

TOWN OF DOVER

ZONING BOARD OF ADJUSTMENT

- ☐ John R. Frister
- ☐ Paul Schmolkie
- ☐ Richard Fox
- ☐ Larry Davis
- ☐ Gilbert Roman
- ☐ Antonio Acosta
- ☐ Austin Nieves

TOWN OF DOVER
Mailing Address
37 North Sussex Street
Dover, New Jersey 07801

Office Location
100 Princeton Avenue
Dover, New Jersey 07801
Telephone: 973-366-2200 (Ext. 2141)
Email: boardsecretary@dover.nj.us

- ☐ TC McCourt (Alternate I)
- ☐ Vacant (Alternate II)
- ☐ Glenn C. Kienz – Board Attorney
- ☐ Stephen Hoyt – Board Engineer
- ☐ John McDonough – Board Planner
- ☐ Paula Mendelsohn – Board Secretary

Agenda for the Zoning Board of Adjustment Meeting

Thursday, November 06, 2025

REGULAR MEETING

1. Call to Order – Reading of the New Jersey Open Public Meetings Notice.

“This meeting is being held in accordance with the Open Public Meetings Act, also known as the Sunshine Law, N.J.S.A. 10:4-6. Notice of the 2025 meeting schedule was sent to the Daily Record and published in the Daily Record on February 3, 2025. The annual meeting list was also posted on the municipal bulletin board in Town Hall, on the Town of Dover website and submitted to the Town Clerk. As a reminder there is no smoking in this building; there are 2 exits in case of emergency and this meeting is not streaming on Facebook live. However, the audio will be posted in a timely manner to the town website.”

2. Roll Call

Name	Present	Absent	Excused
Alternate II - Vacant			
Commissioner T.C. McCourt			
Commissioner Austin Nieves			
Commissioner Antonio Acosta			
Commissioner Gilbert Roman			
Commissioner Larry Davis			
Commissioner Richard Fox			
Vice Chairman Paul Schmolke			
Chairman John R. Frister			

3. Pledge of Allegiance

4. Approval of Minutes – October 2, 2025

5. Resolutions

- a. **Z25-04** – 158 W Clinton St. – Block 703 Lot 8: Dover Business Park LLC
- b. **Z25-05** – 226 E McFarlan St – Block 1318 Lot 9: Estithmar Holding LLC

c. **Z25-03** – 13 Richboynton Rd – Block 803 Lot 2: Jersey Central Power & Light

6. Applications

- **Z25-02 - 203 & 207 East Blackwell Street - Block 1904 – Lot 14 & 15** This application has been carried over from the previous meeting on October 2, 2025. The subject Property identified as Block 1904, Lot 14 & 15 each have an existing 2 ½ story dwelling, with the rear portion occupied by Cipollini Roofing. According to the October 25, 1991 Planning Board Meeting Minutes, a motion was passed permitting a roofing business in the rear of lot 14. However, lot 15 was never approved by such use. Following a Notice of Violation issued by the Town of Dover Code Enforcement Office, the Applicant has submitted an application to formally recognize the roofing business on Lot 14.

7. Open to the Public

8. Old Business - None

9. New Business - None

10. Adjournment

Next meeting is December 4, 2025 @ 7:00PM

TOWN OF DOVER BOARD OF ADJUSTMENT

- John R. Frister - Chairman
- Paul Schmolke _ Vice Chairman
- Richard Fox
- Larry Davis
- Gilbert Roman
- Antonio Acosta
- Austin Nieves

COUNTY OF MORRIS
37 NORTH SUSSEX STREET
DOVER, NEW JERSEY 07801
Office location 100 Princeton Ave
Water Works Park
Telephone: 973-366-2200 (Ext. 2141)

- T.C. McCourt (Alternate I)
- Vacant (Alternate II)
- Glenn C. Kienz Esq. – Board Attorney
- Paula Mendelsohn - Board Secretary
- Stephen Hoyt PE- Board Engineer
- John McDounough- Board Planner

MINUTES October 2, 2025

CALL TO ORDER:

Vice Chairman Schmolke called the meeting to order at 7:00 PM.

ADEQUATE NOTICE OF MEETING:

Was read by Ms. Paula Mendelsohn.

PLEDGE OF ALLEGIANCE:

Was recited by all present.

ROLL CALL

PRESENT: Commissioners McCourt, Nieves, Acosta, Roman, Davis, Fox, and Vice Chairman Schmolke.

ALSO PRESENT: William J. Rush, Planning Board Attorney, Stephen Hoyt and John DeMartinis, Board Engineers, Matt Flynn, representing the Board Planner and Paula Mendelsohn, Board Secretary

EXCUSED: Chairman Frister.

MINUTES: A motion to approve the minutes of the September 4, 2025 meeting was made by Vice Chairman Schmolke and seconded by Commissioner Acosta. The motion was approved by all member eligible to vote. **APPROVED 4-0.**

CASES

Z25-03 – 13 Rich Boynton Road, Block 803 Lot 2

Applicant: Jersey Central Power & Light (JCP&L)

Application: Preliminary and Final Site Plan with Variances

Vice Chairman Schmolke recused himself from hearing Case Z25-03 – 13 Richboynton Road, Block 803, Lot 2, due to a personal conflict. Commissioner Acosta assumed the Chair for the duration of this application. Commissioner Davis was also excused from the hearing due to a personal conflict.

