



City of Dover
Board of Adjustment

Meeting of September 20, 2023
Appeal V-23-03

Appeal Filed By: Dr. Wilma Mishoe and The Apartments at Mishoe Cove, LLC
By John A. Sergovic, Jr., Esq. of Sergovic Carmean Weidman McCartney &
Owens, P.A.

Application Date: Appeal Received July 19, 2023
Scheduled for September 20, 2023 Meeting

Request for Appeal:

Appeal #V-23-03

Consideration of an application by Dr. Wilma Mishoe and the Apartments at Mishoe Cove, L.L.C. seeking an appeal to the City of Dover Board of Adjustment from the decision of the City of Dover Planning Commission to approve Site Development Plan S-23-06 College Road Apartments at Railroad Avenue/Grove Street.

- S-23-06 College Road Apartments at Railroad Avenue/Grove Street – On June 20, 2023, the Planning Commission granted conditional approval of the Site Development Plan and Lot Consolidation Plan for construction of two 6-story mid-rise apartment buildings with a total of 385 units consisting of studio, 1 bedroom, and 2 bedroom units. The ground level of each apartment building is parking and the other site improvements include six 7-car garage buildings, parking lots, landscaping, and recreation areas. The Project also includes street construction/improvements to Raymond Street and Railroad Avenue. A Lot Consolidation Plan will combine the four parcels located east of Railroad Avenue for a total of 31.08 acres of land. These properties are zoned RG-5 (General Residence Zone for Mid-Rise Apartments). The subject area is located north of, but not adjacent to College Road, and east of the Railroad corridor in the vicinity of Raymond Street, Railroad Avenue, and Grove Street. Property Owners: Patel College Properties, LLC and Patel Excess College Road, LLC. Tax Parcels: ED-05-067.00-02-53.00-000, ED-05-067.00-02-54.00-000, ED-05-067.00-02-55.00-000, and ED-05-067.00-02-56.00-000. Council District 4.

Request for Appeal

Dr. Wilma Mishoe and The Apartments at Mishoe Cove, LLC has filed an Appeal of a decision by the City of Dover Planning Commission to approve Site Development Plan S-23-06 College Road Apartments at Railroad Avenue/Grove Street.

Finding on Jurisdiction for Appeal

A legal counsel finding has been received and signed by the Chairman of the Board of Adjustment that the Board does not have jurisdiction to hear Appeal #V-23-03. See Exhibit 1.

Code Citations

Jurisdiction and Procedures

The Board of Adjustment provisions for Appeals are outlined in the *Zoning Ordinance* and within *Delaware Code*. See the following code citations and for the full code text see Exhibit 2 – *Dover Code of Ordinances*, Appendix B - Zoning, Article 9. Board of Adjustment.

Dover Code of Ordinances, Appendix B - Zoning, Article 9. Board of Adjustment:
Section 2. Powers and duties:

The board of adjustment shall have the powers and duties as specified in Delaware Code Annotated (22 Del. C. § 301 et seq.) and as articulated below:

2.2 *Appeal of administrative order, requirement, decision, or determination.* The board shall have the authority to hear and decide appeals where it is alleged there is any order, requirement, decision or determination made by an administrative official in the enforcement of the zoning ordinance. Appeals to the board may be made by any person aggrieved or by any officer, department, board or bureau of the municipality affected by any decision of an administrative officer.

Zoning Ordinance, Article 9 §3 further outlines the procedures for both variances and appeals. Appeals are subject to a Public Hearing before the Board of Adjustment which must be noticed by publication in the newspaper and by mailed notice to property owners within 200 feet of the subject property.

The Appeal must be filed in writing on prescribed forms and is subject to a filing fee. It is noted that this fee may be returned to the applicant (*Zoning Ordinance*, Article 9 §3.4) under certain provisions:

Article 9 §3.4 The board of adjustment may, in its discretion, return to the applicant part or all of the fee paid by him in the event that his appeal under section 2.2 Appeal of administrative order, requirement, decision, or determination hereof is partially or wholly successful.

