CITY OF DOVER BOARD OF ADJUSTMENT
AGENDA
Wednesday, March 15, 2017 at 9:00 AM

City Hall Council Chambers
15 Loockerman Plaza, Dover, Delaware

ROLL CALL

APPROVAL OF AGENDA

APPROVAL OF MINUTES of February 15, 2017 Meeting

COMMUNICATIONS & REPORTS

1. Reminder: The next Board of Adjustment regular meeting is scheduled for April 19, 2017 at 9:00am in the City Council Chambers.

NEW BUSINESS

Applicant #V-17-06
Cemetery on east side of North State Street. Wesley United Methodist Church has requested a variance from the requirements of Article 5 §4.7 of the *Zoning Ordinance* pertaining to permitted sign types and maximum permitted sign height, to allow construction of a 13-foot tall archway sign on the grounds of Lakeside Cemetery. Subject property is zoned ROS (Recreation and Open Space Zone). The Tax Parcel is ED-05-068.13-01-02.00-000. The owner of record is Wesley Methodist Church.

Applicant #V-17-07
1032 South Little Creek Road. Craig Reeves has requested a variance from the requirements of the *Zoning Ordinance,* Article 5 §4.7 pertaining to permitted sign types, and a variance from the requirements of the *Zoning Ordinance,* Article 5 §4.9(A)(2) pertaining to the maximum area of window signs. The requested variances are to allow construction of an 18.33 S.F. roof sign and to retroactively allow posting of two window signs each covering approximately 60% of their window area. Subject property is zoned C-1A (Limited Commercial Zone). The Tax Parcel is ED-05-077.12-01-02.00-000. The owner of record is Tudor Enterprises LLC.

Applicant #V-17-08
868 South State Street. 868 State Street LLC has requested a variance from the requirements of the *Zoning Ordinance,* Article 5 §14.31 pertaining to maximum number of children in a day care center in a residential zone; a variance from Article 6, §3.11 pertaining to maximum number of parking spaces; and Article 3, §1.14(a)(v) pertaining to maximum building coverage of a conditional use in a residential zone. The requested variances are to allow the number of children in Shell's Early Learning Center to increase from a maximum of 50 children to 95 children, to allow the number of parking spaces to increase from a maximum of 10 spaces to 27 spaces, and to allow the permitted total building coverage of the lot to increase from a maximum of 20% to 23.7%. Subject property is zoned R-8 (One-Family Residence Zone). The Tax Parcel is ED-05-077.17-03-49.00-000. The owner of record is 868 State Street LLC.

Applicant #V-17-09

1310-1324 Forrest Avenue. Margaret H. Johnson has requested a variance from the requirements of the *Zoning Ordinance,* Article 3 §27.66 pertaining to the maximum allowed number of stories and allowable height of buildings located with the COZ-1 (Corridor Overlay Zone). Subject property is zoned C-2A (Limited Central Commercial Zone) and subject to the COZ-1. Tax Parcels are ED-05-076.10-01-01.00-000, ED-05-076.10-01-02.00-000, ED-05-076.10-01-03.00-000, ED-05-076.10-01-04.00-000, ED-05-076.10-01-04.01-000. The owner of record is Margaret H. Johnson. *This application represents a resubmission of application V-16-06, initially reviewed by the Board of Adjustment on June 15, 2016 and withdrawn on October 19, 2016.*

ADJOURN

29 Del. C. § 10004(e)(2)
THE AGENDA ITEMS MAY NOT BE CONSIDERED IN SEQUENCE. THIS AGENDA IS SUBJECT TO CHANGE TO INCLUDE THE ADDITION OR THE DELETION OF ITEMS, INCLUDING EXECUTIVE SESSIONS.

CITY OF DOVER
BOARD OF ADJUSTMENT MINUTES
February 15, 2017

A Regular Meeting of the City of Dover Board of Adjustment was held on Wednesday, February 15, 2017 at 9:02 A.M. with Chairman Sheth presiding. Members present were Chairman Sheth, Mr. Hufnal, Mr. Keller and Colonel Ericson. Mr. Senato was absent.

Staff members present were Mrs. Townshend, Mrs. Purnell, Mr. Diaz, Mrs. Harvey, and City Solicitor Mr. Nick Rodriguez.

APPROVAL OF AGENDA

Mr. Hufnal moved to approve the agenda as submitted. The motion was seconded by Colonel Ericson and unanimously carried 4-0. Mr. Senato was absent.