Mr. Russ Anderson, attorney from Bertone Piccini, appeared on behalf of the applicant, JCP&L. Mr. Anderson stated that the applicant is seeking preliminary and final site plan approval, along with a D(2) variance for the expansion of a pre-existing nonconforming use. The subject property, located within the Industrial (IND) Zone, is presently developed and used as a garage and lineman yard. The proposal includes the construction of a **47' x 79' utility storage building**, a four-foot-high chain link fence, a retaining wall, concrete pavement, and associated improvements.

Mr. Anderson confirmed that the application is being presented anew, with all testimony to be placed on record. He called three witnesses on behalf of the applicant:

1. **Mr. Aaron Dickerson**, JCP&L Program and Project Manager;
2. **Mr. Dennis Keenan**, P.E., Project Engineer; and
3. **Mr. Wayne Ingram**, P.E., P.P., Professional Planner.

Testimony of Mr. Aaron Dickerson

Mr. Dickerson was sworn in and identified himself as a Program and Project Manager with JCP&L, employed for over three years. He testified that the proposed project involves construction of an open-front, pitched-roof storage building intended to house utility and mobile equipment, keeping it protected from the elements and outside the floodplain.

He explained that the new building would be located on an existing storage area, replacing a concrete pad that was found to contain PCB contamination. The contaminated material will be remediated and replaced with a new concrete pad in accordance with **NJDEP and EPA regulations** under the oversight of a Licensed Site Remediation Professional (LSRP).

Mr. Dickerson testified that:

- No additional employees will be added to the site.
- There will be no increase in traffic, only relocation of vehicles from a lower to a higher elevation.
- The building will not result in tree removal or loss of parking spaces.
- The building will not require new signage visible from the street.
- Construction is anticipated to begin with excavation and remediation in 2025, with building construction to follow in 2026, lasting approximately four to six months depending on lead times.
- Future site improvements may include separate applications for a switchgear project, oil-water separator, and paving improvements.

The Board had no further questions for Mr. Dickerson. The public portion for this witness was opened and closed with no comments.

Testimony of Mr. Dennis Keenan, P.E.

Mr. Keenan, a licensed Professional Engineer in New Jersey, Pennsylvania, Maryland, and New York, was accepted by the Board as an expert in site engineering.

Mr. Keenan provided an overview of the site, located at **13 Rich Boynton Road**, consisting of approximately 11.17 acres within the Industrial Zone. The property is bounded by the Rockaway River to the south and West Clinton Street/Route 15 to the north, with access via Rich Boynton Road.

He testified that the proposed 79' x 47' equipment and materials storage building would be located in an existing impervious area currently used for outdoor storage. The structure will be three-sided, open in the front, and approximately 23 feet in height—well below the 65-foot maximum permitted in the zone. The project includes a retaining wall and fence for safety, limited drainage improvements to prevent ponding, and a guide rail for additional employee protection.

Mr. Keenan confirmed:

- No trees or landscaping will be removed.

- No additional parking demand will be created; 29 existing striped spaces are sufficient.
- The proposed disturbance exceeds 5,000 square feet; Morris County Soil Conservation District approval has been obtained.
- The project is entirely outside of floodplain, wetland, and buffer areas, requiring no NJDEP permits.
- The proposed improvements are designed to minimize visual impact due to existing vegetation and significant grade differentials between the site and nearby residential properties.

No questions were raised by the Board or the public for Mr. Keenan.

Testimony of Mr. Wayne Ingram, P.E., P.P.

Mr. Ingram, a licensed Professional Engineer and Professional Planner with 16 years of experience, was accepted as an expert witness in planning.

He testified that the applicant is requesting a **D(2) variance** for the expansion of a pre-existing nonconforming use. The use itself (public utility facility) is conditionally permitted in the zone. The variance is required because the existing building encroaches within 100 feet of a residential property, a condition established prior to current zoning regulations.

Mr. Ingram reviewed the six conditional use standards and testified that the proposed project complies with all, with the exception of the existing front-yard nonconformity. He noted that the new structure does not intensify that nonconformity and meets all bulk and height standards.

He further testified that the proposed improvements provide positive environmental benefits by relocating equipment away from the floodplain, improving containment, and modernizing the site while maintaining its current intensity of use.

The Board had no further questions for Mr. Ingram, and no members of the public offered comments.

Commissioner Acosta made a motion to approve the application, which was seconded by Commissioner T.C. McCourt. The application was **approved by a vote of 5-0**, with all eligible members voting in favor.

A second roll call was conducted upon the return of Vice Chairman Schmolke and Commissioner Davis. Board Attorney Glean Kienz also returned to the Board at this time.

ROLL CALL

PRESENT: Commissioners McCourt, Nieves, Acosta, Roman, Davis, Fox, and Vice Chairman Schmolke.

ALSO PRESENT: Glenn Kienz Esq., Board Attorney, Stephen Hoyt and John DeMartinis, Board Engineers, Matt Flynn, representing the Board Planner and Paula Mendelsohn, Board Secretary

EXCUSED: Chairman Frister.

Case Z25-05 – 226 East McFarland Street, Block 1318 Lot 9

The Board proceeded with Case Z25-05, an application to redevelop the property located at 226 East McFarland Street in the C2 General Commercial District. The site currently consists of an asphalt parking

lot with a concrete pad containing broken cinder blocks. The applicant proposes to construct a one-story office building with a 480-square-foot footprint to operate a used car dealership. Proposed site improvements include on-street parking, drainage enhancements, landscaping, and signage. The application is exempt from Morris County Planning Board review.

