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April 10, 2023

City of Rehoboth Beach
Michael Bryan, Planning Commission Chair
229 Rehoboth Avenue
Rehoboth Beach, DE 19971

**RE: Belhaven Hotel | Application No. 1221-05
2 Rehoboth Avenue, 5-14 Wilmington Avenue & 10-12 Baltimore Avenue
Tax Map Nos. 334-14.18-20.00, 21.00 & 35.00, 334-14.14-55.00
Rehoboth Parcel Nos. 4633, 4645, 1417 (hotel) & 645 (parking)
C-1 Central Commercial Zoning District
Site Plan Review (2nd Review)**

Dear Mr. Bryan:

In response to your letters, representatives from Wallace Montgomery (WM) and I reviewed the Site Plan Application and related plans for the above-referenced project for John N. Papajohn (Applicant).

PROPOSAL

This Application for Site Plan Review involves the demolition of existing retail and restaurant structures and redevelopment of 38,475 sq. ft. (1.11± ac.) of land at 2 Rehoboth Avenue, between Rehoboth Avenue and Wilmington Avenue and abutting the Boardwalk, into a 4-story complex spanning multiple parcels (SCTM 3-34-14.18-20.00 and 3-34-14.18-35.00). The proposed structure would contain a mixed-use development of hotel and retail shops, along with underground parking (91 spaces), meeting room availability, and facilities for food (restaurant) and beverage (bar) service. Commercial (non-parking garage) square footage is proposed at 115,424 sq. ft. An additional 10,000 sq. ft. property at 10-12 Baltimore Avenue (SCTM 3-34-14.14-55.00), currently used as a surface parking lot, is proposed to be expanded to accommodate a total of 30 off-street parking spaces. Public water and wastewater are currently provided to this site by the City of Rehoboth.

The application materials included:

- Site Plan Review prepared by Fillat+ Architecture, dated Aug. 26, 2022 (rev. Dec. 13, 2022)
- Preliminary Site Plan prepared by Bohler Engineering, dated Jul. 9, 2021 (rev. Dec. 13, 2022)

Both documents were resubmitted to the City in March 2023 without an updated revision date.

An application for Site Plan review was previously submitted, which contained a completed Site Plan Application Form, copies of deeds for the subject parcels, and a series of illustrations showing the subject and adjacent lots (side and rear); previous application materials were not used for this current review.

Based on our review, we offer the following comments for your consideration. Please note that items in standard text are informational, items in **bold red** text are those needing clarification/revision or are specific items for Planning Commission consideration. We have not provided detailed utility review as this will be completed by others. *Should additional information be presented or subsequent revisions submitted, we reserve the right to provide additional comments on new or revised material(s).*

REVIEW PROCESS

This Application has been submitted for Site Plan review in accordance with Article VII of the *Rehoboth Beach Subdivision & Site Plan Review Ordinance*. Prior to filing this Application and associated plans, the Applicant used the conceptual plan review process (§236-31) to obtain initial non-binding suggestions from the Planning Commission on the proposed use and site plan during the following public meeting(s):

- November 19, 2021 ([Meeting Info](#))
- November 12, 2021 ([Meeting Info](#))
- October 8, 2021 ([Meeting Info](#))
- June 12, 2020 ([Meeting Info](#))
- April 12, 2019 ([Meeting Info](#))

An earlier version of the project proposal was filed July 9, 2021 for Site Plan review in accordance with §236-32, *Site Plan Review Procedures*. Following initial review, City staff met with the Applicant and their representatives to review the submittal and initial findings, including determination that the proposed plan was not in compliance with current City regulations, which would need to be reconciled before proceeding with Site Plan review per §270-13A. Specifically, the initial review verified (already indicated in plan descriptions) that the proposal exceeded allowable FAR 2.0 requirements. In addition, questions regarding compliance for overhangs, parking, hotel lot coverage, height and use of roof enclosures, and antenna equipment were addressed. The Applicant indicated awareness of the FAR code inconsistency and indicated their intent to withdraw the Site Plan while they pursued application for a Variance above the FAR 2.0 requirement. Members of the Applicant's team discussed the value of the hotel/retail proposal and expressed an interest in continuing to discuss the Application with the Planning Commission using the conceptual plan review process while pursuing a Variance to allow the proposed design to be permitted. In a letter dated September 24, 2021, Harold E. Dukes, Jr., Esq. stated, on behalf of the Applicant, the intent to withdrawal the plan for site plan review and instead submit a Concept Plan for Planning Commission review.

In a letter dated December 10, 2021, Harold E. Dukes, Jr., Esq. stated, on behalf of the Applicant, the intent to withdrawal the plan for concept review and submit a Site Plan for Planning Commission review.

On September 24, 2021, the Applicant applied for a Variance by the City of Rehoboth Beach Board of Adjustment ([Case No. 0921-07](#)) from §270-21B(5) restricting floor area ratio (FAR) for all buildings located within a commercial district to 2.0. The Board held a public hearing on November 22, 2021 and issued a written decision on January 24, 2022. The Board's motion granted the Variance request for a 3.0 (please see the Board of Adjustment's decision for more information).

On February 23, 2022, Francis G. Markert, Jr. filed a Petition for the Issuance of a Writ of Certiorari and an Appeal for Judicial Review of the Decision of the Board of Adjustment with the Superior Court of the

State of Delaware (Case No. S22A-02-003 CAK). The Superior Court affirmed the Board of Adjustment's granting of the Variance in a decision dated September 26, 2022.

The stated general purposes of the Planning Commission's review of the current Site Plan Application, as defined in Article VII, *Site Plan Review*, include:

- Protection of the architectural massing, composition, scale, and character of the neighborhood
- Compatibility of new construction and structural alterations with the existing scale and character of nearby properties
- Preservation of streetscapes
- Protection of natural resources
- Protection of the public's health, safety, and general welfare

The Site Plan Review also includes evaluation for consistency with the City of Rehoboth Beach Comprehensive Development Plan (CDP); zoning regulations (Chapter 270); development regulations (Chapter 236); and other applicable federal, State, County, and City laws and regulations. Additionally, §236-30E identifies factors (listed below) the Planning Commission shall consider and may employ to require changes to site plan uses or attach conditions or restrictions to plan approval to achieve consistency with the general site review purpose.

- Traffic flow, both on- and off-site
- Access to structures
- Access (public or private streets, easements, or right-of-way)
- Pedestrian movement
- Fire equipment and other emergency access
- Refuse removal
- Landscaping and maintenance of natural features
- Drainage flow and structures
- Stormwater management
- Air flow, natural light, and similar environmental considerations
- Signage
- Lighting
- Screening for certain uses
- Recreational and open space areas
- Utilities and community facilities
- Height of buildings
- Existing scale and character of nearby properties
- Streetscape
- Impact on nearby properties or the neighborhood
- Other public health, safety, and welfare concerns
- Comments and recommendations received from the City Engineer, City Departments, and the public

State Investment Level/PLUS Review

The subject property is located within an Investment Level 1 area, according to the *Strategies for State Policies and Spending*. Investment Level 1 reflects areas that are already developed in an urban or suburban fashion, where infrastructure is existing or readily available, and where future redevelopment or infill projects are expected and encouraged by State policy.

