

**CITY OF DOVER BOARD OF ADJUSTMENT  
MARCH 16, 2005**

The Regular Meeting of the City of Dover Board of Adjustment was held on Wednesday, March 16, 2005 at 10:00 AM with Mr. Sheth presiding. Members present were, Mr. Sheth, Mr. Nowak, Mr. Senato, and Colonel Ericson. Dr. Goate` was absent.

Staff members present were Mr. Galvin, Mr. Sherman and Mr. Pepper. Also present were Mr. Dominic Balascio, Mrs. Oriaku Nwosu, Mrs. Jeanne Persinger, Mr. Wallace Edmanson, Mr. Michael Braun, Mr. Gene McFann, Mr. Kenneth Brown, Ms. Pam Scott, Ms. Susan Turnay, Mr. Tom Zolnar, and Mr. Andrew Peterson.

*Mr. Senato moved to approve the agenda as presented, seconded by Colonel Ericson and the motion was unanimously carried.*

*Mr. Senato moved to approve the regular minutes of February 16, 2005 as submitted, seconded by Mr. Nowak and the motion was unanimously carried.*

**OPENING REMARKS CONCERNING DEVELOPMENT APPLICATIONS**

Mr. Galvin advised the audience of policies and procedures for the meeting.

*Mr. Senato moved to adjourn to Executive Session, seconded by Colonel Ericson and the motion was unanimously carried.*

*At 10:07, the Board recessed for a brief Executive Session. The regular meeting was continued at 10:13 AM.*

**OLD BUSINESS**

**Application V-05-01**

401 Kesselring Avenue: Capital Baptist Church of 401 Kesselring Avenue, Dover, Delaware has applied to the City of Dover Zoning Board of Adjustment requesting a variance from the R-10 (One Family Residential) Zoning District Bulk Requirements (Article 4 § 4.1) to allow the construction of a one-hundred (100) foot guyed tower, with associated guy anchors and equipment building at the nine (9) acre empty parcel of land behind 401 Kesselring Avenue. Specifically the applicant is requesting a variance of sixty-five (65) feet from the maximum building height of thirty-five (35) feet.

The subject property is located on the north side of Kesselring Avenue between New Burton Road and Alder Road. The owner of record is Capital Baptist Church.

**Representative:** Mr. Dominic Balascio; Attorney for Capital Baptist Church

Mr. Galvin stated that there was a public hearing held at the last meeting; therefore, no public hearing was advertised for today's meeting of protocol.

Mr. Sheth stated that a legal opinion was received from Mr. Rodriguez and if any Board member has a question, they may ask Mr. Pepper before a motion is made concerning this matter.

Colonel Ericson stated that he does not feel that there is anyone on this Committee that appreciates the number of towers that are being seen around the City of Dover. They are unsightly and to put them in or close to a residential area does not seem to be in the best interest of the people who live there. Unfortunately, by case law, our ability to say no to certain religious institutions is limited. In this case, it seems to him, that we have no choice but to make a motion of approval.

Mr. Senato stated that he has studied the minutes of February 16, 2005 as he was unable to attend last months meeting and it is his understanding that a permit has been granted for an FM tower by the FCC. A variance has been requested from thirty-five (35) feet to one hundred (100) feet, which is a difference of sixty-five (65) feet. It was also stated that there are a limited number of permits that are given out; however, no documentation was given to this affect. It was stated that the towers are to broadcast the church's religious and educational topics and that it will not be a telecommunications tower. He has to assume that in the future, the tower will not be used and or rented out for commercial purposes.

Mr. Senato further stated in looking at the height and width of the tower it was not mentioned what the maximum sustained winds the tower would and could handle. Also, there was no count as to how many people that were in support of the tower, that were in the audience, and how many were in fact residents of the area. Regarding the tower station on this piece of land, as stated in the record, it has been there for thirty-five (35) years and of course the railroad has been there much longer. He is not sure what bearing this would have at this time.