Applicant's Presentation

Attorney John J. Cardile represented the applicant and provided an overview of the project. He noted that the application seeks several variances due to existing non-conforming conditions, including an undersized lot and insufficient frontage for the proposed use. The applicant requested a lot coverage variance of 90%, which Mr. Cardile explained is appropriate and necessary for a car dealership of this type. He emphasized that the property has a long history as a car lot dating back to the 1960s, supporting the continuation of the existing use in a modernized form.

The Board heard testimony from Emmanuel Kavrakis, a licensed architect retained by the applicant. Mr. Emmanuel confirmed his professional credentials and described the design of the proposed office building. Key architectural features include cement fiber siding painted in a light warm gray, buff gray cultured stone at the base of the structure, and white trim. All elevations and architectural details were provided to the Board, including the building footprint, facade treatments, and window/door placements. Mr. Kavrakis also confirmed that the design complies with Town ordinances regarding height, bulk, and materials.

Operational Details

The applicant clarified operational plans for the proposed dealership:

- Hours of operation will be 10:00 a.m. to 6:00 p.m., six days per week.
- Vehicles will arrive individually, with no deliveries by large trucks, flatbeds, or tow trucks.
- No mechanical work, oil changes, or other automotive services will be conducted on-site; the lot will strictly be used for display and sale.
- Customer parking will include two dedicated spaces in front of the office building, with additional maneuvering space in front for vehicles for sale.
- Trash and recycling will be handled through standard office procedures, without the need for large containers or collection vehicles.

The Board confirmed that these operational plans minimize traffic impact, noise, and safety concerns for the surrounding area.

Site, Landscaping, and Lighting

The applicant outlined the landscaping plan, which includes small shrubs and plantings around the site perimeter. All landscaping is placed outside the site triangle to maintain clear egress and visibility for vehicles. Shrubs will not exceed a height of two feet, consistent with visibility and safety requirements.

- The Board confirmed that the site triangle is properly depicted and unobstructed, ensuring safe vehicle ingress and egress.
- Proposed lighting will comply with Town ordinances, utilizing cut-off fixtures to minimize off-site glare and light pollution.
- Drainage and handicap accessibility measures were reviewed and deemed compliant based on the Board engineer's September 30th report.

Discussion – Parking, Lot Layout, and Site Improvements

The Board engaged the applicant in a detailed discussion regarding parking and site layout:

- Employee and customer parking spaces will be striped along the left-hand side of the lot, while the rear portion of the lot may remain unstriped to allow temporary vehicle maneuvering and staging.
- The Board recommended striping the entire lot to establish a fixed number of parking spaces and improve organization and safety.
- An emergency parking space in the northeast corner was suggested to accommodate occasional visitor or overflow needs; the applicant agreed to incorporate this.
- Board members emphasized safety and circulation, particularly in the rear portion of the lot, to prevent conflicts between vehicles and pedestrians.

The applicant agreed to work with the Board's planner and engineer to ensure the final parking plan meets both operational needs and Town standards.

Tree Removal and Landscaping Considerations

The Board reviewed the existing trees on the property, noting sizes ranging from 3" to 10" in diameter and their placement relative to circulation paths and parking areas:

- Trees that obstruct circulation, impede operations, or are dead must be removed.
- Trees that can be preserved, particularly a healthy 10-inch tree, should remain if feasible.
- The applicant will submit a revised landscaping plan identifying which trees will be preserved, in consultation with the Board's planner and engineering department.
- The Board confirmed compliance with the Town's tree removal ordinance, including requirements for replacement plantings or payment in lieu of replacement.

Other Approvals and Compliance Conditions

The Board highlighted additional approvals and conditions necessary for project completion:

- Water and Sewer approval is required for all outside utility connections.
- A road opening permit from the New Jersey Department of Transportation (DOT) is required for any connections to state roadways.
- Signage must comply with Town ordinances and be reviewed and approved by the engineering department.
- The applicant confirmed that all other items noted in the Board engineer's report have been addressed and will comply with the conditions imposed.

A motion to approve Case Z25-05 – 226 East McFarland Street, with the conditions as noted, was made by Commissioner Acosta and seconded by Commissioner T.C. McCourt. **The motion was approved by all members eligible to vote, with a roll call vote of 7-0.**

Case Z25-02 – 203 & 207 East Blackwell Street (Block 1904, Lots 14 & 15)

The Board proceeded with Case Z25-02, an application concerning properties located at 203 and 207 East Blackwell Street, identified as Block 1904, Lots 14 and 15. Lot 14 (207 East Blackwell) historically had approval for a roofing business in the rear, while Lot 15 (203 East Blackwell) did not have formal approval for commercial use, resulting in a notice of violation issued by the Town of Dover Code Enforcement Office. The applicants, Mr. and Mrs. Cipollini, sought formal recognition of the existing roofing business on Lot 14 and D1 Use Variance relief for Lot 15 to regularize the commercial use across both properties.

Applicant's Presentation:

Attorney John Mills of Morristown, New Jersey, represented the applicants, who were present. Attorney Mills explained that Cipollini Roofing has operated in the rear of Lot 14 for approximately 36 years. The applicants purchased both properties in 1989, with deeds dated August 10, 1989. Mr. Cipollini testified that he received verbal approval from the Town's zoning officer at that time to operate the roofing business and that the business has continued uninterrupted without complaints from neighbors or the Town.