A Preliminary Land Use Service (PLUS) review (PLUS No. 2021-09-01) was conducted for the proposed Site Plan on September 22, 2021. The issued review [letter](#) identifies areas of concern related to the parcel's location including emergency access, fire protection features, development in a flood hazard area, concerns over future sea level rise, and stormwater management. As described in the State's review letter (dated October 19, 2021), the Applicants will be required to work with the City and State agencies to address the preliminary findings as the development review and permitting process continues. The

Applicant provided a written response to the PLUS review letter on November 2, 2021, noting whether comments were incorporated into the project design and reasoning if they were not. **Comments within the PLUS letter from the Office of State Planning Coordination (OSPC) indicate that changes to the reviewed plan other than those arising from PLUS comments may result in additional comments from the State agencies. Clarification on the standards for requirements for secondary review of revised plans were requested from Dorothy Morris. Preliminary responses indicated that additional review would result generally from major changes to the site plan—specifically entrances, exits, size or number of structures, and (most importantly) if the City feels the change warrants another review.**

COMPREHENSIVE DEVELOPMENT PLAN (CDP)

The proposed redevelopment project—to construct a multi-story hotel with retail units at the corner of Rehoboth Avenue and the Boardwalk, including a primary access off Wilmington Avenue—represents a significant redevelopment project at a highly prominent City focal point. It is not surprising that the CDP would contain applicable policies to address (opportunities and challenges) as part of the site design to achieve the defined goals for the City of Rehoboth.

The 2020 CDP included a Vision for Business: *Rehoboth Beach's downtown is a balanced mix of year-round and seasonal businesses with a residential scale, distinctive architectural design, and pedestrian-oriented character.* This vision is described as follows:

Rehoboth Beach's downtown is readily identifiable in extent, non-uniform in its mix of businesses, and controlled in architecture and signage. The residential scale of its commercial buildings is linked to its surroundings and its pedestrians and is essential to the character of the City. The downtown is oriented to pedestrians and cyclists first and automobiles second. It contains a mix of private and public uses, year-round and seasonal operations, and is dominated by locally owned, small businesses. All the business operators and property owners share a responsibility for the year-round care and appearance of their establishments as a way of maintaining the overall viability and character of the downtown area.

Related key areas in the CDP include ability for the City to continue to evolve and provide year-round services to residents and visitors; continuation of the City's residential ambiance, resort attractiveness, and favorable local business climate; commitment that future (re) development reflects and is compatible with the City's existing commercial districts and residential neighborhoods, particularly related to building height, scale, architectural character, and pedestrian orientation; and protection of the quality of life within the City's existing commercial districts and residential neighborhoods from adverse impacts of future (re)development plans and projects that will be incompatible with the City's traditional small-town character, existing architecture, and pedestrian-oriented scale.

Many of the applicable CDP goals and related strategies seek to continue and expand revitalization efforts established along Rehoboth Avenue to adjoining properties and streets including Wilmington and Baltimore Avenues. The revitalization goals are intertwined with goals to maintain and enhance the overall vision described for the community that balances "continued residential ambiance, resort attractiveness, and favorable business climate of the City."

The CDP provides recommendations particularly relevant to the area encompassing the first two blocks between Wilmington and Baltimore Avenues. The following list includes excerpts from the CDP that should be considered as part of the proposed site plan review.

Applicable Goals highlighted by the CDP include:

- Goal 3-1: Improve the quality and integrity of architecture in new and renovated residential and commercial structures throughout the City.
- Goal 3-3: Preserve Rehoboth's overall small-town character and charm, as well as its pedestrian-orientation and ambiance, all of which should be consistent with the distinctive architecture and scale of existing development within the City's individual neighborhoods.
- Goal 4-3: Identify opportunities for appropriate redevelopment and repurposing of commercial structures and land uses throughout the City limits to achieve consistency with the City's existing scale, architectural design, pedestrian-oriented character, and compatibility with nearby residential neighborhoods.
- Goal 5-3: Identify opportunities for the creative redevelopment of selected properties on Rehoboth Avenue and other commercial districts of a scale and design consistent with the small-town character of the City.
- Goal 5-5: Protect the small-town character, design, and scale of distinctive groupings of existing buildings, streetscapes, and neighborhoods.
- Goal 6-6: Seek to relocate overhead utilities to underground, when and where feasible.
- Goal 7-1: Maintain and control physical and visual access to the ocean and other waterbodies.
- Goal 7-2: Control the density, scale, and use of structures along the Boardwalk, ocean, and other waterbodies.

Applicable Action Items (AI) highlighted by the CDP include:

- AI 3-B: Actively promote use of the *Architectural Design Manual* as a positive aid to property owners and their designers and builders.
- AI 7-T: Consider implementing recommendations from the Resilient Community Partnership Project.
- AI 7-V: Consider utilizing renewable energy infrastructure (e.g., solar, wind) to further reduce pollution.

Based on the CDP recommendations, the City has already provided opportunities to promote a successful redevelopment project by completing a Rehoboth Avenue revitalization project, providing the opportunity to expand revitalization through the Wilmington and Baltimore Streetscapes project, and working with the Applicant on site design ideas using the conceptual plan review process. The City should continue to work with the Applicant while considering the guidelines contained in the current 2020 CDP as part of this Site Plan Review process.

Site Design/Suitability

- Ideas that should be considered are similar to those implemented on Rehoboth Avenue (e.g., underground utilities, pedestrian friendly sidewalks, lighting improvements, landscaping enhancements, increased pedestrian-serving uses such as outdoor dining and food carts, street end improvements to provide more inviting entrances to commercial blocks from the Boardwalk).
- The City should examine establishing a new mixed-use zone category allowing a blend of residential and nonresidential uses as a means of encouraging the development and redevelopment of selected commercial areas. The emphasis on this strategy was to increase