Mr. Senato further stated that it was stated in the minutes that if there was any complaints they could contact the FCC. This indicates to him that no one knows if there is going to be any problems after the tower is installed. To him, this is a very important issue. We as the Board have a responsibility to the people in the immediate area. We do not want a situation similar to the one at the Heritage of Dover. The Heritage of Dover has a similar tower just one hundred (100) feet to the rear of their property. He has met with the Administrator and head of Maintenance and was given a tour of one of the apartments. The telephone lines have five cigarette sized filters on them and the main phone board in the maintenance room have so many filters that you can almost not see the lines. This type of situation should not occur at the Capital Baptist Church site or the surrounding neighborhood. These problems should be resolved for the benefit of all concerned in the area. The applicant has not produced evidence that the impact on this neighborhood would not be similar to that of the Heritage of Dover.

Mr. Senato further stated that the main problem that he sees is the added height. Putting up a tower of this height to reach a dozen homes, which was stated in the minutes, does not seem very practical. The Dover Electric Department Director seems to have many concerns regarding this tower. All of the concerns regarding the tower must be taken into consideration or there could be a significant impact on the neighborhood. We must remember that the burden of proof is upon the applicant.

*Colonel Ericson moved to approve Application V-05-03 401 Kesselring Avenue: Capital Baptist Church with the stipulation that they provide security fencing around the property, that there will be no co-location of other antenna's on this tower, and that the antenna is used for the purpose in which they have stated. They will also, during construction of this tower, include the guidance of the Planning Department, seconded by Mr. Nowak. Mr. Senato was opposed to the approval of this application. The motion carried with three (3) in approval and one (1) opposed.*

**NEW DEVELOPMENT APPLICATIONS****Application V-05-04**

353 North Governors Avenue: Oriaku Nwosu of 353 North Governors Avenue, Dover, Delaware has applied to the City of Dover Zoning Board of Adjustment requesting a variance from the RG-1 (General Residential) Zoning District Bulk Requirements (Article 4 § 4.2) to allow the construction of an addition to the existing single family dwelling unit. The addition would allow the existing garage to be occupied as part of the dwelling unit. Specifically, the applicant is requesting a variance of four and a half (4.5) feet from the minimum front yard setback of twenty (20) feet. The applicant is also requesting a variance of 17.4 feet from the minimum rear yard setback of thirty (30) feet.

Subject property is located on the southeast corner of North Governors Avenue and Clara Street. The owner of record is Oriaku Nwosu.

Mr. Galvin stated that the legal notice was published in the Delaware State News on March 6, 2005 and the public was notified in accordance with regulations.

*Mr. Sheth questioned whether there was any member with a conflict of interest. There were none.*

**Representative:** Mrs. Oriaku Nwosu, property owner.

Mrs. Nwosu stated that first of all she does not know where the issue of a variance comes in. The two structures that are located on the property when I bought it a year ago were existing. I have not, in any way, extended or moved the locations of where they were. She is not sure what she is asking for at this hearing. I bought this property because the previous owners who sold it to me led me to believe I could turn the double garage into useable space. The double garage has everything that one would need to use as useable livable space with electricity, heat, and a telephone, it was never a garage.

Mr. Nwosu further stated with that impression and \$45,000 that she gave for this particular unit called a garage, and the impression that she could convert it to livable space would be the reason she bought it. Approval was given to her because she has family members who are students that have lived with her for years. The only reason she bought the property was because she had an accident, which more or less left her handicapped. Her husband is elderly and they are not able to go up and down stairs. She was looking for property where everything is on the same level.

Mrs. Nwosu further stated that the family members living with her are attending school at Delaware State University and Wesley College and they need accommodations. She has housed them free of charge for more than ten (10) years. Once one goes another set comes and she cannot put them out because they cannot find other accommodations. For those reasons, she feels that she should be permitted to convert the garage as is, into livable quarters.

Mrs. Nwosu further stated that she made it quite clear from the get go that she wanted it for that purpose. She knows that it would mean borrowing money for the conversion and for that reason she would take no more than two people at any time to live in it. As a result, she was given approval. There is nothing that she did without approval and would invite the City Council to come and inspect the finished job. With everything having been completed based on the approval she received, the issue of the zoning violation came up and she wonders what she did wrong.