The applicants requested that the Board consider both lots together as a single functional site, as the roofing business spans the rear of both properties. Attorney Mills further explained that, in the event the Board does not grant administrative recognition for Lot 15, the applicants seek D1 Use Variance relief to permit the continued use of Lot 15 for the roofing business.

Property and Site Description:

- **203 East Blackwell Street (Lot 15):** A multifamily dwelling with a front office and a rear shop/garage. At the time of purchase, the property contained debris and old materials, which the applicant removed.
- **207 East Blackwell Street (Lot 14):** A single-family dwelling with an existing garage. The lot was historically approved for a roofing business in 1991.

Operational Details:

- Business hours are 7:00 a.m. to 5:00 p.m.
- Vehicle trips are limited, with some trucks parking in the rear.
- Employees are primarily local residents.
- Materials and tools are stored on-site, with a 30-yard container for waste disposal; municipal waste collection is not used.
- The business is largely hidden from public view, and the front properties have been maintained and improved by the applicants.

History and Compliance:

- The roofing business has operated continuously since 1989 without complaints.
- Certificates of Continued Occupancy (CCO) were sought recently, resulting in denial for Lot 14 due to zoning interpretation.
- Lot 15 did not have a formal denial but was part of the administrative appeal.

Board Discussion – Administrative Appeal and Use of Both Lots:

Attorney Mills explained that the administrative appeal arose from the denial of a CCO and emphasized that the roofing business operates as a single, unified use across both lots. The Board was asked to consider the properties as a unitary site due to common ownership and continuous business operations. Although the office historically was at 203, the rear yard spans both parcels. Counsel recommended merging the two lots for zoning purposes to resolve administrative ambiguity.

The Board discussed potential impacts on future property sales. The applicant confirmed that current contracts include a five-year lease for the yard, ensuring continuity of the business regardless of ownership changes. The Board also clarified permitted and non-conforming uses: 203 contains permitted commercial use, residential units on both lots are pre-existing and non-conforming but not being expanded, and 207 is in a C1 zone where commercial use is permitted but residential use is non-conforming. The Board and professionals agreed on the need to “clean up” the situation with formal approval for clarity for future owners and enforcement.

Expert Testimony – Anthony Marucci, PE, Planner & Licensed Land Surveyor:

Anthony Marucci of Marucci Engineering Associates, LLC, qualified as a licensed land surveyor; his qualifications were accepted by the Board. Mr. Marucci serves as Zoning Officer and Planning/Zoning Board Engineer for the Township of Bloomfield.

- **Site Background:**
 - 203 East Blackwell: Three-family building, circa 1900, vacant office on ground floor.
 - 207 East Blackwell: Single-family building, circa 1908.
 - Rear area contains garages, accessory structures, and contractor storage.
 - Zone: C1 Retail Commercial; buildings predate zoning.
- **Master Plan Considerations:**
 - 2007 Master Plan emphasizes buffers and transit-oriented development.
 - 2018 Master Plan notes conflicting land uses and floodplain concerns along East Blackwell Street.
 - 2025 Housing Element indicates Dover is fully developed.
- **Positive Criteria:**
 - Longstanding roofing business (35+ years) employing local residents.
 - Business visually buffered by front houses and adjacent properties.
 - Site not reasonably adaptable to conforming uses due to floodplain constraints.
- **Negative Criteria:**
 - No substantial detriment to the public good.
 - No impairment to the zoning ordinance or Master Plan; longstanding use with no complaints.
- **Site Plan & Operational Notes:**
 - No new construction or site improvements proposed.
 - Residential parking occurs on asphalt areas; commercial parking and storage in rear gravel areas.
 - Outdoor storage includes containers and trailers.
 - Board recommended delineated parking, improved organization of materials, and continued orderly maintenance.
 - Flood mitigation measures in place: fenced rear yard and secure material storage.

Conclusion:

Mr. Marucci concluded that the site is particularly suited for the continued use of the roofing business. The Board discussed minor site improvements for organization, clarity, and flood risk management. Overall, the Board acknowledged that the use is longstanding, largely hidden, and non-disruptive to the

Dover Board of Adjustment Regular Meeting Minutes 10/02/2025

surrounding neighborhood. Formal approval was recommended to regularize the unified use across both properties and ensure clarity for future enforcement and ownership transfers.

Motion to carry application for November meeting was made by TC McCourt and seconded by Commissioner Acosta. All in favor vote. 7-0.

NEW BUSINESS: None

OLD BUSINESS: None

PUBLIC COMMENT: None

A motion to adjourn the meeting was made by Vice Chair Schmolke and seconded by Commissioner Acosta. The motion carried with a 7-0 vote, and the meeting was adjourned at 10:05 PM.

