



DEPARTMENT OF PLANNING SERVICES

NOTICE OF DECISION

APPLICATION:	A-26-07
APPLICANT/OWNER:	Tidewater Utilities, Inc. 1100 S Litle Creek Rd. Dover, DE 19901
OWNER:	Behram Holding LLC 77 Case Ridge Rd Dover, DE. 19901
PROPERTY LOCATION:	Firetower Rd. Felton, DE 19943
NATURE OF REQUEST:	

A-26-07 Tidewater Utilities LLC (Owner: Behram Holding LLC) seek a variance from the maximum height allowance of 80', the maximum size of a sign shall be no larger than 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 (**§205-81.D.(4)(b) and 205-232.B.(4) of the Kent County Code**). The property is located on the north side of Firetower Rd., approx. 900' west of Turkey Point Rd., south of Viola. Levy Court District: 5th. Zoning District: AR. **Tax Map No. 7-00-119.00-02-48.02-000**

The applicant is requesting a variance from:

- 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 140' water tower. The proposed signage will be 672 sq. ft. (approx. 24% of the area of the building front which the industry occupies) and be placed approximately 124 ft. above grade.

SUMMARY OF EVIDENCE

1. The subject site is a 0.33-acre project area on a 57.85± acre property. The property is approved for an 85-lot major subdivision.
2. Mr. Elio Battista Jr., with Parkowski, Guerke & Swayze, spoke in favor of the application.
3. Mr. Battista explained that Tidewater came through in November and December 2024 for

two water towers that are the same size as the proposed and same size signage.

4. Mr. Battista detailed that the practical difficulty is that they need that size for the water pressure and fire suppression, not only for this subdivision but for the surrounding area so that they do not lose water pressure.
5. Mr. Battista stated that the practical difficulty in relation to the sign size is that the structure is a water tower, a spherical object with a stem up.
6. Mr. Battista explained Tidewater is not trying to be an eyesore and that the proposed base of the tower is tucked behind the trees.
7. Mr. Charlie Barnett, Morris & Ritchie Associates, spoke in favor of the application.
8. Mr. Barnett explained that the proposed water tower was discussed during the recent approval of the 85 lot major subdivision.
9. Mr. Barnett detailed they are seeking the 140' tall water tower because that is what is needed for adequate water pressure and fire suppression. The proposed water tower is to hold 500,000 gallons.
10. Mr. Barnett stated that the proposed water tower is 140' and 142' from the nearest proposed residential parcels. He added that there is also existing woods that will remain, and a stream and power easement on the subject parcel.
11. Mr. Barnett explained that the proposed 672 sq. ft. sign is the same as other signs by Tidewater on other water towers.
12. Mr. Barnett detailed that the proposed structure is not a building and if the stem of the tower was included then the proposed sign would be 19% of the front.
13. Mr. Barnett explained that the proposed sign would not fit on the stem of the tower and it would not be able to be seen from the road if it was only 30' above grade due to the existing trees that will remain.
14. Mr. Barnett stated that two previous water towers have requested the same variances but one also included a variance from the setback and was granted a variance to allow it 9' from the front property line. He added that the subject water tower will be 1000' from the front property line of Firetower Rd.
15. Mr. Battista detailed that the proposed sign is of the Tidewater corporate brand and notifies the public of who owns it and who to call if there is a complaint.
16. Mr. Barnett detailed that they chose this area on the parcel to help be code compliant and to be least impactful to neighboring properties. He added that the proposed water tower will be in close proximity to existing natural resources and existing power line easement.
17. Mr. Barnett stated that some of the trees will remain to provide a visual buffer to the base

of the tower.

18. Mr. Barnett detailed that the proposed subdivision could be provided water without the water tower but the surrounding properties would need it to keep up their existing water pressure.

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 **APPROVAL** of the requested variances.

- (1) **The nature of the zone where the property lies:** As shown on Exhibit A, the subject site is zoned AR (Agricultural Residential). Minor utilities, such as water towers, are permitted in the AR zoning district through a Conditional Use with a Site Plan. Signage is also permitted within the AR zoning district, provided it meets the applicable size and height requirements.
- (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 approved for a community energy generating facility. To the west is Riverdale Estates subdivision and a manufactured home park. To the south are residential properties and an agricultural property. A water tower with associated signage would fit within the character of the area.
- (3) **Whether removal of the restriction on the applicant's property would seriously affect the neighboring properties:** Removal of the height restriction for the tower, as well as the height and size restriction for the signage, are not likely to seriously impact the neighboring properties. The proposed water tower will be 140' from the nearest residential lot line. Also, water towers are normal improvements within residential areas.
- (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 height restriction for the tower, as well as the height and size restriction for the signage, would create a practical difficulty for the applicant, who is looking to make a normal improvement on the property. Water towers are considered a minor utility use within the zoning code and these uses are permitted through a conditional use with a site plan in the zoning district. 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. As for the sign height and size, the nature of the use also applies. The standard and logical location of water tower signage would be the tower bulb, which is located above the permitted sign height. The inherent height of the sign and size of the structure require a larger sign for visibility.

DECISION: On a motion made by Mrs. Hudson and seconded by Mr. Carter, the Board of Adjustment voted 7 in favor to grant **APPROVAL** of a portion of application A-26-07, thus granting a variance for relief from the maximum height requirement of 80' to permit a 140' tall water tower, as shown on Exhibit B, attached hereto. The support of this motion was based on

staff recommendation, testimony given, and the need for the water tower to be this tall to provide service to the area.

DECISION: On a motion made by Mrs. Hudson and seconded by Mr. Carter, the Board of Adjustment voted 7 in favor to grant **APPROVAL** of a portion of application A-26-07, thus granting a variance for relief from the maximum sign height of 30' to construct a water tower with signage 124' above grade, as shown on Exhibit B, attached hereto. The support of this motion was based on staff recommendation, testimony given, and the exceptional practical difficulty of the tower height.

DECISION: On a motion made by Mrs. Denney and seconded by Mr. Carter, the Board of Adjustment voted 6 in favor and one opposed to grant **APPROVAL** of a portion of application A-26-07, thus granting a variance for relief from 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, to allow for signage that is 672 sq. ft. (approx. 24% of the area of the building front which the industry occupies), as shown on Exhibit B, attached hereto. The support of this motion was based on the proposed signage size is in relation to the size of the tower, tower being 140' in height, no negative affect on neighboring properties, and testimony given. The opposition of this motion was based on no exceptional difficulty given for the proposed size of the sign.

NOTES:

1. The applicant is 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 applicants are advised that a Conditional Use with Site Plan application for the water tower shall be submitted prior to the commencement of any construction. For more information, contact the Division of Planning at (302) 744-2471 or the Department of Inspections and Enforcement at (302) 744-2451 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 submitted to the Division of Planning.

KENT COUNTY BOARD OF ADJUSTMENT



Brian Cusick, Chairperson

DECISION FILED: 5/21, 2026