Mrs. Nwosu further stated that she was given alternatives to correct the situation. One of the alternatives was that because it is a contradiction to what is existing she could appear before this Board to be given permission to connect the garage to the main house. This would cost her a lot of money, but she does not want to live in a situation where she would be in conflict with what the requirements are. I have already put in between \$15,000 and \$20,000 based on the approvals that have been given. There are a lot of properties in the area that have the type of thing that she is asking for. Whatever it will take for her to be in compliance without anybody being offended, she will do. The property I bought is about three times the size of other properties in the area. The house is located well off of Governors Avenue. I will not be taking away from anyone else in the neighborhood as there are parking spaces for about six cars and I only have one car. I am also thinking of retirement and being able to supplement payment for my mortgage.

Colonel Ericson stated that Mrs. Nwosu stated that she had approval when she started the project. Who did you talk to in the City Government? Responding to Colonel Ericson, Mrs. Nwosu stated practically everybody. She applied to the City for a plumbing permit and then again for the accommodations of the garage.

Mr. Sheth questioned that at first she said family members, then she said students, and then you said two at a time. What kind of members will be accommodated? Responding to Mr. Sheth, Mrs. Nwosu stated that it is her two nieces.

Mr. Sheth further questioned with regards to zoning, when you bought it, the ordinance classified it as a single unit dwelling with a garage. Responding to Mr. Sheth, Mrs. Nwosu stated that in all of the areas surrounding her property people have multiple family dwellings.

Mr. Galvin stated that Staff has worked with the applicant over several months related with the request to do something with this garage. The initial permit request was to enclose the garage doors to put in pedestrian doors, which is permissible as long as the property remains an accessory structure. The applicant came in with a plumbing permit to put in a bathroom as an accessory structure that is permissible as well. The permit ultimately included another sink separate from the bathroom. The plans that were presented for the plumbing permit included some lines that indicated something was going on in the garage. Ultimately, Mrs. Nwosu informed Staff that they represented walls. The Staff member that reviews permits did not

recognize them as walls as she did not pull a permit for the construction of walls, she pulled a plumbing permit. When the Plumbing Inspector went in to take a look to see what was going on with the plumbing permit he found that the walls were up. He is not sure if the rooms were furnished at that time. There were doors separating the kitchen from two areas that were subdivided where cars would normally be located at.

Mr. Galvin further stated that a conversation was held in-house as to whether a sleeping area was allowed for family members. Ultimately, it was determined that it seemed to be a second principle structure on the same lot, which is not allowed. There was some talk of it being defined as a rooming house. Regardless, Staff felt that it was not appropriate for this zoning district. Ultimately, in discussions with the client, we offered her the opportunity of coming before this Board to look at connecting the house to the garage to make it one unit, one building, and then to have it include two dwelling units. Under those circumstances, it would also require Planning Commission Conditional Use approval. The reason we brought this to the Board of Adjustment was because with the change of use of the garage from an accessory use, which is allowed by right, and meets the rear yard setback change of use to a residential use, in which it does not meet the rear yard setback for residential use, we felt it was appropriate to request a variance.

Mr. Galvin further stated that he feels that it would be appropriate for the Board to consider the definitional issue of whether Staff's interpretation was correct and that this change of use would require a variance and to also discuss the merits of the variance itself. In discussions with the applicant, to begin with, it was for family members and then ultimately he was told that it was to be open for rental units not only to students but to non-family members.

Mr. Galvin further stated that a secondary multiple unit property can be rented for any purpose. The only limitation would be under the Student Housing Ordinance where a property that would be used for a unit for student housing that had more than two students in it would have to be greater than five hundred feet from any other adjacent student housing property and would have to be a Conditional Use as well. Because this unit would be limited to only two people, this would not be an issue.

