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August 16, 2023

VIA ELECTRONIC MAIL & CERTIFIED MAIL

Chairperson Kishor C. Sheth
City of Dover Board of Adjustment
Department of Planning and Community Development
15 Loockerman Plaza
Dover, DE 19901
CompPlan@dover.de.us

**RE: Board of Adjustment Application Submitted July 19, 2023, relating to an
appeal of Planning Commission Approval of Site Development Plan S-23-06**

Dear Chairman Sheth:

My firm represents the City of Dover Planning Commission (the “Commission”) in relation to the Commission’s decision regarding Site Development Plan S-23-06. I am writing in response to the appeal to the City of Dover Board of Adjustment (the “Board”) filed by Dr. Wilma Mishoe and the Apartments at Mishoe Cove, LLC (the “Appellants”) contesting the Commission’s approval of Site Development Plan S-23-06 (the “Appeal”). For the following reasons, the Board is clearly without jurisdiction to hear the Appeal, and as a result, we respectfully request that the Board dismiss this matter.

The Delaware General Assembly created municipal boards of adjustment pursuant to 22 Del. C. § 321. Delaware Code permits boards of adjustment to hear appeals in certain zoning matters. 22 Del. C. § 324 provides in relevant part:

§ 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. . . .”

Additionally, the Board’s powers and duties are specifically promulgated under Dover Code, Appendix B, Art. 9, § 2.2, which states in relevant part:

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. . . .

Here, Appellants rely upon Dover Code, Appendix B, Art. 9, § 2.2 for the contention that the Board has jurisdiction to hear the Appeal of the Commission. However, a site plan decision by the Planning Commission clearly is not a determination made by an administrative official. As a result, § 2.2 does not vest the Board with power to hear the Appeal.

Further, the decision being appealed is a site plan decision, which does not constitute zoning. *see Deibler v. Sea Gate Village*, 1983 WL 142507, at *3 (Del. Ch. Aug. 24, 1983) (holding in part that site plan approval is not akin to adoption of a zoning ordinance). Since the matter being appealed is not a zoning determination, the Board cannot hear it. *See Friends of Paladin v. New Castle Cnty. Bd. of Adjustment*, 931 A.2d 436 (Del. 2007).

“It is well established that a writ of certiorari proceeding in the Superior Court is the appropriate cause of action for determining whether, on the face of the record, the City of Dover Planning Commission exceeded its powers or failed to conform to the requirements of law.” *Dover Hist. Soc. v. City of Dover Plan. Comm'n*, 838 A.2d 1103, 1106 (Del. 2003). The Board has no authority under state law or the City Code to hear an appeal of a decision of a site plan decision by the Commission. As a result, we respectfully request that the Board summarily dismiss the Appeal.

Thank you for your time and consideration. Please feel free to contact me if you have any questions.

Sincerely,

/s/ Glenn C. Mandalas, Esq.
Glenn C. Mandalas, Esquire

Enclosure

CC: Mary Ellen Gray
Nicholas H. Rodriguez, Esq.
Nicholas G. Kondraschow, Esq.
John A. Sergovic, Jr., Esq.
Tyler Friedman, Esq.
Dominic J. Balascio, Esq.
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