Respectfully submitted,

Paula Mendelsohn
Board of Adjustment Secretary

Dated: _____

RESOLUTION
Town of Dover
Board of Adjustment
In the Matter of Dover Business Park, LLC
Application Number Z25-04
Decided on September 4, 2025
Memorialized on October 2, 2025
Certification of a Preexisting Use and/or Use Variance Approval

WHEREAS, Dover Business Park, LLC (hereinafter the "Applicant") has made application to the Dover Board of Adjustment for certification of a preexisting use and/or use variance approval for property known as Block 703, Lot 8, as shown on the Tax Map of the Town of Dover, located at 158 E Clinton Street, in the Industrial Zone (hereinafter the "Subject Property"); and,

WHEREAS, a public hearing was held on September 4, 2025, after the Board determined it had jurisdiction; and,

WHEREAS, the Applicant was represented by Lawrence A. Calli, Esq.

NOW THEREFORE, the Board of Adjustment makes the following findings of fact, based on evidence presented at its public hearing, at which a record was made.

The application before the Board is a request for certification of a preexisting use or, alternatively, use variance relief related to a residential dwelling unit on the Subject Property.

The application presented to the Board by Mr. Calli was in the form of seeking one of two (2) kinds of relief so as to be able to address a violation notice received from the Town of Dover dated March 28, 2025 regarding the existing use of the property which asserted that "No Certificate of Compliance for an illegal dwelling on Unit C." had ever been received. As a witness Mr. Calli presented Eric Scott, the person residing on the property along with additional supplemental information including a letter dated 4/9/2025 from Peter Harris whose family owned the parcel from 1937 to 2011.

Mr. Calli indicated that there was also a Lease dated 2015 confirming the current tenant at that time and the use of this approximately 800+/- square foot apartment as a night watchman living quarters. He also asserted that there had been no cessation of the use nor expansion of that use during that time period. The use was affirmed through the Board taking judicial notice of the activities in the letter prepared by Peter Harris, former owner. It was Mr. Calli's position that there was no need to obtain a use variance for the property since this had been an ongoing use. He also noted that no development was contemplated but that in the recent past the Applicant had filed for land use approvals which were granted for additional uses on the property. These included a vintage record store. He also submitted plans prepared by Steven Smith depicting the various uses on the parcel. Mr. Calli went on to state that if necessary they were in a position to place planning testimony on the record which justified the use pursuant to N.J.S.A. 40:55D-70d.

A report dated May 30, 2025 prepared by Stephen Hoyt was reviewed at the hearing. Mr. Hoyt in his report stated he found no record for this caretaker use on previous applications. However, it appeared there was adequate parking and other items necessary for it to be a continuing use.

The meeting was opened to the public at which time Irene Worth appeared and asked general questions about the proposed use and whether the owners would be able to place an entire family in this building. The Applicant indicated this was not their intent since it was merely to provide a living space for a caretaker. There were no other members of the public present expressing an interest in this application.

NOW THEREFORE, the Board of Adjustment makes the following conclusions of law, based on the foregoing findings of fact.

The application before the Board is a request for permission to continue a preexisting caretaker's facility on the Subject Property pursuant to the Board's authority of N.J.S.A. 40:55D-68. This section of the Municipal Land Use Law allows Zoning Boards to hear evidence and determine whether uses taking place on a property either were previously approved or pre-dated zoning requirements.

In reviewing the application, plans and testimony, the Board concludes that in this instance this use clearly has been present on the site since at least some time before 1970. While there was direct testimony, the Board finds as a matter of fact and law that not only the letter sent by Mr. Harris but also the very nature of the site and uses which have been in existence, clearly point to the use of this modest 800+/- square foot residential structure to have existed. For the facility associated with this caretaker business to not have provided for some kind of additional security given the size of the Dover Business Park, would have been surprising. The Board concludes that in this instance given the limited circumstances, that it has been taking place and, therefore, should be found to be a valid preexisting, nonconforming use on the site. In rendering this opinion, however, the Board notes that this is not intended for use by a family although, that it not say that should the caretaker now or in the future have a live-in partner, that also would be appropriate and permitted. It would not be an appropriate use, however, for any individual with small children since this an industrial site.

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment that the application of Dover Business Park, LLC for Block 703, Lot 8, as shown on the Tax Map of the Town of Dover, located at 158 E Clinton Street, in the Industrial Zone, to allow the residential use for a caretaker be permitted pursuant to N.J.S.A. 40:55D-68 subject to the following terms and conditions:

1. This apartment shall only be occupied by a caretaker and his or her companion. No children shall be permitted to reside within the residential unit.
2. Any cessation of use by a caretaker shall result in an abandonment of that use providing said cessation is for a period greater than 12 months.
3. Payment of all fees, costs, escrows due or to become due. Any monies are to be paid within twenty (20) days of said request by the Board's Secretary.
4. Certificate that taxes are paid to date of approval.
5. The Applicant shall be bound to comply with the representations made before this Board by the Applicant at the public hearing and the same are incorporated herein and are representations upon which this Board has relied in granting the approval set forth herein and shall be enforceable as if those representations were made conditions of this approval
6. Subject to all other applicable rules, regulations, ordinances and statutes of the Town of Dover, County of Morris, State of New Jersey, or any other jurisdiction.

The undersigned secretary certifies the within resolution was adopted by this Board on September 4, 2025, and memorialized herein pursuant to N.J.S.A. 40:55D-10(g) on October 2, 2025.

J. Ron Frister, Chairman

The vote on the Resolution was as follows:

FOR:

AGAINST:

ABSTAIN:

Board Member(s) Eligible to Vote:

I certify that the above Resolution is a true copy of a Resolution adopted by the Board of Adjustment on _____, 202_.

Paula Mendelsohn, Secretary

Dated:

Prepared by: Glenn C. Kienz, Esq.

