and certain construction features of stormwater management facilities.

A Zoning Map Exhibit (Exhibit A) prepared by Staff is attached to this Report. It shows the subject properties location and surrounding zoning.

Code Citations

IPM-2 (Industrial Park Manufacturing - Business and Technology Center)

Zoning Ordinance, Article 3 Section 20A lists the permitted uses, conditional uses, and other provisions of the IPM-2 zone. In Article 3 Section 20A.16, it notes for the IPM-2 zone that the proposed use of a bulk cold storage and distribution building is allowable as a type of "Warehousing, transshipment and distribution, and logistics support and trucking terminals."

The IPM-2 development requirements include the following chart of the bulk standards as found in *Zoning Ordinance*, Article 4 Section 4.16. The two highlighted standards are the two variances requested regarding height and lot coverage.

Article 4 Section 4.16. - M, IPM zones.

Bulk and parking regulations for industrial zones in M and IPM zones are as follows:

For All Permitted Uses	IPM2 (Business and Technology Center)
Lot area	10 acres
Lot width (ft.)	100
Lot depth (ft.)	100
Front yard (ft.)	60
Side yard (ft.)	40
Rear yard (ft.)	40
Side or rear yard which adjoins a residential zone (ft.)	100
Off-street parking space:	
Per 800 sq. ft. of floor area	1
Per employee, per largest working shift (if greater than the requirement under the floor area calculation)	1
Maximum permitted:	
Building height	
Stories	Not limit
Feet	Equal to distance to nearest lot line
Floor area ratio	0.5
Lot coverage	65%

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

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.

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

The Applicant has submitted a Site Plan Set (Exhibits C and D) and Architectural Warehouse Photo Examples (Exhibits E & F). These plans/drawings depict the proposed building placement, the setbacks of the site, and other site improvements as currently proposed. The building footprint is shown as 165,000 SF+/- . The building is placed with a front yard setback ranging from 62 feet to 88 feet from Garrison Oak Drive. Its closest side yard setback is 60 feet from the

west property line. There are portion of the north and west sides of the building which are not located the minimum of 100 feet from the closest property lines in order to be constructed at a height of 100 feet; this is one of the variances sought. With the building and the paved fire lanes, vehicle and truck parking areas, the property is proposed to have 353, 697 SF (8.12 acres) of impervious surfaces which is approximately 71%. This increase in lot coverage is the second variance sought.

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.

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

Applicant Response:

"The parcel subject to this request is zoned IPM-2 and lies on the northeast side of the Garrison Oak Business and Technology Center."

Staff Response:

The subject property is zoned IPM-2 and is part of the Garrison Oak Business and Technology Center where the lots are zoned IPM-2 with the exception of a ROS zoned property that runs along Lot #8's south property line (and to the south) that contains a Special Flood Hazard Area (1% Annual Chance Flood/ 100-year floodplain), drainage areas and other open space. The subject property is also partially within the SWPOZ (Source Water Protection Overlay Zone: Tier 2 – Primary Wellhead Protection Area)

where there are additional restrictions on certain uses and development limitations and requirements if project is within certain distances of a wellhead.

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

Applicant Response:

“The subject parcel is located within a planned industrial and technical park. The surrounding parcels are all zoned IPM-2 and are in various states of development. Although located on adjacent parcels, the areas to the parcels south are open space and stormwater management areas for the Technical Center.”

Staff Response:

This is a planned industrial park subdivision with a loop road (City street) known as Garrison Oak Drive which serves all the Lots. Currently, there are four (4) sites within Garrison Oak Business and Technology Center that have been developed: Dover Sun Park (a solar farm); Garrison Energy Center (electric generation facility); Uzin Utz (manufacturing); Advantech (office and light manufacturing); and a planned City-owned Electric Substation. One other Lot has received conditional approval from the Planning Commission for a Site Plan to develop a warehouse facility of 30,000 SF+; its Final Plan approval is expected in the next week. Additionally, development plans have been submitted for review for another logistics/trucking terminal facility. The rest of the lots are still owned by the City of Dover or may be under contract for pending sales.

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

Applicant Response:

“Removal of the restriction from the setback requested on the property would not adversely affect the neighboring properties. The closest neighboring parcels to the west and south of the subject parcel are lots 9 and 3 respectively. The building envelopes of these two lots are roughly 200' away from the common parcel line. The intent of the setback requirement is to provide spacing of the structures within the park between the properties. There is no adverse impact to either of the surrounding Lots as natural features and sewer infrastructure on both lots prevent the construction of structures within close proximity to the shared parcel line. Separation of the buildings would remain at least 260 feet apart, depending on the layout.”