*Mr. Sheth opened a public hearing.*

**AGAINST APPLICATION:**

**Mrs. Jeanne Persinger – 400 N. Bradford Street:** Stated that the cart was put before the horse in this matter, which is unfortunate. The gentleman who did her construction work also did the construction work on our bathroom. She does not doubt what Mrs. Nwosu plans are. Her concern, as being a good citizen, is what happens when the house is re-sold? We have enough issues going on with students in the area. They have sold their house and she speaks on behalf of the new owners that will take residence some time in April. Her concern is the on-going issues with traffic. Her Daughter got a petition together in the neighborhood to have a stop sign put up on the corner of Clara and North Bradford Street, which was done. We still have some issues;

however, the police have been very cooperative and have tagged a few people who have been speeding. She also has a concern with noise. They have had damage done to their house and again she is speaking about re-sale. She has to believe that this will be family members only; however, the way it is setup it could be rented to students in the future, in particular, Wesley College students. She has had damage done to her property with a fence that was kicked in and they had to replace some boards, and having her trash cans kicked over is also not unusual. They have also had fights that have had to be broken up by the police. It has gotten better this year because her husband has been in to speak with Dr. Miller at Wesley College. There are a number of rental properties in the area now that are located next door to the property in question and across the street people are moving because of the noise. Her concern is maybe not now, but with the future. You are opening doors.

**Mr. Wallace Edmanson – 352 N. Bradford Street:** Stated that he respects Mrs. Nwosu's integrity, intelligence, and values and that is why he is here to keep that in tact in the community and in the City of Dover. He has pro and con arguments for this application before you. Regarding the pros, he really does not have any except, for monetary gain for rental income down the road. The cons are the potential rental that is coming. Parking problems that already exist. As it has been noted, this on going inch by inch, little by little progression and even forwardly moving and building two rental units that are visible with two air conditioners, two doors, two windows, and a two car garage, there is even wall separations and a kitchen, where was that permit? He heard toilet, and door enclosure, she has already got it and stated she has already spent \$45,000. If she needs handicap access there is a permit she can obtain from the City and build it for her house. If she needs a bigger house, build it, buy it. Do not ruin his neighborhood by rental income, parking, and noise. He also would mention fraud to the City in that she moved forward without the proper permits and without the proper guidance. If she wasted her money by building before she came before the City then she wasted her money. Send that message do not build before you obtain proper permits in the City of Dover.

**Mr. Michael Braun:** Stated he does not live in the City of Dover limits but is a landlord that has a piece of property that I rent in downtown Dover. He made no modifications to his property when he bought it. He had the opportunity to speak here about a year and a half ago when the City was up in arms over what they perceived to be an out of control student population. He feels like he represents a group of landlords that have tried to do what is right. In his particular case, he has made no modifications to the property as his units each have four bedrooms in them and were built that way. He has reduced the density of the people he has on the property down to three. He has screened his applicants more closely to weed out what might be people that are there to have a party as opposed to attending school. This has reduced his rental income but it has also cut down on his aggravation, the aggravation to the people who live in the neighborhood, because as a landlord he was receiving quite a few phone calls, and he wouldn't say that they were always valid complaints, but he appreciates those calls in that there is an issue in this area that needs to have some control over.

Mr. Braun further stated that he knows that the magnitude of the problems in the downtown area near Wesley College, have decreased. He would like to think that it is perhaps because landlords who are responsible have taken some actions to reduce the incidences of problems. The problem with this particular application is if it looks like a duck, walks like a duck and smells like a duck,

then maybe it is a duck. From what he understands we have not just got the renovations to the garage we have renovations to the property to increase the ability to house a number of occupants independently on that particular property. He is concerned that he will have to come back here to this Chamber at a later date to then again defend his right to use his property in a valid purpose. If there is too much density in a unit it is likely to become a problem. He is sure that this woman is telling you the truth and that she has made significant economic investment but at the same time, he has made adjustments economically that have been detrimental to him to try and be a good landlord and neighbor.

**Gene McFann – 401-403 Clara Street:** Stated that everything that the other people have said he agrees with. She also stated while in her opening statements that when she retires she could use the income from these rental units to supplement her mortgage. To him this is what the whole plan was from the beginning, for two rental units. When you take a garage and turn it into two rental units you have got to get the permits first and also find out if it is okay first. To build a little bit here and a little bit there until you wind up with what you want is wrong. It should be done up front from the very beginning.

**Kenneth Brown – 350 N. Governors Avenue :** Questioned why we were here over this issue and not over the issue of changing this from a single family dwelling to a multi-family dwelling which is really what it is going to be. He feels that the cart is before the horse. You are going to rule on this and it doesn't seem right that we are here discussing whether they become a multi-family dwelling when in fact the application is simply for setbacks. Setbacks do not bother him and will not change his community that much. There are other places on this street that are very close to the street. What he would like to see is things done orderly. What should be done here is to debate on an application to change to a multi-family dwelling.

