



DEPARTMENT OF PLANNING SERVICES

NOTICE OF DECISION

APPLICATION: A-24-51

APPLICANT: Tidewater Utilities, Inc.
1100 S Litle Creek Rd.
Dover, DE 19901

OWNER: Eagle Meadows DE 1 LLC, Eagle Meadows DE
2 LLC, & Eagle Meadows DE 3 LLC
C/O Ajh Management
101 Chase Ave Ste 401
Lakewood, NJ 08701

PROPERTY ADDRESS: W Denneys Rd.
Dover, DE 19901

**DATE OF PUBLIC HEARING
& DECISION:** November 21, 2024

MEMBERS PRESENT: Brian Cusick, Chairperson
Morgan Hudson, Vice Chairperson
Joan Denney
Brauncy Jenkins
Temple Carter
Charlie Jones
George Gallo, Jr. (Recused from this application)

NATURE OF REQUEST:

A-24-51 Tidewater Utilities, Inc. (Owner: Eagle Meadows DE 1 LLC, Eagle Meadows DE 2 LLC, & Eagle Meadows DE 3 LLC) seek a variance from the condition and setback requirement that a water tower be set back from the street line or any other lot line the height of such tower, the maximum height requirement of 80', the maximum size of a sign of 10% of the area of the building front which each business occupies, and the maximum height of a sign of 30' to construct a water tower with signage (§205-72.E.(1), §205-81.D.(4)(a & b), 205-232.B.(4) of the Kent County Code). The property is located on the southwest corner of Sorghum Mill Rd. and Locust Grove Rd., south of Dover. Levy Court District: 5th. Zoning District: AC. Tax Map No. 7-00-095.00-01-17.00-000

The applicant is requesting a variance from:

- the condition and setback requirement that a water tower be set back from the street line or any other lot line the height of such tower,
- the maximum height requirement of 80',
- the maximum size of an on-premises single-faced wall-mount sign of 10% of the area of the building front which the industry occupies, and
- the maximum sign height of 30' to construct a water tower with signage.

The applicant is seeking variances to construct a 160' water tower 9' from the front property line and 26.85' from the side property line. The proposed signage will be 672 sq. ft. (approx. 47% of the area of the building front which the industry occupies) and be placed approximately 143' above grade.

SUMMARY OF EVIDENCE

1. The subject site is a 0.26-acre project area on a 76.13± acre property. The property is the location of Eagle Meadows Apartment Homes and is improved with 298 dwelling units, a leasing office, and various recreational amenities.
2. Mr. Elio Battista, Jr., the applicant's attorney, spoke in favor of the application.
3. Mr. Elio Battista stated that the existing tower that the applicant is looking to replace has been out of service for decades. He explained that it has been maintained but it is too small and cannot be put into service for current and future needs.
4. Mr. Battista stated that the proposed height of the tower is necessary due to the engineering and physics of the tower. He added that placing the new tower in a different location to comply with the setbacks would disturb more land. He explained that the outside of the bulb will be 160', but there would be no additional physical impairment further away than what is already there.
5. Mr. Robert Palmer, the project engineer, spoke in favor of the application.
6. Mr. Palmer stated that the reason the tower is so tall is because the surface water elevation in the district is 181' above sea level. He explained that in order to provide fire protection and drinking tower cannot be shorter. He added that a shorter tower would overflow constantly, or they would need to set all other towers at a lower height, which would compromise firefighting capabilities.
7. Mr. Palmer stated that the base of the new tower will about 16' from the ROW and 6'3" further back than the existing tower, due to the difference in the tower design. He explained that the easement is limited to what is shown on the exhibit and that no land is available to expand. He added that reusing the bearing capacity of the existing foundation would allow for less disturbance to the property and the neighborhood.
8. Mr. Palmer explained that they are requesting a sign height of 143' because the sign will be placed on the water ball, centered on the equator, which is the largest part of the tower. He stated that the total proposed sign area is 672 sq. ft., that surface area of the tank is

13,680 sq. ft., and that this would allow for a 997.5 sq. ft. sign based on a building front of 90 degrees of the tower.

9. Mr. Palmer added that a building front of 160 degrees would be more reflective of the visible portion of the tower and that this would allow a sign of 616 sq. ft. He stated that the signage is needed to express corporate pride. He explained that other towers in the area have signage for the company or municipality.
10. Mr. Palmer explained that Tidewater did an analysis of the district to see how much capacity is needed for fire protection. He explained that the company determined they are two million gallons short, which is why they need the half million-gallon tower near Carpenters Bridge, the one-million-gallon tower at Fork Branch, and this half million-gallon tower would provide that two million.
11. Mr. Palmer added that the tower would serve the customers in the Camden, south Dover area. He stated that there are about 20,000 customers in the district and that it is the largest district in the state. He explained that they are proposing to replace the existing fence, in the same location, and that the new tower would be located further away from this fence.