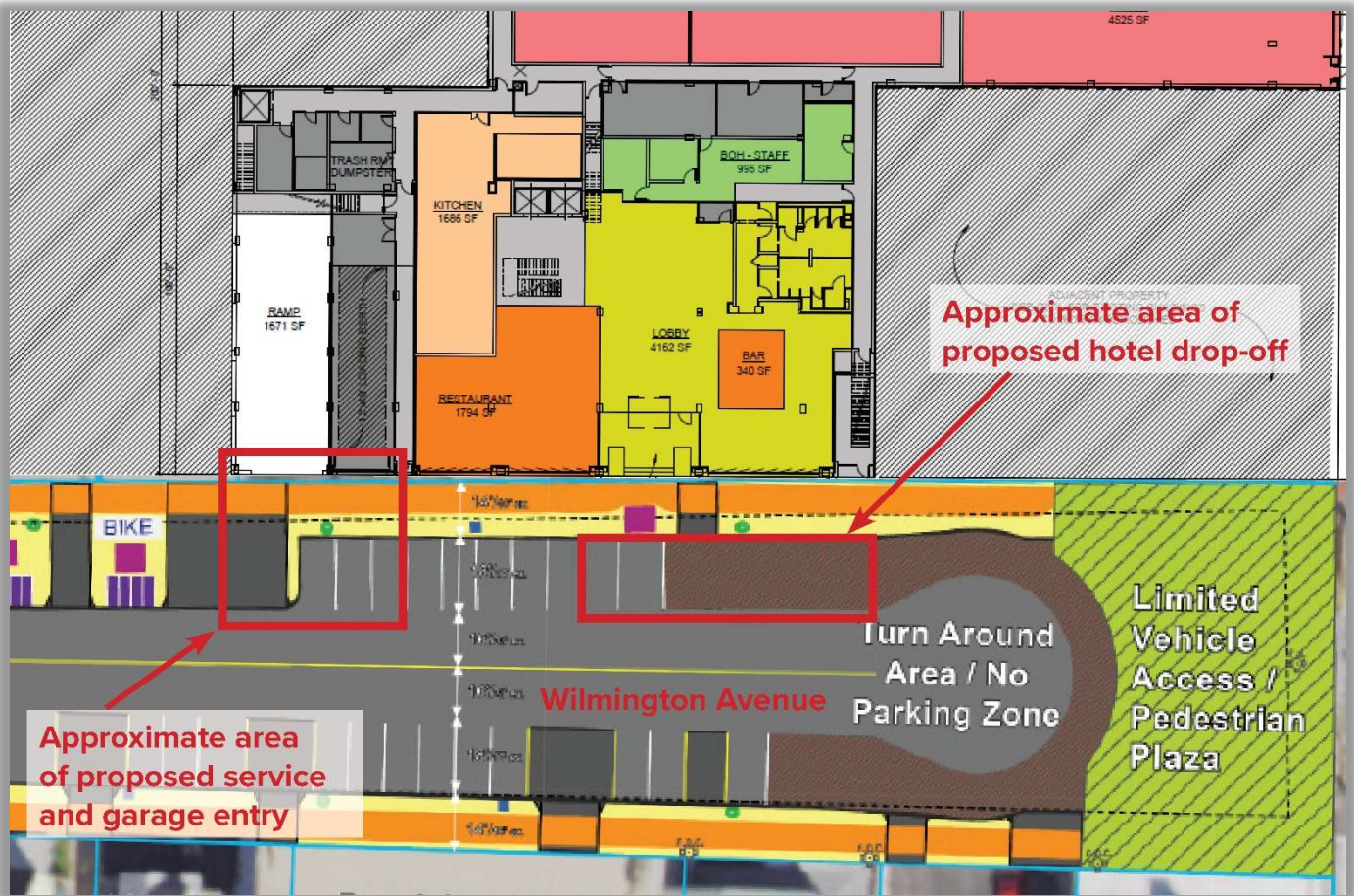
community identity in the downtown area. Public feedback suggested that Rehoboth Beach was losing residents because of a lack of "community," which was defined as more than the popular image of beach and Boardwalk—it included provision of local shopping for everyday needs; support for the elderly; availability of more suitable and more affordable housing for employees; and more mixed-use developments that include housing to compete with the projects along SR 1.

- Address physical and functional change in Rehoboth in terms of a "design image" or architectural character for each block to be used as a source of ideas for owners when individual properties are modified. A preliminary "design image" was proposed as part of the Wilmington/Baltimore Avenue Streetscape Task Force's conceptual designs.
- Employ Green Building, Low Impact Development, and Conservation Landscaping principles and practices.
- Plant and maintain curbside trees on all side-walked streets within the City.
- Capital Improvement Program. (How does the project increase or support services burdens and fit into CIP strategies?)
- Decisions should incorporate specific responses to public emergencies, which should be reflected in the Emergency Operations Plan and made readily available.
- The City should use environmentally responsible outdoor lighting and promote responsible legislation, public policy, and standards for such lighting in Rehoboth.

Access

- Access for people should not be inhibited; rather access by people must be increased while traffic is decreased.
- Assure the connectivity and "walkability" of all sidewalks.
- Impacts of vehicular traffic over walkable, bikeable, pedestrian-friendly community. Make sure projects address multimodal travel (e.g., pedestrian, bicycle, public transit) to benefit people as much as automobiles

The sketch below (not to scale) shows a portion of the proposed development ground floor fronting Wilmington Avenue, along with the streetscape concept for that section from the final Baltimore and Wilmington Avenue Streetscape Concept study. Although the streetscape study remains in a concept form, it is worth comparing the two concept proposals. The Belhaven site plan calls for a portion of the streetscape (approximately 45 ft.) to be reserved for the service and garage entry and another area to be reserved for a proposed hotel drop off (highlighted by red outlines).



The proposed garage and service area entryways will result in the loss of approximately 3 or more on-street parking spaces. In addition, the area would result in vehicles crossing an area designed to promote pedestrian circulation. Special design consideration should be applied to ensure the vehicle access area does not inhibit the goal to promote pedestrian transit. The area for the proposed hotel drop-off is directly adjacent to the proposed turn-around area, an area that is also used for local business deliveries. It would also result in the loss of approximately 2 or more on-street parking spaces.

To address the site design and access objectives, outlined in the CDP and streetscape concepts, the proposed plan should incorporate techniques to maintain the pedestrian scale and prominence of the pedestrian circulation path across this frontage. Techniques that should be considered and incorporated include:

- The loading area service entry opening should contain a door that is designed to mimic the adjacent store window panels when closed. This could include glass panels that are glazed to

screen the opening while maintaining the repetition of the public space openings. Another possible solution would be to pick up design aspects to use in this location to lessen its appearance as a loading area/service entry.

- To address vehicle access across the pedestrian circulation path:
 - Ensure the pedestrian access route is at least 5 ft. wide (preferably 7 ft. wide)
 - maintain the surface treatments along the pedestrian access route
 - ensure the slope of the surface across the pedestrian access route is maintained and level
 - change driveway material at the building line to demarcate the transition to the pedestrian circulation path
 - all driveways must meet ADA accessibility requirements
 - curb returns for driveways are prohibited because they create tripping hazards
 - driveways should be at least 10' deep past the right of-way line, so that standing vehicles do not encroach onto the sidewalk
 - Signs, mirrors, flashing lights, or other warning signals may be needed at garage exits where they cross the sidewalk. It should always be clear that vehicles must yield to pedestrians on the sidewalk. Stop signs should be used where sight distance is restricted.