Responding to Mr. Brown, Mr. Sheth stated that this Board is strictly worried about the variance; however, you would have a chance to voice your concerns when this goes forward to the Planning Commission as a Conditional Use.

*Mr. Sheth closed the public hearing.*

*Mr. Sheth questioned whether there was any correspondence related to this application?*

*Responding to Mr. Sheth, Mr. Galvin stated that there was no correspondence related to this case. He has had some conversations; however, they have been represented during discussions at this hearing.*

Colonel Ericson stated that it would seem to him that this property was bought as a house with a single detached garage. It was the plan of the owner to ultimately change it into a multiple family dwelling unit. We cannot depend on the fact that over time it will stay just within the family. He is not sure how the permits were handled but obviously there is a communication gap. The applicant was not honest up front from the beginning with what the total purpose of the project was. He does not feel that the hardship test was met and that by extending this building it is going to make not in harmony with the neighborhood. It would change the character of the neighborhood and would be detrimental to the public welfare.

*Colonel Ericson moved to deny Application V-05-04; 353 North Governors Avenue: Oriaku Nwosu, seconded by Mr. Senator and the motion was unanimously carried.*

**Application V-05-05**

9 Pennsylvania Avenue: Eric Hogate of Clayton, Delaware has applied to the City of Dover Zoning Board of Adjustment requesting a variance from the RG-1 (General Residential) Zoning District Bulk Requirements (Article 4 § 4.2) to allow the conversion of an existing structure into a Single Family Detached Dwelling. The applicant is requesting a variance of one (1) off-street parking space from the minimum required two (2) off-street parking spaces per dwelling unit.

Subject property is located on the east side of Pennsylvania Avenue, between Delaware Avenue and Division Street. The owner of record is Eric Hogate.

Mr. Galvin stated that the actual variance that you will be considering is the off street parking space. Staff has made the determination that this is a primary building on an existing lot and therefore would not need a variance to allow for conversion of the existing structure. The legal notice was published in the Delaware State News on March 6, 2005 and the public was notified in accordance with the regulations.

*Mr. Sheth questioned whether anyone had any conflict of interest with regards to this application. There was none.*

**Representatives:** None

*It was determined at this time, since there was no representative present, that the Board would continue with the hearing and if the representative did not appear before the adjournment of the meeting, that the application would be tabled.*

*Mr. Senato moved to table Application V-05-05 to next months meeting, seconded by Mr. Nowak and the motion was unanimously carried.*

**Application V-05-06:**

Intersection of Bacon Avenue and Buckson Drive: Dover Village Apartments, LLC of 680 Forrest Street, Dover, Delaware has applied to the City of Dover Zoning Board of Adjustment requesting a variance from the RG-2 (General Residential) Zoning District Bulk Requirements (Article 4 § 4.3) to construct a one-hundred and twenty (120) foot monopole and associated equipment shelter. The applicant is requesting a variance of eighty (80) feet from the maximum building height of forty (40) feet.

Subject property is located on the northeast corner of Bacon Avenue and Buckson Drive. The owner of record is Dover Village Apartments, LLC.

Mr. Galvin stated that the legal notice was published in the Delaware State News on March 6, 2005 and the public was notified in accordance with the regulations.

*Mr. Sheth questioned whether there was any conflict of interest? Mr. Sheth stated that he would like to declare that he has received notice of this hearing as a 200 feet property owner. He has no financial interest regarding this application.*

**Representatives:** Ms. Pam Scott, Attorney Representing Cingular Wireless; Ms. Susan Turnay, Site Engineer; Mr. Tom Zolnar, Property Acquisition Specialist; and Mr. Andrew Peterson, Radio Frequency Technician.