**RESOLUTION
Town of Dover
Board of Adjustment
In the Matter of Estithmar Holding LLC
Application Number Z25-05
Decided on October 2, 2025
Memorialized on November 6, 2025
Use Variance, Preliminary and Final Site Plan Approval and
Ancillary “c” Variance Approval**

WHEREAS, Estithmar Holding LLC (hereinafter the "Applicant") has made application to the Dover Board of Adjustment for a use variance, site plan approval with variance relief for property known as Block 1318, Lot 9, as shown on the Tax Map of the Town of Dover located at 226 E McFarlan Street, in the C-2 Zone (hereinafter the "Subject Property"); and,

WHEREAS, public hearings were held on September 4, 2025 and October 2, 2025, after the Board determined it had jurisdiction; and,

WHEREAS, the Applicant was represented by John J. Cardile, Esq.

NOW THEREFORE, the Board of Adjustment makes the following findings of fact, based on evidence presented at its public hearings, at which a record was made.

The application before the Board is a request for a use variance, and site plan approval with variance relief to redevelop the Subject Property into a used car dealership with a 1-story office building having a 480 square foot footprint.

September 4, 2025 Hearing

Appearing and testifying on behalf of the Applicant at the initial hearing was Emmanuel Kavrakis, a licensed professional architect. Mr. Kavrakis testified that the application before the Board involves lot 9 in Block 1318 as shown on the Tax Map of the Town of Dover said property currently consisting of an asphalt parking lot with a concrete pad containing broken cinderblocks and is located in the C-2 General Commercial District. A review of the plans and the testimony

from the initial hearing revealed that the Applicant proposed to redevelop the site into a used car dealership containing a 480 square foot 1-story office building with assorted site improvements consisting of on-site parking, drainage, landscaping and signage. He acknowledged a number of variances and waivers were needed. As a result of discussions with the Board and its professionals it was agreed that variance relief was needed from several conditional use requirements meaning that a use variance pursuant to N.J.S.A. 40:55D-70d was required. These nonconforming issues involved a lot area of 6,904 square feet whereas the minimum required is 20,000; a variance for lot frontage whereas the minimum lot frontage required under the conditional use standards was a minimum of 100 feet and only 94 feet was provided; and also a variance for proposed impervious lot coverage whereas the Ordinance only permits 80 percent (80%) and the Applicant was proposing a 97 percent (97%) coverage. In addition, it was noted they were also requesting waivers from a number of items which included delineating freshwater wetlands, delineation of all floodways, flood hazard areas, and riparian zones for regulated water not only on the property but within 50 feet of it including the top of bank floodway lines, flood hazard area limits and the flood hazard area design flood elevation. Further, it was stated that the location identification of proposed office open space, park and recreation areas was needed to be shown along with a soil fill plan for all soil to be brought onto site, a tree removal plan and designation and calculation of steep slope areas and their adjustment to the developable area of the property in accordance with the Ordinance. Mr. Kavrakis testified they were willing to provide this information and could do so on the plans but that the application was from, their standpoint, relatively simple and straight forward in that they were merely desiring to reuse the property for a used car dealership with a small sales office. They anticipated having up to 18 vehicles on the site along with two (2) parking spaces for sales people. They agreed that no repairs of any vehicles or changing of fluids and the like would take place on

the property. Specifically it was testified that a similar facility in another municipality would be used for any work on the vehicles.

Mr. Hoyt's report indicated that the Applicant was required to provide testimony for a number of items which included lighting, stormwater runoff, the proposed signage, stormwater management, limits of disturbance and landscaping. He also raised a question regarding the existing driveway and believed it might be subject to NJDOT jurisdiction although a permit may have been granted at some earlier date. At this point the Board determined the application should not proceed, at this time, due to the amount of information needed. The meeting was, therefore, carried to the October 2, 2025 hearing of the Board.

October 2, 2025 Hearing

The Applicant again appeared with its witnesses at the October 2, 2025 hearing of the Board. Mr. Kavrakis testified that they made a number of changes to the plans the vast majority of which had been discussed and reviewed with the Stephen Hoyt, the Board Engineer. The current status of the actual application is reflected in the September 30, 2025 Memorandum of Mr. Hoyt. Mr. Kavrakis testified that the pylon sign was now conforming. He indicated that hours of operation would be 10:00 a.m. to 6:00 p.m. Monday through Saturday. They adjusted lighting within the property to meet Town standards. He also noted there would be no oversized vehicles on site and a maximum of 18 cars would be on site at any one time as indicated on the site plan which would be amended, if necessary to clearly reflect this. He testified all trees will be removed but they would be replaced with an appropriate landscaping plan to be approved by Mr. Hoyt and the revised landscaping plan will be aimed at saving as many trees as is possible. They also intend to have one (1) free-standing pylon sign and one (1) building-mounted sign which will comply with all Ordinance requirements. Further, there will be fencing around the building. It was noted that a

number of conditional use standards were not being met which included variance for the nonconforming lot area whereas 6,904 square feet is provided and a minimum of 20,000 square feet required; lot frontage whereas a minimum is 100 feet and 94 feet is being provided; an impervious coverage variance since 80 percent (80%) is permitted and the Applicant was exceeding that with a total impervious coverage of 97 percent (97%). It was their position that these variances had existed on the site for a considerable period of time and they are undertaking improvements to the parcel which will bring it into greater conformance with Ordinance requirements. A review of the documents and testimony also indicated the Applicant had requested a number of waivers for items including delineation of all freshwater wetlands and delineation of all floodways, the location and identification of proposed open space, park, or recreation areas, a soil-fill permit, a tree removal plan and the designation and calculation of steep slopes. It was ultimately determined that the waivers being sought could be granted. It was also noted during the hearing process that the conditional use standards existed on the property and the Applicant was merely attempting to modernize and upgrade the existing facility so as to be able to maintain the business on site.