The Applicant should clarify how their proposed plan can best incorporate the proposed streetscape improvements designed to revitalize and improve the Wilmington Avenue corridor.

ORDINANCE/CODE COMPLIANCE

WM and the City of Rehoboth Beach reviewed the subject Application for compliance with City ordinances/codes listed below. WM and the City of Rehoboth Beach's review focused on the *italicized* items indicated.

- *Chapter 270—Zoning*
- *Chapter 236—Subdivision of Land and Site Plan Review*
- Chapter 105—Demolition of Buildings
- Chapter 159—Flood Damage Reduction
- Chapter 194—Parking
- Chapter 206—Pools
- Chapter 215—Restaurants
- Chapter 227—Solid Waste
- Chapter 253—Trees

Relevant Definitions

§270-4 provides the following relevant definitions (unless otherwise noted):

- **Bar Area:** The floor space, not classified as permanent seated dining area, in any restaurant where alcoholic liquor is served or consumed. It shall include, but not be limited to, the bar counter and the contiguous floor and seating area where alcoholic liquor is dispensed or consumed, any dance floor area and any area occupied by persons providing entertainment. Patron restrooms are specifically excluded.
- **Dining Patio:** A deck or porch whether covered, uncovered, raised or at grade, used in connection with a restaurant and a part of, abutting, adjacent or adjoining thereto.
- **Dwelling Unit:** A room or group of rooms located within a dwelling and forming a single habitable unit with facilities which are used or intended to be used for living, sleeping, cooking and eating. Nothing herein shall permit cooking facilities in any individually rented hotel room, motel room, inn room, tourist home room, rooming house room or boardinghouse room.
- **Floor Area, Gross:** The sum of the gross horizontal areas of the several floors of a building measured from the exterior face of the exterior walls or from the center line of a wall separating two attached buildings, including basements but not including any space where the floor-to-ceiling height is less than six feet, six inches; subject to the following:
 - B. Floors or stories or a portion thereof with a ceiling height greater than 12 feet shall be included twice in the computation of gross floor area. For rooms with cathedral ceilings where the ceiling is the underside of a roof the height shall be determined at the top wall plate, the point where the horizontal dimension begins to decrease.
 - E. Gross floor area in a commercial use is deemed to include:
 - (1) The actual floor space of all habitable spaces above a finished height, at or above seven feet, six inches;
 - (2) Portions of basements above a finished height at or above six feet, six inches;
 - (3) Porches, balconies, decks, patios, pergolas, gazebos, canopies, whether covered or uncovered;
 - (4) Courts closed on three or more sides and covered;
 - (5) Atria, or greenhouses, closed on all sides and covered;
 - (6) Walkways and corridors that are covered;
 - (7) Storage and equipment spaces, at a finished height at or above six feet, six inches;
 - (8) Heating, ventilating and cooling devices, compressors or pumps in enclosed and roofed habitable areas;
 - (9) Roofed outdoor showers;
 - (10) Covered parking, carport, garage, port cochere at or above grade;
 - (11) Parking area located below finished grade or finished floor of habitable space, except as provided for in Subsection F;
 - (12) All interior and exterior stairwells and stairhalls, on all levels, at or above grade;
 - (13) Elevators, elevator equipment rooms, and elevator shafts, on all levels at or above grade;
 - (14) Swimming pools, swimming pool pumps, filters and equipment and surrounding deck.

F. Gross floor area in a commercial use is deemed to exclude:

(1) Open areas, not defined in Subsection E, such as, but not limited to, parking lots, loading zones and driveways if uncovered;

(2) Underground parking area, as defined in § 270-4.

- **Floor Area Ratio (FAR):** The quotient obtained by dividing the gross floor area of all buildings on a lot by the gross lot area.
- **Floor, Commercial:** A floor or story of a building that is entirely devoted to commercial use and has no living accommodations.
- **Floor, Residential:** A floor or story of a building, any portion of which is devoted to residential use, such as motel rooms or residential condominiums.
- **Height:** The height of a building measured from a point where the center line of the building to be erected intersects with the center line of the street on which the building will front to the highest point on the roof, its parapet walls or any feature which extends above the roof.
- **Hotel, Motel, or Inn:** A building or structure operated for profit, accommodating more than six persons, providing lodging, food and/or service to the transient traveling public, and may include restaurants, club rooms, public banquet halls, ballrooms or meeting rooms, but the individual living units shall not contain kitchen or cooking facilities.
- **Lot Coverage:** That portion of the lot area that is covered by building or structures.
- **Permanent Seated Dining Area:** The floor space in any restaurant or dinner theater where complete meals are served. A permanently marked dance floor may be located in the permanent seated dining area, but the square footage of its floor space shall not be included in the calculation of the square footage of the permanent seated dining area, but rather shall be included in the calculation of the square footage of the bar area.
- **Restaurant:** An establishment where meals are, for compensation, prepared and served on the premises and when alcohol is sold or consumed complies with §270-19.
- **Sidewalk:** An impervious surface parallel to a street between a curblin and a property line, or from a driveway to an entry, or from a front property line to an entry, or between an exterior entry from a primary structure to an accessory structure, intended for use by pedestrians to the exclusion of vehicles. Sidewalks between the curblin and the adjacent property line parallel to a street or other way shall have a minimum width of five feet and shall have a maximum width coinciding with an adjoining sidewalk, except that where there is no adjoining sidewalk, the maximum width shall be seven feet. All other sidewalks shall have a maximum width of three feet, except that a sidewalk leading to a main entry shall not be more than five feet wide; however, within three feet of the main entry or steps leading to the main entry, it may be as wide as the main entry or the steps leading to the main entry. All other walkway areas, including, but not limited to, walkways around pools and mazes through gardens, shall be considered structures.
- **Story:** That portion of a building included between the upper surface of a floor and upper surface of the floor or roof next above it. For the purposes of determining the number of stories specified in Article III, the following shall apply: a) If the top story of a building is roofed by a dormer(s) covering 50% or more of the floor area, it shall be considered a full story; b) Floor area under a gambrel or mansard roof shall be considered a full story.
- **Taproom:** An establishment provided with special space and accommodations and operated primarily for the sale by the glass and for consumption on the premises of alcoholic liquors

with the sale of food as a secondary object as distinguished from a restaurant where the sale of food is the primary object.

- **Tavern:** Any establishment with special space and accommodations for the sale by the glass and for consumption on the premises of beers.
- **Underground Parking Area:** An area containing one or more parking spaces and travel lanes, used as a lot or garage for the parking or movement of motor vehicles where no parts of the parking structure, except accessways, are above sidewalk level or above the undisturbed ground level of adjacent properties.

Permitted Uses

The subject property is located in the C-1 Central Commercial Zoning District, per the Rehoboth Beach Zoning Map dated June 18, 2010. The purpose of this District is *to include those commercial areas wherein uses are not restricted as to the floor space size*. The proposed Site Plan is consistent with this overall stated purpose (§270-13).