Ms. Scott stated that she was here today on behalf of Cingular Wireless who has an agreement with the owner of this property to replace an existing television tower with a telecommunications monopole. The existing tower is ninety (90) feet tall and they are proposing a one-hundred twenty (120) foot monopole on this property. The property is located at Bacon Avenue and Buckson Drive and about one thousand feet from Dover Downs property. Cingular Wireless is a provider of telecommunication services and licensed by the FCC. As part of that license, they are required within a certain period of time, to have their cellular network built out in the territories in which they are licensed and the City of Dover is included in one of those territories. They are here today because they have a gap on one of their service areas and have proposed this location for this tower in order to close this gap and be able to provide consistent regular service to the Cingular Wireless customers in the area. This is not only required by the FCC license, it is also something pursuant to the Federal Telecommunications Act and are required to go through this process in order to obtain their final approvals.

Ms. Turnay stated that regarding the layout of this site, the entrance to the site is from an existing parking lot. The existing site is located towards the rear of the property closer to Dover Downs property. It is a compound that is approximately 40x90 feet. Cingular is proposing to place an equipment shelter and a one-hundred and twenty (120) foot monopole within the compound. There is an existing TV tower that is about forty (40) years old that was constructed around the same time as the existing apartment buildings with the intention of providing television service through one antenna to all of the units. The existing structure would not be able to support the proposed antenna.

Colonel Ericson questioned what speeds of wind could this antenna take up to? Responding to Colonel Ericson, Ms. Turnay stated that the proposed would be designed to meet IBC, EIA, and TIA 222 averages of governing standards. This would be designed to withstand 90 to 95 MPH winds for Kent County Delaware. This would be regulated through pecking gusts or fastest winds and is based upon IBC or EIA. These are two different standards and you cannot mix one with the others formula so you would have to cross reference an equivalent wind speed and then the analysis is performed. This is an independent structured with guyed wires.

Mr. Senato questioned if this monopole would have one pole going straight up 120 feet with no guyed wires located within the proximity of a residential area? Responding to Mr. Senato, Ms. Turnay stated that this was correct. The monopole is typically six to seven feet in diameter depending upon the number of multiple carriers that would be co-locating on the tower and the base speeds for the County in which it is designed for. The foundation is typically a case-on that

would be larger than the monopole itself and would be drilled in about twenty-four to thirty feet depending upon the specific design conditions.

Mr. Senato further questioned how many of these monopoles have gone up in this general area? Do you have any track records of sustained winds for these monopoles? Responding to Mr. Senato, Ms. Turnay stated that 75% of new structures are monopoles. The monopoles have been used for many years now and are designed specifically for these conditions.

Mr. Senato further stated that what he is trying to find out is if there has been any history of damage of these antennas falling down in high winds or bending after having been up for many years. Responding to Mr. Senator, Ms. Turnay stated that she was unaware of track records. The design manufacturer could provide this information if necessary.

Mr. Zolnar stated that he is employed by Volocitell as a subcontractor for Cingular Wireless and is the site acquisition person on this particular project. He has been in this industry for approximately fifteen years and the history of these monopoles has been around for longer than that since the early 80's when pioneer licenses were granted. This company started out as Metro Phone, Comcast Metro Phone, Cellular One and then to Cingular as a progression. Within the Cingular system he is not aware of any monopole failure, which is nationwide. These monopoles are structurally designed to withstand the highest winds required by the areas in which they are located in.

Ms. Turnay stated that there are design standards and codes that are specifically tailored to communication structures. The IBC is the International Building Code, TIA, EIA, which is 222-F and is the standard for steel antenna towers and support structures.

Mr. Zolnar further stated that they looked at other sites for co-location. They looked at the Dover Downs race track as a possible location; however, they have an exclusive agreement with Nextel and no other communication providers are allowed on their property. They also looked at an existing water tower that is located across the street on the University's property; this also did not work for location. They also looked at a water tower located to the south which also did not work. They looked at other land in the area as they have an existing one sector site which is located behind the Shuckers Pier 13 and is only forty-five (45) feet high. This sector was put in specifically for the race track because of the growth in cellular communication it is overwhelmed with calls. They also looked at the residential area to the south. The reason they chose this site was because they felt it was the least objectionable place to locate a monopole. They would be taking down an existing tower that is in very poor condition and putting up something that would be structurally sound and will serve their purposes.