APPROVAL OF THE REGULAR BOARD OF ADJUSTMENT MEETING MINUTES OF JANUARY 18, 2017

Mr. Keller moved to approve the meeting minutes of January 18, 2017 with the necessary corrections, seconded by Colonel Ericson and unanimously carried 4-0. Mr. Senato was absent.

OPENING REMARKS CONCERNING DEVELOPMENT APPLICATION

Mrs. Townshend, Director of Planning and Community Development stated that the meeting today will be conducted in accordance with the agenda. There are three (3) new applications on the agenda under New Business. The application file will be read, and the floor will be opened for questions of the applicant by the Board and for public testimony. If the Board needs to consult the City Solicitor, they will recess to discuss legal matters. If the applicant must leave, they can contact the Planning Office at 736-7196 to learn of the Board's decision. A formal notice of the decision will be mailed to the applicants. Approved variances expire after one year if the approved project has not commenced.

All public notice for the new applications on this agenda was completed in accordance with code requirements. The meeting agenda was posted in accordance with Freedom of Information Act requirements.

NEW BUSINESS

Applicant #V-17-03

1218 Harrison Drive. Thornton and Lisa Spellman have requested a variance from the requirements of Article 4 §4.1 of the *Zoning Ordinance* pertaining to the maximum permitted lot coverage to retroactively allow construction of a 15-foot by 52-foot driveway. Subject property is zoned R-8 (One Family Residence Zone). The Tax Parcel is ED05-068.14-03-49.00-000. The owners of record are Thornton L Spellman Sr. and Lisa Spellman.

Exhibits for the Record: Staff report, zoning exhibit, statements and plans submitted by the

applicant. Legal Notice was published in the Delaware State News on February 5, 2017. The public was notified in accordance with regulations.

Mr. Diaz gave a brief overview of the application.

Mr. Keller questioned whether there had been subsequent inspections of the driveway as constructed? Mr. Diaz replied no, it is typically done after the building permit is approved.

Mr. Keller questioned whether a Building Inspection personnel had viewed the driveway; does it appear that it has been constructed to some standard which is acceptable to the City. Mrs. Townshend replied that the City does not actually have standards that regulate the construction of driveways. When a permit is issued for a driveway the City is looking at lot coverage. The code requirement for a parking surface is that it be a hard paved dust free surface. It is not like a City street where there is a specific standard and a specific detail in terms of the subsurface and surface.

Chairman Sheth questioned if there was any member present who had a conflict of interest and there was none.

Colonel Ericson commented as he referred to Staff Response "construction work subject to a variance application already being completed is not guaranteed grounds for the granting of a variance, though the Board may consider this situation as a factor." He did not think that the sentence should be included in the response because it is not accurate. If someone builds something on their property without a building permit, shame on them. The Board does not consider it as part of the factor because they did not get the proper permission.

Mr. Keller commented that he knew after the circumstance requests such as this it is classified as a self-imposed hardship. Typically, self-imposed hardships are not looked favorably upon but is not necessarily an action in and of itself to warrant a denial of a variance request after the fact. He looks at the information submitted as a relatively minor increase in the impervious area coverage.

Mr. Diaz stated that Mr. Keller's comments would be the correct terminology.

Mr. Hufnal commented that he would believe that the self-imposed hardship originated because of the summons that was given because of the deterioration of the driveway by the Code Enforcement Office. Mrs. Townshend replied that this was correct.

Colonel Ericson commented that there have been cases where people put additions on their houses and then came before the Board, the Board did not approve it and the addition had to be removed. Therefore, he would not put that statement in any future report. Mr. Diaz replied that he would take that information under advisement.

Representative: Mr. Thornton L. Spellman Sr. & Ms. Lisa Spellman, Owners.

Mr. Thornton L. Spellman Sr. & Ms. Lisa Spellman was sworn in by Mr. Rodriguez.

Mr. Spellman testified as stated they received a citation for their driveway being decayed and they gathered from the citation that the driveway needed to be replaced. They currently had an extension on the side of the house where they parked their trailer. Upon reading the citation he did not actually see where they needed a permit for the replacement of the driveway. They later found that the back portion of the driveway was also cracked. Instead of waiting for that portion to decay and crack even more, they replaced the entire driveway. In doing so, the driveway was widened by 1-foot (52 feet to the walk way). Previously it was an angle, now it is straight and they have exceeded what has already been replaced. The Code Enforcement Officer came out to inspect after work was completed and upon inspection he was asked where was the permit for doing the work. In return they had to backfill everything that they were trying to do. They made a mistake by not getting a permit at the beginning.

Mr. Keller questioned whether the house fronts on Harrison Drive? Mr. Spellman replied yes.