The proposed uses are permitted as a matter of right in the C-1 District as provided for in §270-13:

- §270-13C(2)(a): Hotel, motel or inn, where the motor vehicle entrances have been approved by the Building Inspector so as to comply with the applicable City standards and the State of Delaware Department of Transportation specifications, and so as not to be unsafe for pedestrian traffic. [Tier 2]
- §270-13C(3)(b): Public or private automobile parking lot pursuant to Article IV. [Tier 3]
- §270-13C(3)(c): Retail stores, including gift, art and antique shops, but not including bird or animal treatment or sale; and personal services shops, including craftspersons' trades not requiring the use of power tools. [Tier 3]
- §270-13C(3)(d): Restaurants or caterers or dinner theaters. [Tier 3]
- §270-13C(3)(s): Public or commercial garages, repair shops, gas and oil service stations. [Tier 3]

Height, Density & Area Requirements

Based on the proposed site design, the Application does not comply with the required height requirements for the C-1 Commercial District as illustrated below.

<u>STANDARD</u>	<u>C-1 REQUIRED</u>	<u>PROPOSED</u>	
		<u>HOTEL</u>	<u>PARKING LOT</u>
Min. Lot Area (§270-22B)	10,000 sq. ft.	38,475 sq. ft.	10,000 sq. ft.
Per Dwelling Unit (§270-23)	300 sq. ft. per guestroom	>300 sq. ft. ¹	—
Min. Lot Width (§270-22B)	100 ft.	>100 ft.	100 ft.
Max. Floor Area Ratio (§270-21B)	3.0 ²	3.0	—
Max. Lot Coverage (§270-21C)	50% (hotel + related)	48%	—
(Coverage for 1 st Floor; §270-4)	100% (other comm. uses)	52%	—
Min. Street Frontage (§270-22A)	50 ft.	164'10"	—
Min. Building Setback Line (§270-24)	None	—	—
Min. Rear Yard Depth (§270-25)	None	—	—
Min. Side Yard Width (§270-26)	None	—	—
Max. Height (§270-20)	42 ft. or 4 stories above grade³	42.42 ft. / 4 stories	—
Incl. cupola (§270-20⁴)	50 ft.	50.42 ft.	—

Notes: ¹Typical Guestrooms (Graphic B6 on Architectural Plan Sheet A0103) shows the typical double queen room as being 12'5" x 28'4" (351.81 sq. ft.) and the typical king room as being 12'5" x 26'0" (322.83 sq. ft.).

²Maximum FAR was increased to 3.0 per Variance.

³Heating, ventilation, and cooling devices, which are to be enclosed so as to be obscured from view, elevator shafts, one stairway entry for maintenance access to the roof, chimneys, and antennas shall not be included in calculating height.

⁴A dome, spire, cupola, belfry, chimney or pinnacle serving as an architectural embellishment and not for occupancy or storage may be erected to a height in excess of that authorized in this subsection for the district in which the building concerned is located, provided that the aggregate of the bases of all such structures does not exceed 10% of the building's ground floor area. The total height of a building with such embellishments shall not exceed 50 feet.

- **Building Height:** Pursuant to §270-20A, the Applicant indicates the building height at 42 ft. measured from a point where the centerline of the building fronts Rehoboth Avenue, Wilmington Avenue, the Boardwalk, and the west side of each roof. Incorporated into the design is a large cupola not higher than 8 ft. as required by the Code. The single stairway roof entry is permitted for maintenance access and is not included in calculating height. Elevator shafts are also allowed to exceed the height limitation.

Based on elevations indicated on Graphic C1, East Elevation – Boardwalk (Architectural Plans Sheet A0301), heights are as shown below. Both the building height and height including cupola exceed the requirements of §270-20A by 0.42 ft.

Ground/Level 1:	12.42 ft.	(25.42 ft. – 13.00 ft.)
Level 2:	9.33 ft.	(34.75 ft. – 25.42 ft.)
Level 3:	9.33 ft.	(44.08 ft. – 34.75 ft.)
Level 4:	11.34 ft.	(55.42 ft. – 44.08 ft.)
Building Height:	42.42 ft.	(55.42 ft. – 13.00 ft.)
Including Cupola:	50.42 ft.	(63.42 ft. – 13.00 ft.)

- **Gross Floor Area & Floor Area Ratio:** Per the definition of "Gross Floor Area" found in §270-4, floors/stories with a ceiling height greater than 12 ft. are included twice in the computation of gross floor area.

The Applicant requested and obtained relief in the form of a Variance from the required 2.0 FAR requirement. The City of Rehoboth Beach Board of Adjustment granted the Applicant's request to obtain approval to build a structure that could be up to 3.0 FAR (115,425 sq. ft.). See the Review Process section earlier in this letter for more information about this Variance.

Per §270-21B(5), the average gross floor area of all residential floors shall not exceed 50% of the gross lot area and the gross floor area of any one residential floor shall not exceed 75% of the gross lot area. Depending on whether the ballroom (and related) is included in the GFA calculations, items shown in **red** indicate where the avg. GFA of all floors exceeds 50% and items in **orange** indicate where the individual floor GFA exceeds 75%.

<i>Based On</i>	<i>Level 2</i>		<i>Level 3</i>		<i>Level 4</i>		<i>Total</i>		<i>Average</i>	
	<i>SF</i>	<i>%</i>	<i>SF</i>	<i>%</i>	<i>SF</i>	<i>%</i>	<i>SF</i>	<i>SF</i>	<i>%</i>	

Without Ballroom + related	31,106	80.8	22,378	58.2	23,705	61.6	77,189	25,730	66.9
With Ballroom + related	38,252	99.4	22,378	58.2	23,705	61.6	103,161	34,387	89.4

- Building Stepback Line:** Pursuant to §270-20B, the Applicant appears to satisfy that the balconies facing the Boardwalk and Wilmington Avenue are placed at an angled stepback line that slants away from the street at an angle of not less than 30° magnitude from a vertical line above the setback line with the vertex of such angle fixed at a point not higher than 14 ft. above the setback line (Wilmington Avenue, Boardwalk) or 24 ft. above the setback line (Rehoboth Avenue). **Plans show that there are a few places where balcony overhangs extend into this 30° area.**

Restaurant/Bar Area

Requirements for restaurants/bar areas are found in several code sections (e.g., §270, §215)