Mr. Peterson from RF Design Engineering representing Cingular Wireless Facilities, Inc. stated that his company identifies deficiency within the network and then go before boards such as this to address these deficiencies. An exhibit present to the Board outlined the areas of coverage and deficiencies. The areas outlined in red on the map depict existing facilities that are cingular facilities that are on the air. The areas outlined in green are the existing coverage that these facilities provide. The threshold in which this has grown is the coverage level that would give you reliable coverage in say a mobile home or a van. It is a higher threshold than what they need

to have for reliable coverage in a car. The white areas represent spots on the map where coverage would not be reliable and are referred to as gaps in reliable coverage.

Mr. Peterson further stated that in connection with trying to find a suitable site to correct the gap in service there were some sites that were ruled out. The University water tank located across the street on Route 13 and the Dover Park water tank would bring additional coverage for the area; however, the targeted area around Dover Downs and where they park RV's for the races including Route 13 and Route 1 would still not be covered. There would still be a deficiency in their coverage.

Colonel Ericson question how much coverage they gain by adding a new tower such as this one? Responding to Colonel Ericson, Mr. Peterson stated that it depends on height and terrain. This particular tower should cover between a quarter mile and a half of mile.

Mr. Sheth questioned what the existing tower would cover? Responding to Mr. Sheth, Mr. Peterson stated that this would not be a viable option because structurally it was not built to hold their antennas.

Mr. Galvin asked Mr. Peterson if he could address the State Police Antenna.

Mr. Peterson stated that located at the Delaware State Police Headquarters on Route 13 is a facility they currently hold a lease with. They plan to co-locate their equipment and antenna's on this tower in the near future. They will gain some coverage with this site; however, they will still have a deficiency in the targeted area.

Mr. Peterson further stated that the last map indicates their anticipated coverage with the new facility which will fill the gap in the targeted area. It will also provide more coverage on route 13 and Route 1.

Ms. Scott questioned Mr. Peterson, on an average what size territory does each cell site cover? She realizes it varies due to terrain and other things. What she is hearing is some concern with the fact their there will be more towers, could you explain why they are necessary? Responding to Ms. Scott, Mr. Peterson stated that it all depends on the coverage you are trying to provide. In this case, we are trying to provide coverage to the City of Dover, a lot of the buildings and restaurants along Route 13, and various residences. We are also trying to provide coverage to NASCAR events that are just north of the tower. Our level of coverage that is depicted here is high level. It will depend on what the environment is, if you are walking down the street you could be a good two to three miles from a 200 foot site on flat terrain; however, when you get into a car or a building environment your reliable coverage shrinks to within a half a mile.

Ms. Scott further stated that based on the studies that you have done by placing this tower at this location, you will be coving the gap in service that is a concern for Cingular is that correct? Responding to Ms. Scott, Mr. Peterson stated that yes that would be correct.

Mr. Nowak stated in the desire to cover the targeted area, what other sites have you looked at? Responding to Mr. Nowak, Mr. Peterson stated that it was just the candidates that were previous mentioned by Mr. Zolnar.

Mr. Nowak further stated that it would not include any candidates towards Route 9 or on Finish Line Road? Responding to Mr. Nowak, Mr. Peterson stated that the site on Route 9 would not give them the level of service that they are seeking.

Mr. Sheth stated that this is a residential area and is not a variance for Dover Village; this is a commercial lease, is this permissible? Responding to Mr. Sheth, Mr. Galvin stated that the towers themselves are not consider commercial use; they are considered uses that are allowed in all districts that have to abide by the requirements of those districts. This indicates that towers are buildings and structures. The height of the structure must meet the current zoning regulations.

Responding to Mr. Galvin, Ms. Scott stated that telecommunication towers are sort of a hybrid. They are not a public utility because they are not regulated by the State as a public utility; however, they provide some of the same functions for example the 911 service. This is not a licensed public utility.