The Applicant further opined that allowing this business to continue on the site would not negatively impact the public good nor the zone plan or zone scheme of the area and that the benefits of keeping business in Town on existing developed parcels significantly outweighed any detriments. Testimony also was provided which asserted that the revised landscaping plan when eventually approved by Mr. Hoyt, would be such as to modernize the area.

Mr. Hoyt indicated that the Applicant had addressed a number of the issues contained in his report, but that several items still needed to be met which included: providing signed and sealed engineering plans by a licensed professional engineer; revisions of various sheets on the plans as indicated in his comments; supplying a materials board with colors to be used; the striping of the

entire lot so as to clearly designate where vehicles would be parked; adjusting any landscaping within the sight triangle for egress; revising the plans to show if there are any utility crossings; and whether or not there will be adequate separation between all utilities specifically showing a 4 inch PVC pipe and a 4 inch sanitary line; amending the plans to show the proposed trash and recycling management on site; revising the plans to provide construction details including ADA parallel curb ramp details; ADA symbol date detail; and ensuring they received all other applicable approvals required by outside agencies.

NOW THEREFORE, the Board of Adjustment makes the following conclusions of law, based on the foregoing findings of fact.

The application before the Board is a request for a use variance along with site plan approval and ancillary other forms of relief so as to permit the continued operation of a used car dealership having no more than a total of 18 vehicles on site to be located on the Subject Property.

Since the proposal was incapable of meeting the conditional use standards on site set forth in Section 236-18.C, the Applicant sought a number of variances specifically pursuant to N.J.S.A. 40:55D-70d(3).

Under the Municipal Land Use Law, a Board of Adjustment, when considering a “d” variance, cannot grant relief unless sufficient special reasons are shown and there is no substantial impairment of the intent and purpose of the zone scheme and Zoning Ordinance. In addition, the burden of proof is upon the applicant to establish the above criteria. It is the Board’s responsibility, acting in a quasi-judicial manner, to weigh all the evidence presented before it by both the applicant and all objectors, and reach a decision which is based upon findings of fact and conclusions of law and is not arbitrary, unreasonable or capricious.

The New Jersey Courts have been willing to accept a showing of extreme hardship as sufficient to constitute a special reason. The courts have indicated that there is no precise formula as to what constitutes special reasons unless the use is determined to be inherently beneficial, and that each case must be heard on its own circumstances. Yet, for the most part, hardship is usually an insufficient criteria upon which the Board can grant a variance. In addition, special reasons have been found where a variance would serve any of the purposes of zoning as set forth in N.J.S.A. 40:55D-2. However, in the last analysis, a variance should only be granted if the Board, on the basis of the evidence presented before it, feels that the public interest, as distinguished from the purely private interests of the applicant, would be best served by permitting the proposed use. In these instances, the Board must also find that the granting of the variance will not create an undue burden on the owners of the surrounding properties. The Board also notes the special reasons requirement may be satisfied if the applicant can show that the proposed use is peculiarly suited to the particular piece of property. With regard to the question of public good, the Board's focus is on the variance's effect on the surrounding properties and whether such effect will be substantial. Furthermore, in most "d" variance cases, the applicant must satisfy an enhanced quality of proof and support it by clear and specific findings by this Board that the variance sought is not inconsistent with the intent and purpose of the Master Plan and Zoning Ordinance. The burden of proof is upon the applicant to establish the above criteria.

In reviewing the application, plans and testimony, the Board ultimately concludes that after two (2) hearings, the Applicant provided the testimony necessary for the Board to conclude that they had satisfied the conditional use requirements of the Ordinance to a sufficient degree so as to enable the Board to find that the affirmative and negative criteria have been satisfied.

First, this is an existing parcel which has been used in the past for a used car business. However, the Applicant as a result of the current status of the property was required to prove the affirmative and negative criteria could be met. In this instance, most of the conditional use standards including lot area, lot frontage and impervious coverage are existing conditions which, given the size of the parcel and development which has taken place in the area, limit the ability of the Applicant to eliminate these conditional use standards. The Board takes judicial notice of the fact that this is a significantly undersized lot, however, it also may, under the law, allow the Board when enforcing conditional use standards to limit the size of the business to be located on the parcel. Here, the Applicant will not be doing any work on any of the vehicles but merely displaying them on site and having a small building to conduct transactions. This places significant limitations on the size of the business which may take place, however, the Applicant also indicated it had other sites in other municipalities where it also operated a used car business and the one before the Board is more of a satellite sales facility. They also, as a result of review of the application and all submissions by the Board and its professionals, agreed to make all necessary improvements as contained in Mr. Hoyt's Engineering Report. Of particular concern to the Board was the removal of a number of trees which provided some additional buffer. However, it was agreed that tree removal would be done judiciously and a complete landscaping plan provided for the site which would be subject to final review and approval by Mr. Hoyt and municipal officials. This serves to help mitigate some of the development problems for the site and provides an adequate mechanism in order to allow the business to operate while not negatively impacting the surrounding area. A number of other conditions and restrictions were called out by the Board and its professionals which are set forth in the conditions of this Resolution which the Applicant will be required to strictly

adhere to but the Board believes that if undertaken and found satisfactory that these go to providing additional proofs for the Board to conclude that the affirmative proofs have been met.