The Appeal (written application and submission items) as filed shall consist of the following per the *Zoning Ordinance*, Article 9 §3.5:

Article 9 §3.5 Each variance application or appeal shall fully set forth the circumstances of the case. Every variance application or appeal shall refer to the specific provision of the ordinance involved, and shall exactly set forth, as the case may be, the interpretation that is claimed, the details of the variance that is applied for and the grounds on which it is claimed that the same should be granted.

- **A copy of the Appeal as filed by the Appellant (Wilma Mishoe and The Apartments at Mishoe Cove, LLC) is attached as Exhibit 3A and 3B.**
 - **Exhibit 3A – Application to Board of Adjustment for Appeal**
 - **Exhibit 3B – Letter on behalf of the Appellant (Dr. Wilma Mishoe and The Apartments at Mishoe Cove, LCC) dated July 19, 2023 from John A. Sergovic, Jr., Esquire of Sergovic Carmean Weidman McCartney & Owens, P.A.**

The provisions of *Delaware Code* (22 Del. C. § 301) also note a procedure for Appeals:
22 Del. C. §324 Appeals to board.

Appeals to the board of adjustment may be taken by any person aggrieved or by any officer, department, board or bureau of the municipality affected by any decision of the administrative officer. Such appeal shall be taken within a reasonable time as provided by the rules of the board by filing with the officer from whom the appeal is taken and with the board a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.

Additional correspondence was sent and received regarding the filing of this Appeal.

- **Exhibit 4A: Letter to John A. Sergovic, Jr. Esq. dated July 25, 2023 from Mary Ellen Gray, AICP as Planning, Inspections, and Community Development Director**
- **Exhibit 4B: Letter on behalf of the Planning Commission dated August 16, 2023 from Glenn C. Mandalas, Esquire of Baird Mandalas Brockstedt & Federico**
- **Exhibit 4C: Letter dated August 30, 2023 from John A. Sergovic, Jr., Esquire of Sergovic Carmean Weidman McCartney & Owens, P.A.**

The following items are provided as reference:

- **Exhibit 5 – *Dover Code of Ordinances*, Appendix B - Zoning, Article 10. Planning Commission**
- **Exhibit 6 – Notice of Decision Letter of Planning Commission Action on Site Development Plan S-23-06 College Road Apartments at Railroad Avenue/Grove Street** (Enclosures referenced in this Letter are on file in the Planning Office as part of Application File S-23-06)

GUIDE TO ATTACHMENTS

Exhibit	Description/Author	# Pages
1	Determination of Board of Adjustment Jurisdiction for Appeal #V-23-03	1
2	<i>Dover Code of Ordinances, Appendix B - Zoning, Article 9. Board of Adjustment</i>	3
3A	Application to Board of Adjustment for Appeal (Applicant Submission)	7
3B	Letter on behalf of the Appellant (Dr. Wilma Mishoe and The Apartments at Mishoe Cove, LCC) dated July 19, 2023 from John A. Sergovic, Jr., Esquire of Sergovic Carmean Weidman McCartney & Owens, P.A.	9
4A	Letter to John A. Sergovic, Jr. Esq. dated July 25, 2023 from Mary Ellen Gray, AICP as Planning, Inspections, and Community Development Director	2
4B	Letter on behalf of the Planning Commission dated August 16, 2023 from Glenn C. Mandalas, Esquire of Baird Mandalas Brockstedt & Federico	2
4C	Letter dated August 30, 2023 from John A. Sergovic, Jr., Esquire of Sergovic Carmean Weidman McCartney & Owens, P.A.	12
5	<i>Dover Code of Ordinances, Appendix B - Zoning, Article 10. Planning Commission</i>	8
6	Notice of Decision Letter of Planning Commission Action on Site Development Plan S-23-06 College Road Apartments at Railroad Avenue/Grove Street	3