FINDINGS OF FACT & CONCLUSIONS OF LAW

Analysis of the four factors set forth in Board of Adjustment of New Castle County v. Kwik-Check Realty, Inc., 389 A.2d 1289, 1291 (Del. 1978), supports the **APPROVAL** of the requested variance.

- (1) **The nature of the zone where the property lies:** As shown on Exhibit A, the subject site is zoned AC (Agricultural Conservation). Minor utilities, such as water towers, are permitted in the AC zoning district through a Conditional Use with a Site Plan. Signage is also permitted within the AC zoning district.
- (2) **The character and uses of the immediate vicinity:** The character of the surrounding area is a mix of residential and agricultural. The adjacent property to the north is part of the Eagle Meadows development. Several properties to the north, as well as the properties to the west, south, and southeast are used for farmland. To the east is the Quail Landing development. There are also a few single-family residences to the north.

The proposed use of a water tower is within the character of the area. The proposed tower will be replacing an existing tower on site. There is also a water tower to the west, located on the campus of the Allen Frear Elementary, John S. Charlon, and Postlethwait Middle Schools.

- (3) **Whether removal of the restriction on the applicant's property would seriously affect the neighboring properties:** Removal of the setback and height restrictions for the tower, as well as the height and size restrictions for the signage, are not likely to seriously impact the neighboring properties. There is an existing water tower on the property. While the proposed tower will be taller, this is a minimal change to the visual aspect. The water tower will only be closer to the property lines at the bulb height. The ground mounted portion will be a similar distance as the existing tower.

(4) Whether failure to remove the restriction would create unnecessary hardship or exceptional practical difficulty for the owner in relation to the owner's efforts to make normal improvements to the property: Failure to remove the setback and height restrictions for the tower, as well as the height and size restrictions for the signage, would create a practical difficulty for the applicant who is looking to make a normal improvement on the property.

- The proposed location of the replacement tower is the same as the original tower, where the applicant already has an existing easement for the use. Additionally, locating the tower further from the property lines would locate it closer to the existing dwelling units on the property.
- As for the proposed height, the nature of the use itself requires a structure that is taller than the permitted height of 80'. There are other uses identified in the code that are permitted to be taller than the 80' height limit, such as telecommunication towers. These types of uses require a height that is taller than typical buildings.
- The nature of the use itself also applies to the sign height and size. The standard and logical location of water tower signage is the tower bulb, which is located above the permitted sign height. In turn, the height of the sign and the shape of the water tower create a visual perspective that requires the sign to be larger than typically permitted.

DECISION: On a motion made by Mrs. Hudson and seconded by Mrs. Jenkins, the Board of Adjustment voted 6 in favor, 1 recused, to grant **APPROVAL** of application A-24-51, thus granting a variance for relief from:

- the condition and setback requirement that a water tower be set back from the street line or any other lot line the height of such tower,
- the maximum height requirement of 80',
- the maximum size of an on-premises single-faced wall-mount sign of 10% of the area of the building front which the industry occupies, and
- the maximum sign height of 30'

to allow the construction of a 160' water tower 9' from the front property line and 26.85' from the side property line, with 672 sq. ft. of signage located 143' from grade, as shown on Exhibit B and C, attached hereto. The support of this motion was based on the public testimony, that the new tower will fit the character of the area, and that there is a need for water services and fire protection.

NOTES:

1. The applicants are advised that any persons jointly or severally aggrieved by any decision of the Board of Adjustment may present to the Superior Court in and for Kent County a petition setting forth that such decision is illegal in whole or in part, specifying the grounds for the illegality. The petition shall be presented to the Court within 30 days after the filing of the decision in the office of the Board (9 Del. C. § 4918).
2. The applicant is advised that a Conditional Use with Site Plan application for the water tower shall be submitted prior to the commencement of construction. Please include a copy of this Notice of Decision with the Conditional Use application so the reviewer knows a

variance was granted. For more information, contact the Division of Planning at (302) 744-2471 between 8:00 a.m. and 5:00 p.m.

3. This variance will expire after **ONE YEAR** if a Conditional Use with Site Plan application has not been updated.

KENT COUNTY BOARD OF ADJUSTMENT



Brian Cusick, Chairperson

DECISION FILED: 1/17, 2025

Exhibit B

Application: A-24-51
Tidewater Utilities, Inc.