Ms. Scott further stated some jurisdiction have specific ordinances that address the permit towers in certain districts. It is not a limitation on height but a limitation on setbacks and things of this nature. The City of Dover does not have such an ordinance and her understanding is that basically it has been interpreted in the past that they have been permitted in various districts; however, most of them do not meet the height regulations. Pursuant to their license by the FCC, we have to provide coverage within our territory within a certain period of time. Normally, the licenses are for about ten (10) years and you have to show that you have 80% coverage within your territory. This is what they are trying to do. They are trying to meet the requirements of the license that was issued to them and to provide that service. This is what all telecommunication providers are doing so I am sure, as time goes by, you will see more people come before you to ask for this type of approval. While we are required to meet requirements of each jurisdiction in terms of their zoning and subdivision requirements, the Telecommunications Act which basically established our ability to do this basically says that you cannot prefer one provider over another and that your regulations cannot be such that it prohibits the ability to provide this service in your jurisdiction.

Mr. Nowak question whether the relationship was linear where if you were to increase the height by say 30% it would be 30% less coverage? Responding to Mr. Nowak, Mr. Peterson stated that no it would not.

Colonel Ericson stated that this does not apply to this case but say if we were to place a moratorium on looking at towers for six months until City Council could come up with a City Ordinance to cover this, would this cause you undue burden on the telecom industry as a whole?

Responding to Colonel Ericson, Ms. Scott stated that she would have to refer this to Mr. Zolnar. They have a schedule where they are trying to get so many sites on the air within a certain period

of time. Kent County went through this process several times and has now finally adopted an ordinance that most people in the profession feel is almost impossible to meet. There have been some short time moratoriums in order for jurisdictions to establish the appropriate legislation.

Also responding to Colonel Ericson, Mr. Zolnar stated that they are continuously looking for new sites to upgrade their operations. We have a mandate from the Federal Government to start locating cell phone users with respect to 911 cell phone calls. At the same time, we are in business just like anyone else. We want to provide good service to our customers and we are finding more and more people using cell phones. The amount of cell phone usage is limited by the number of radios that are on each one of these sites. As you have more and more people using cell phones you are going to need more and more sites. We have a very ambitious program this year in that we are putting up in access of 300 sites in the Pennsylvania, New Jersey and the Delaware area this year.

Ms. Scott stated to summarize as they indicated when we started, the purpose for being here is because Cingular has a gap in its service coverage in this area of the City of Dover. While we tried to find some sites to co-locate we were unable to do that successfully and cover the area that we are concerned about. We meet all of the requirements of the RG-2 zoning district with the exception of the height limitation and unfortunately you cannot build monopoles thirty-five (35) feet in height and get any level of service coverage in the area. She believes that they have shown that they will not have a negative impact in terms of where they would be located.

Mr. Senato stated that he was not sure if it would be proper for the Board to consider, even with this application, a short moratorium so that we may get some guidelines. It would seem that with the amount of towers and the cases that have come up in the past six or seven months he is concerned that there is a potential situation that the City of Dover is going to look like the tower City of the state. He feels that we need other than a height variance, maybe some guidance from City Council.

*Mr. Sheth questioned whether there was any correspondence related to this application, responding to Mr. Sheth, Mr. Galvin stated that there was none.*

*Mr. Sheth closed the public hearing.*

*Mr. Senato moved to approve Application V-05-06 Intersection of Bacon Avenue and Buckson Drive: Dover Village Apartments, LLC, seconded by Colonel Ericson all were in favor with Mr. Sheth abstaining from the vote.*

Colonel Ericson stated that we do not have clear guidance from City Council. We have Federal statute, and Federal Agencies that are making rules and regulations that supersede our boundaries as far as the City ordinance is concerned. We have court decisions that take us even a step further and right now we have to make decisions in a vacuum. He feels that it is proper to request that we put a moratorium on this for six months on all tower applications until City Council gives us better guidance.

Mr. Senator stated that rather than a time limit, should we instead consider until City Council renders a decision. Responding to Mr. Senato, Mr. Sheth stated he would rather leave the six months on it so that it puts pressure on them.

Mr. Pepper stated that if City Council changes the ordinance this would wipe away your precedent. He is unsure what City Council would be able to do faced with the Federal Statue that states that you cannot have regulations that prohibit or have the affect of prohibiting personal wireless service. Putting a height restriction in the ordinance would probably be the best route in that you would probably stop hearing these types of cases.

Mr. Pepper further stated that action could not be taken on this matter as it was not placed on the agenda.

**Meeting Adjourned at 11:58 PM**

Respectfully Submitted,

Diane Metsch  
Secretary