- Restaurant Enclosure:** §Per §270-19, restaurants shall be totally enclosed (except with a dining patio supplemental certificate of compliance.
- Minimum Seating/Tables:** Per §270-19A(3), in addition to other relevant standards, restaurant establishments must have seating and tables for a minimum of 35 patrons. **Confirm that at least minimum seating and tables are proposed.**
- Bar Area:** Two bars totaling 500 sq. ft.—one on Level 2 in the lobby/lounge area (340 sq. ft.) and one on Level 4 adjacent to the roof terrace (160 sq. ft.)—are proposed for the sale of alcoholic liquor for consumption on the premises as part of the hotel. Per §270-19A(5), bar area shall be no more than 25% of the square footage of the permanent seated dining area, but not to exceed a maximum of 500 sq. ft. (except that any restaurant may have a bar area of 350 sq. ft.). The restaurant area is shown to be 1,794 sq. ft., yielding a maximum of 448.5 sq. ft. of total bar area. **The Code does not allow for standalone bar areas—any bar is to be within the limits of an approved restaurant space (see §270-4, Definitions, or Relevant Definitions section earlier in this letter). Due to this, the bar area shown on the 4th Level is not permitted. The bar area shown on the Ground Floor is not permitted as a standalone bar and will need to be relocated to within the limits of the proposed restaurant.**
- Dining Patios:** It is unclear whether the Applicant is attempting to utilize “dining patio” to describe the roof terrace or pool deck in such a manner; however, per §270-4, dining patios must be a part of, abutting, adjacent, or adjoining a restaurant. §270-19B also describes other restrictions related to dining patios including gross area, restrictions on bars, etc.

Off-street Parking, Loading & Unloading

§270-35 requires minimum parking spaces for the following uses:

<u>USE</u>	<u>REQUIRED</u>	<u>PROPOSED</u>	<u>DIFFERENCE</u>
Hotel	118 spaces		
1/rental room + 2/resident owner	<i>116 rooms x 1 space + 2/resident owner</i>	118	—
Office	3 spaces		
1/400 sq. ft.	<i>995 sq. ft. / 400 sq. ft.</i>	3	—
Conference Room <5,000 sq. ft.	0		
No spaces required	<i>Meeting space <5,000 sq. ft.</i>	—	—
Restaurants < 10,000 sq. ft.	0		
No spaces required	<i>Restaurant space <10,000 sq. ft.</i>	—	—
Retail over 15,000 sq. ft.	0		

1/200 sq. ft. Retail only fronting Boardwalk No spaces required	Each retail <15,000 sq. ft. 0 Retail space <u>only</u> fronting Boardwalk is 4,525 sq. ft.	—	—
TOTAL	121 spaces	91 (garage) 30 (surface) 121 spaces	—

Notes: The Zoning Code is silent on the required number of parking spaces for retail less than 5,000 sq. ft. and has been interpreted to mean that no spaces are required. Any future tenant fit-outs will have to meet this requirement or will be subject to providing parking spaces as required by the Zoning Code.

The Applicant proposes to construct 121 parking spaces (91 in the underground garage and 30 in the surface lot), of which 6 are accessible spaces. Using the "all other commercial uses" standard for minimum parking spaces, the overall development requires a total of 195 spaces with minimum dimensions 9 ft. in width and 18 ft. in length (see ADA Accessibility for those particulars).

Will the Baltimore Ave Surface Lot require a parking permit from the hotel? Will the underground parking garage require a parking permit from the hotel or be secured by a code that only allows guests to utilize the spaces? How does the Applicant intend to restrict these parking areas to hotel guests, since 116 spaces are required for hotel guests?

Baltimore Ave Surface Lot Location: §270-35C allows up to 50% of required parking spaces to be provided on a separate lot/facility in the same ownership whose principal point of pedestrian access is not more than 700 ft. from the principal entrance of the building, **as long as structures are not used for dwelling in a commercial district. According to definitions, a hotel would be considered a dwelling; therefore, this section would not be applicable.** The Applicant has indicated that the principal hotel entrance is located on Wilmington Avenue. Two pedestrian routes (Ped #1 and #2) are detailed below with approximate distances (utilizing Google Earth Pro). **The proposed location of the surface lot is located more than 200 ft. too far from the principal (hotel) site. Using this site to provide required parking would require acquiring a Variance for both issues noted in this section.**

- Ped #1: Start at Wilmington Ave entrance; 195 ft. west to Penny Ln; 215 ft. north to Rehoboth Ave; 135 ft. east to Rehoboth Ave Crosswalk; 186 ft. north to Rehoboth Ave; 75 ft. west to pedestrian path; 108 ft. north to Baltimore Ave Surface Lot. Total distance = 914 ft.
- Ped #2: Start at Wilmington Ave entrance; 207 ft. east to Boardwalk; 392 ft. north to Rehoboth Ave; 342 west to pedestrian path; 108 ft. north to Baltimore Ave Surface Lot. Total distance = 1,049 ft.

Loading & Unloading: Per §270-36, 1 loading berth is required for hotels with over 15,000 sq. ft. of gross floor area, to be provided on the premises; 2 spaces are required for hotels over 100,000 sq. ft. The Applicant has provided one berth generally between the underground parking ramp and the restaurant. **There is a discrepancy between the area of the hotel provided by the Applicant and that calculated by the Building Inspector. Using the Building Inspector's calculations, the area is over 100,000 sq. ft.; therefore, two berths will be required.**

ADA Accessibility: Per the *2010 ADA Standards for Accessible Design*, [§208.2](#), where more than one parking facility is provided...the number of accessible spaces provided shall be calculated according to the number of spaces required for each parking facility.

- **Baltimore Ave Surface Lot:** A parking lot with 30 spaces is required to have 2 accessible parking spaces, at least one of which must be van accessible. Drawing A4 in the Site Plan Review plan set indicates 2 spaces are to be ADA accessible.
- **Garage:** A parking lot with 91 spaces is required to have 4 accessible parking spaces, at least 1 of which must be van accessible. ADA spaces are provided on the "Garage Level Plan" All ADA-indicated spaces appear to be 9 ft. wide with a shared 5 ft. wide access aisle. **Accessible parking spaces must be located on the shortest accessible route of travel to an accessible facility entrance—in this case, nearest the elevator bank. Accessible spaces are shown as spaces 6, 7, 11, and 12, none of which meet the "shortest accessible route of travel" requirement.**

Circulation/Turning Aisle: Per §270-30B, parking lots and garages require a circulation/turning aisle with a minimum width of 24 ft., without differentiation between one- and two-way aisles; however, it does allow for a minimum width of 20 ft. if the aisle serves angle parking of less than 75°. Where angled parking is proposed, the Building Inspector has measured the angles to be 75°.

- **Baltimore Ave Surface Lot:** The east-west aisle meets the minimum width requirement; however, **the two north-south aisles are only 22.9 ft. and 23.4 ft. in width, 1.1 ft. and 0.6 ft. in. too narrow, respectively.**
- **Garage:** According to the Building Inspector's measurements, the angle used for those spaces that are not 90° is 75° and, therefore, **the majority of the aisles are only 22 ft. in width, 2 ft. too narrow.**

In addition, Architectural Plans Sheet A0100 (Garage Level Plan) shows support structures located within numerous parking spaces and drive aisles in some instances. Their location further narrows either the parking space width/length or the drive aisle width below the allowed minimums.