As regards to the negative criteria, the Board concludes this will not negatively impact the public good nor the zone plan or zone scheme of the area. This pre-existing use was before the Board in order to be brought into conformance and to be more consistent with development patterns in the neighborhood. By undertaking the various improvements, it will better sustain any flooding, have less intrusive lighting, and be more attractive once a landscaping plan has been submitted and approved. Further, with the upgrading of the existing structure, the Board finds this too to be an example of enhancing the public good.

As regards it negatively impacting the zone plan and zone scheme, the Board concludes this is an area which has historically had activities which did not satisfy all Ordinance requirements. The Board concludes, however, that provided the Applicant meets all items set forth in this Resolution and ultimately obtains a Certificate of Compliance and continuing operation from the Engineering Department and a sign off on the site plan from the Board Engineer and Planner, that the Board concludes the negative criteria is satisfied.

As regards to the request for other ancillary forms of relief, under Puleio v. North Brunswick Twp. Board of Adjustment, 375 N.J. Super. 613, 621 (App. Div. 2005), the Board concludes that these are subsumed under the use variance. However, in the event the Board were required to grant bulk or “c” variance relief on their own merits, the Board finds that the Applicant’s proofs were sufficient to grant the above-referenced bulk or “c” variances for the reasons stated herein.

Finally, in reviewing the request for preliminary and final site plan approval, the Board concludes that this relief may be granted at this time provided the Applicant meets all the items contained in the professionals' reports and this Resolution.

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment that the application of Estithmar Holding LLC for Block 1318, Lot 9, as shown on the Tax Map of the Town of Dover located at 226 E McFarlan Street, in the C-2 Zone, requesting a use variance from conditional use standards, preliminary and final site plan approval and ancillary "c" variance approval be and are hereby granted pursuant to N.J.S.A. 40:55D-70d(2), N.J.S.A. 40:55D-46, N.J.S.A. 40:55D-50 and N.J.S.A. 40:55D-70c, subject to the following terms and conditions:

1. The development of this parcel shall be implemented in accordance with the plans submitted and approved entitled "Major Site Plan", prepared by Emmanuel Kavrakis Architects, LLC, consisting of eight (8) sheets, dated January 1, 2025, with the latest date of September 22, 2025.
2. Applicant shall provide an engineering certification and seal on the plans indicating that the plans have also been prepared by a licensed professional engineer in the State of New Jersey in order to ensure that all engineering issues are appropriately addressed. This shall ultimately be subject to final review and approval by the Board Engineer.
3. Applicant shall submit a materials board for the building subject to the review and approval of the Engineering Department.
4. Trees shall be supplied in accordance with Town Ordinances and in addition a landscaping plan and showing as many trees as possible for the property shall be submitted subject to final review and approval of the Board Engineer. The plans

shall show a signature block providing for a space for approval by the Town of Dover.

5. The fence located around the building shall be shown on the amended plans.
6. The entire lot pavement shall be repaired and resurfaced and striped subject to the review and approval of the Engineering Department.
7. Complete lighting details shall be provided on the plans subject to final review and approval of the Engineering Department.
8. A utility crossing shall be provided and shown on the plans for the 4 inch PVC pipe and the 4 inch sanitary line.
9. Applicant shall show the proposed trash and recycling management locations on the plans subject to review and approval of the Engineering Department.
10. Subject to NJDOT jurisdiction or a letter of non-applicability subject to review and approval of the Engineering Department which shall include access permits for the proposed sanitary sewer connection.
11. Additional revisions to the plans shall include an ADA parallel curb ramp detail, replacement of the term handicap ramp with accessible ramp, parking sign and parking details and ADA symbol detail with accessible stall marking details needed to be replaced by the NJADA symbol.
12. Morris County Soil Conservation District approval.
13. Payment of all fees, costs, escrows due or to become due. Any monies are to be paid within twenty (20) days of said request by the Board's Secretary.
14. Certificate that taxes are paid to date of approval.
15. Morris County Planning Board approval.

16. The Applicant shall be bound to comply with the representations made before this Board by the Applicant at the public hearing and the same are incorporated herein and are representations upon which this Board has relied in granting the approval set forth herein and shall be enforceable as if those representations were made conditions of this approval
17. Subject to all other applicable rules, regulations, ordinances and statutes of the Town of Dover, County of Morris, State of New Jersey, or any other jurisdiction.

The undersigned secretary certifies the within resolution was adopted by this Board on October 2, 2025, and memorialized herein pursuant to N.J.S.A. 40:55D-10(g) on November 6, 2025.

J. Ron Frister, Chairman

The vote on the Resolution was as follows:

FOR:

AGAINST:

ABSTAIN:

Board Member(s) Eligible to Vote:

I certify that the above Resolution is a true copy of a Resolution adopted by the Board of Adjustment on _____, 202_.

Paula Mendelsohn, Secretary

Dated:

Prepared by: Glenn C. Kienz, Esq.