Staff Response:

Planning Staff acknowledges that the neighboring parcels are not yet developed that are adjacent and located on the same side of the street. There are the solar field and the energy generation facility already existing to the north across Garrison Oak Drive. With the adjacent open space parcel running the full length of the south side of the property, it is encumbered by a Special Flood Hazard Area (100-year floodplain) in which the *Zoning Ordinance* is prohibited from development. The proposed placement of the building on this property meets the setbacks from property lines for the IPM-2 zone. However, for this zone the height of a building is also regulated by a setback of sorts. Even allowing a building height of up to 100 feet would not impact the adjacent properties as the lot areas

immediately adjacent are limited in their development potential for placement of the building due to utility infrastructure/easements and floodplain areas. There is not a parcel currently under development that would be impacted by this current plan proposal. The lot to the west has not yet been sold or planned for development. The lot south of the open space has also not been planned for development as of yet beyond the water tower located there. The open space tract to the south zoned ROS, is roughly 200 +/- feet away from the start of the next parcel; therefore, the requested variance should not impact the future developers of that land.

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:

“The development of the property as proposed would be impacted if the restriction is not removed as it would limit the potential end users in an already narrow market. These cold storage facilities are located across the country and designed to provide shorter transport times for perishable goods between the producer and the end user. The stored items include products like fruits and vegetables, fresh meat, etc. These facilities can vary in size and shape depending on the end user. The intent is to create a development package for the developer to utilize for end user. The City of Dover began this process by creating the Technology Center more than 13 years ago by subdividing the land, building the roads, and infrastructure, and we are intending on continuing that effort by providing a lot ready for a facility. Removal of the restriction would not alter the essential character of the neighborhood or corridor in the area as this is a planned industrial park/center which can be developed in a number of different uses. Currently the center contains two power generating station, (solar and Gas Fired), Manufacturing Plant (Uzin Utz), and Advantech's corporate headquarters. These buildings or facilities vary in both shape and size, this new facility would not alter that character.”

Staff Response:

Planning Staff notes that this is an industrial park where large scale buildings and truck parking areas are expected. The design of the site appears to maximize the building size while also providing the on-site circulation, fire lane coverage, and space for on-site maneuverability of trucks for loading activities. By allowing the building height of up to 100 feet to be closer to the property line, it will provide interior volume for storage (vertical storage) rather than increasing the building footprint to achieve the same capacity. The applicant has annotated a Site Plan to identify the surface area that would need to be removed to comply with the lot coverage limitations of the IPM-2 zone. The larger coverage version (at ~70%-71%) provides 18 additional automobile parking spaces and 24 truck parking spaces at the south end of the parcel with is adjacent to the ROS strip of land that runs along the south side of the lot. Given that this lot is being developed for an undetermined future prospective client, it is not known how much of this additional parking would be necessary for the end-user. However, the additional truck parking area (not at the loading dock) would allow for more functionality to building operations for staging of trucks on-site. It is noted that the paved width of Garrison Oak

Drive does not accommodate on-street parking. The regular (car) vehicle parking requirement rate is based on building floor area size and the applicant could seek a waiver to reduce the parking space requirement from the Planning Commission which could remove some areas of impervious surface.

Variance Recommendations

Staff recommends **approval** of the variances for a reduction in the setbacks related to building height and for the increase in lot coverages based on the applicant's response statements our earlier findings outlined in this report and as noted below.

Planning Staff finds that development of this Lot is subject to the IPM-2 bulk standards; however, there are some limitations as to the parcel's shape and needs for on-site operations that may warrant approval of the variance requests. This property is in a unique spot where it is basically a corner property due to the curvature of the street. Also, due to the encumbrances on the adjacent properties, it can maintain increased distances from other potential buildings on other Lots by nature of this Lot's location, the floodplain, the utility easements, and open space areas.

Lot coverages were designed to help with drainage and flooding issues in the future by having area available for water to be absorbed into. The lot has a sizable undeveloped area that will not be built upon in its southeast corner. The overall GOTBC has a regional approach to stormwater management that was planned for a lot coverage of 65% per lot; so, any increase will likely warrant additional stormwater management facilities to be implemented on the individual lot.

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 variance is 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).
- Noting the proposed building height, Planning Staff reminds the applicant of compliance needs with all applicable Federal Aviation Administration, State, and other associated aeronautics related height restrictions, obstruction marking and lighting standards for during construction and for the actual building.

GUIDE TO ATTACHMENTS

Exhibit	Description/Author	# Pages
---	BOA Application Form	1
A	Zoning Map Exhibit (Staff)	1
B	Applicant's Written Responses: Letter of September 15, 2023	4
C	Site Plan (Exhibit 1-Building Restriction Line Affected Area).	1
D	Site Plan-Impervious Coverage (Exhibit 2)	1
E	Warehouse Photo Example 1 (Aerial View of Building with Parking Lot & Loading Dock area)	1
F	Warehouse Photo Example 2 (View of Building)	1