Curb Stops/Bollards: The parking garage is shown only in the Site Plan Review plan set and does not have the same level of detail as would otherwise be provided in an engineering plan set. **Is it advisable or recommended that bollards, curb stops, or wall bumpers be provided so vehicles do not hit the building walls or clearly define the end spaces for end-to-end parking spaces.**

Baltimore Ave Surface Parking Screening: §270-43 requires a parking lot that is a main or accessory use to be enclosed, except for entrances and exits, by a landscape screen consisting of a semi-opaque ornamental fence or by compact evergreen hedge at least 3 ft. in height. **The entire area of the Baltimore Ave surface parking lot is proposed to be paved. The Applicant should indicate how this requirement will be addressed.**

Lighting: Any light fixture(s) in the proposed Baltimore Avenue off-street parking facility should use a luminaire that ensures safety while avoiding significant glare onto surrounding properties. The Applicant is showing fixture(s) that utilize house-side shields. Lighting for the parking garage will be reviewed at the time of Building Permit application.

Consolidation of Lots

Administrative consolidation should be pursued on approval based on the provisions of §270-46.1.

Signs

Proposed signage must conform to the requirements of Article VII, *Signs*. **All signage must obtain a separate permit approved by the Building Inspector. Signage or awnings that encroach on or above the City sidewalk/right-of-way will require a license agreement with the City.**

Building Demolition (Chapter 105)

Chapter 105 of the City Code covers the demolition of buildings and a permit for demolition of existing buildings will be required. The Applicant should also note that demolition is prohibited from May 15-September 15.

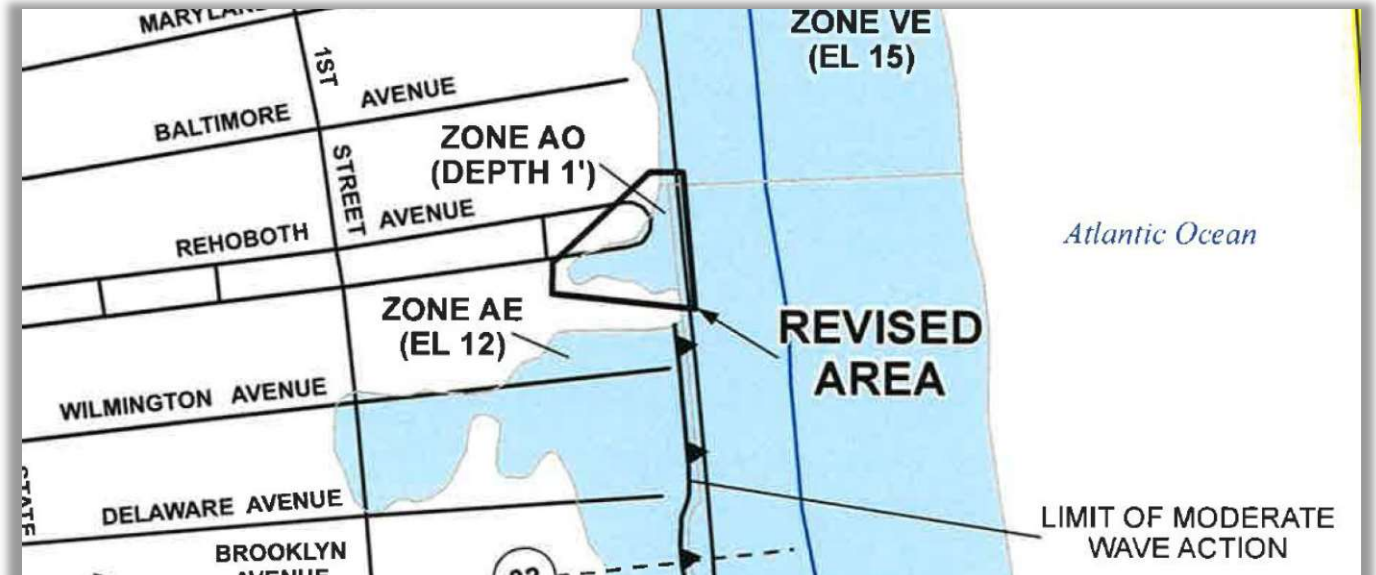
Valet Parking (Chapter 194)

Chapter 194 of the City Code discusses valet parking services. **Will the proposed hotel be providing this service? If so, the Applicant should explain proposed operations to ensure the “drop-off” area remains available for others trying to check in to the hotel, as well as if any spaces within the parking garage or surface parking lot are intended to be utilized for this purpose. The Applicant should also indicate the location of any proposed valet stand operations and ensure that they will not encroach upon required pedestrian passing areas. The Applicant should also coordinate with the City in regard to the Wilmington & Baltimore Avenue Streetscape Plan that was discussed earlier in this report.** Please note that, if this is a desired service, a separate permit from the City will be required.

Flood Damage Reduction (Chapter 159)

Detailed review of Chapter 159, *Flood Damage Reduction*, is performed by the City’s Floodplain Administrator (Building Inspector); however, we also wish to voice the following concerns. **§159-12 requires the Applicant to obtain a floodplain permit from the City before any filling, grading, site improvements, etc. can be accomplished.**

On July 26, 2021, the Federal Emergency Management Agency (FEMA) issued a Letter of Map Revision (LOMR, Case No. 21-03-0968P), effective December 13, 2021, to reclassify a portion of the property previously designated as Zone VE to Zone AO (see map excerpt). This area has a 1% or greater chance of shallow flooding each year, with an unpredictable flow path averaging a depth of 1 ft. (derived from hydraulic analysis). Areas in white are considered Zone X (unshaded), which is an area of minimal flood



hazard. The remainder of the site within the Special Flood Hazard Area (SFHA) is within Zone AE, with a Base Flood Elevation (BFE) of 12 ft.

Survey Reference No. 2 (Preliminary Site Plan, Sheet No. C-201) does not reference the LOMR, which was effective December 13, 2021. It indicates that references on the Cover Sheet should provide additional FEMA information, which does reference the LOMR. **The Applicant may wish to include the LOMR information on the same page as the FIRM information and graphic representation of the SFHA.**

The plans contain notes on drainage and sedimentation, describing standards and procedures for site development, but lack sufficient documentation on development and site disturbance concerns in the flood hazard area. **At a minimum the set of plans should identify current City Code provisions concerning development activity from Chapter 159, *Flood Damage Reduction*, with specific reference to those sections describing floodproofing, testing, and inspection to ensure that all activities are done in compliance including, but not limited to §159-29, *Nonresidential Structures & Nonresidential Portions of Mixed-use Structures*.**

Construction of underground parking remains a concern because the subgrade basement area will be subject to flooding. Floodproofing will be required for proposed commercial buildings (enclosures) below base flood elevation.