Eagle Meadows DE 1 LLC, Eagle Meadows DE 3 LLC, & Eagle Meadows DE 3 LLC

Variance from the condition and setback requirement that a water tower be set back from the street line or any other lot line the height of such tower, the maximum height requirement of 80', the maximum size of a sign of 10% of the area of the building front which each business occupies, and the maximum height of a sign of 30' to construct a water tower with signage

**Required Setback:
160'**

**Proposed Setback
(from tower bulb):
26.85' ± to
southern property
line, 9'± to eastern
property line**

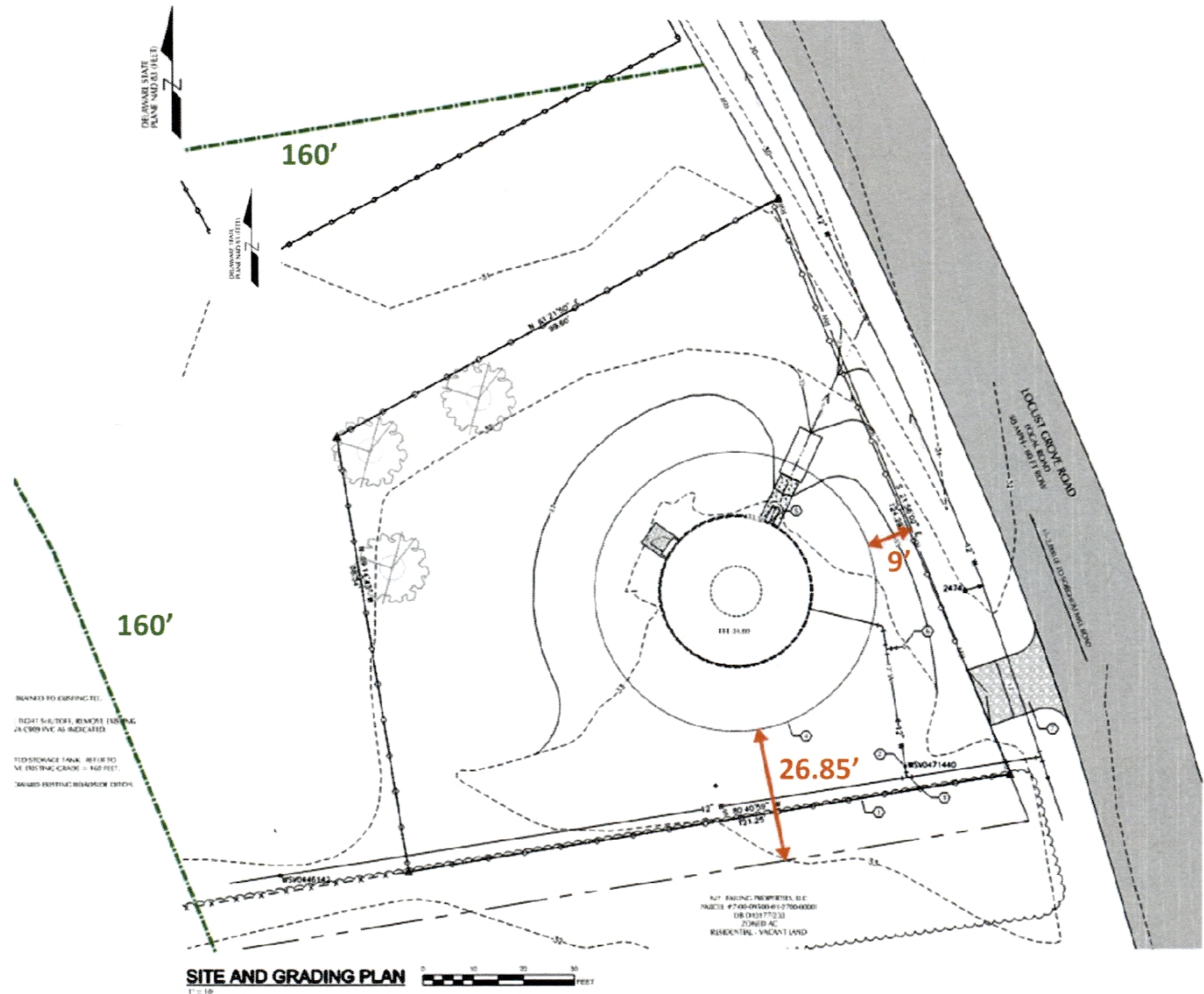


Exhibit C

Application: A-24-51
Tidewater Utilities, Inc.

Eagle Meadows DE 1 LLC, Eagle Meadows DE 3 LLC, & Eagle Meadows DE 3 LLC

Variance from the condition and setback requirement that a water tower be set back from the street line or any other lot line the height of such tower, the maximum height requirement of 80', the maximum size of a sign of 10% of the area of the building front which each business occupies, and the maximum height of a sign of 30' to construct a water tower with signage

Structure Height Limit: 80'
Structure Proposed Height: 160'

Permitted Sign Size: 143 sq. ft.
Proposed Sign Size: 672 sq. ft.

Sign Height Limit: 30'
Sign Proposed Height: 143'