Additional comments will be forthcoming from a third-party reviewer.

ADDITIONAL CONSIDERATIONS

Buildings & Structures

- **Hotel Rooms/Cooking Facilities:** Specific attention should be given as to whether any proposed rooms are equipped with cooking facilities based on the zoning definition of "dwelling unit" (see §270-4 or the Relevant Definitions section earlier in this letter. **The Applicant should clarify whether it is their intent to provide cooking facilities (ranges) in any individually rented hotel room. If so, the dwelling units will require variances and need to satisfy the placement of trees for each dwelling unit. If not, the Applicant should clearly state as such on plans.**
- **Overhangs:** Overhang (awnings) areas of the structure are noted as requiring City approval. **Review and approval should be completed and incorporated into plan notes prior to final site plan approval.**

Emergency Access/Protection

- Given the location of the proposed development that will house guests and vehicles (underground parking) in a flood hazard area, **the Applicant should consider providing guidelines to guests on evacuation procedures in the event of significant weather-related events.**
- **Guidelines regarding emergency access and protection from the State Fire Marshal, the City Building Code, or other relevant agencies and regulations should be incorporated into the Site Plan with notes to ensure that all designs comply with standards to ensure public safety.**
- In their PLUS review comments, the Delaware State Fire Marshal's Office (SFMO) indicated a requirement for the Applicant to meet with the SFMO and the City due to the limited access for fire apparatus and fire department operations, prior to formal SFMO review submittal. **Please provide the status on this meeting/submittal, as well as its outcome.**

- In their PLUS review comments, the Delaware Emergency Management Agency (DEMA) noted concerns with the proposed development and strongly encouraged all utilities to be located, preferably, on the roof or top floor; locate no hotel rooms on the first floor; acquire NFIP flood insurance, as applicable; and to use flood resistant infrastructure during construction (e.g., large diameter drain piping, additional water/sump pumps), as well as the use of green infrastructure and renewable energies. **Please indicate how these comments are being addressed.**

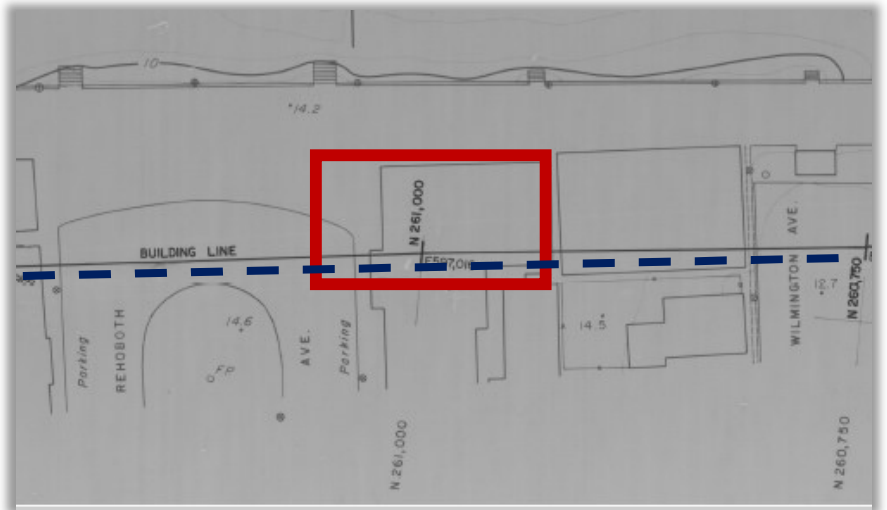
Natural & Environmental Resources

There are currently no forested acres, wetlands, other waterbodies, or tax ditches on the site.

Sediment & Stormwater Management: This Application proposes greater than 5,000 sq. ft. of land disturbing activities; therefore, it is subject to Delaware's *Sediment & Stormwater Regulations*, administered by the Sussex Conservation District. Construction activities that exceed 1.0 acre of land disturbance also require Construction General Permit coverage through submittal of a Notice of Intent for Stormwater Discharges Associated with Construction Activity, administered by the DNREC Division of Watershed Stewardship. A Stormwater Assessment Study may also be required. **Please clarify the status on submission/approval of these requirements.**

Sustainable Practices: In their PLUS review comments, the Delaware Department of Natural Resources & Environmental Control (DNREC) included recommendations (above and beyond State Code requirements) for sustainable practices that the Applicant may wish to consider including the use of renewable energy infrastructure, installation of bicycle racks, use of efficient Energy Star® rated products and materials, use of low Volatile Organic Compounds (VOC) structural paint coatings, and use of recycled materials. **Please indicate how these comments are being addressed.**

Coastal Building Line: The project lies within an area subject to the State's *Regulations Governing Beach Protection & Use of Beaches* (7 DE Admin. Code 5102). Construction is proposed seaward of the Coastal Building Line and within the defined regulated area. **These activities require a Letter of Approval from the DNREC Shoreline & Waterway Management Section. Please clarify the status on submission/approval of this requirement.**



Utilities

Water: Comments/requirements regarding water connection shall be by the Building Official, Director of Public Works, Fire Marshal, and/or other agencies as determined appropriate.

Sanitary Sewer: Comments/requirements regarding sanitary sewer connection shall be by the Building Official, Director of Public Works, and/or other agencies as determined appropriate.

Stormwater: Comments/requirements regarding stormwater connection shall be by the Building Official, Director of Public Works, Sussex Conservation District, and/or other agencies as determined appropriate.

Other: In December 2021, the City conducted a Power and Utility Undergrounding (PLUG) Study and Conceptual Design as part of its Wilmington/Baltimore Avenues Streetscape Project. It identified Wilmington Ave and Baltimore Ave as those with existing aerial electric, telecommunication, and CATV lines. **If the City moves forward with this plan, the Applicant should coordinate with the City and applicable utilities.**

Historic Resources

The subject site is not in the vicinity of any known historic/cultural resources or sites but has not been evaluated for historic or cultural resources. The Applicant did note their openness to a site evaluation by the State Historic Preservation Office (SHPO), should one be desired or appropriate.

Landscaping, Maintenance of Natural Features & Screening

Please note that §253-7 identifies species of street trees that may be planted without written permission of the City Parks & Shade Tree Commission. §253 also contains requirements for the spacing and diameter of street trees, distance from curbs and sidewalks, distance from street corners and fireplugs, planting underneath overhead utility lines. **§253-29 also requires the submission of a tree survey/protection/planting plan and §253-30 discusses tree removal/land clearing permit requirements that are required prior to removal/clearing commences.** Coordination with the City Arborist is recommended.

Should additional information be presented or subsequent revisions submitted, we reserve the right to provide additional comments on new or revised material(s).

If you have any questions, comments, concerns, or would like to discuss our review further, please do not hesitate to contact us.

Sincerely,

WALLACE, MONTGOMERY & ASSOCIATES, LLP
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