Mr. Keller questioned whether White Oak Road is at the rear of the property? Mr. Spellman replied yes.

Mr. Keller questioned whether there was a sidewalk to the rear of the property? Mr. Spellman replied yes. There is a walkway and a ditch that comes down to the area.

Mr. Keller questioned whether there was vehicular access from White Oak Road? Mr. Spellman replied no.

Mr. Keller questioned whether the Code Enforcement Officer and Building Inspector made an appearance at the property after the construction and that is when Mr. Spellman found out that the needed a permit. Mr. Spellman replied yes and at that time he was informed that he needed a permit and printed information was shown to him in the letter when a permit is needed. He informed the Code Enforcement Officer that he was unaware that he needed a permit.

Mr. Hufnal questioned whether the reason for the extension to the width of the driveway was because owner has a trailer for lawn equipment and it is wider than a normal trailer type facility? Mr. Spellman replied yes, he has a 20-foot trailer with a cab pickup truck. Before this was done almost 15-years ago the trailer would be parked on the street and again because of the decay everything was replaced.

Mrs. Townshend added that as mentioned by Colonel Ericson and Mr. Keller one of the issues whether the work was done without a permit is a self-imposed Exceptional Practical Difficulty or hardship. However, the reason for expanding the driveway by a foot was to protect the area around it from being rutted by riding on it. Again, from the community character and Code Enforcement standpoint it is an issue in the City where people are parking partially on the driveway and it does start to degrade the character of the neighborhood. The intent with the expansion of the driveway was certainly not to violate the code, but to be stewards.

Mr. Keller stated that from all the information heard it sounds as though it is an oversight as opposed to some sort of a blatant disregard for what is otherwise required of the City Permitting

process.
Mr. Hufnal stated that it was already a non-conforming lot that was allowed 35%, but took up 38.5%, therefore; the additional from the increase in the size made it 39.8% which is really only 1.3% variance.

Mr. Hufnal questioned whether it would be a 1.3% non-conforming variance? Mrs. Townshend replied correct.

Chairman Sheth opened the public hearing.

Chairman Sheth questioned if there was any additional correspondence for the record. There was none.

Mr. Diaz stated that he received a call from a neighbor questioning whether the property backed up to their property. He replied to the call by saying that it did not.

Chairman Sheth closed the public hearing after seeing no one wishing to speak.

Colonel Ericson moved to approve application V-17-03 based upon the evidence presented today in written form and the testimony. The motion was seconded by Mr. Hufnal and was unanimously carried 4-0. Mr. Senato was absent.

Applicant #V-17-04
218 West Reed Street. Marion Lott Sr. and Renora H. Lott have requested a variance from the requirements of the *Zoning Ordinance*, Article 3 §13.1 pertaining to permitted uses in the C-2 Zone and Article 7 §1.11 and 1.21 pertaining to expansion of nonconforming uses in order to allow construction of a 30-foot by 16-foot addition to a one-family dwelling. Subject property is zoned C-2 (Central Commercial Zone). The Tax Parcel is ED05-077.09-01-38.00-000. The owners of record are Marion L. Lott and Renora H. Lott.

Exhibits for the Record: Staff report, zoning exhibit, and statements and photos submitted by the applicant. Legal Notice was published in the Delaware State News on February 5, 2017. The public was notified in accordance with regulations.

Mrs. Harvey gave a brief overview of the application.

Chairman Sheth questioned if there was any member present who had a conflict of interest and there was none.

Mr. Marion Lott and Mrs. Renora Lott were sworn in by Mr. Rodriguez.

Representative: Mr. Marion Lott and Mrs. Renora Lott, Owners.

Mr. Lott stated that he agreed with Staff Response and Recommendations. He testified that he moved into the home in 1988. The home was originally a crack house before it was purchased by them. They purchased the house with the intent of refurbishing as well as making improvements

to accommodate their family gatherings. He puts a lot of emphasis on family gatherings especially for certain occasions and holidays. Since moving to area in 1988 his family has expanded. He purchased the property in 1993 and other than his immediate family he has other family members that have moved into the area. They would like to do the addition because there are expert cooks in the family and everyone wants to display their favorite dish when they all come together. Obtaining the addition would add more space to have more fun during our family gatherings. At the current time the kitchen is extremely small and they cannot update it with more modernized kitchen utilities. They also do foster care and would like to maintain a nice family setting for meals.

Mr. Hufnal questioned whether the addition would accommodate a larger kitchen and dining and den area? Mr. Lott replied kitchen and dining area (open space).

Mr. Keller questioned Mrs. Harvey whether the Building Permit was applied for on November 21, 2016 and if the Building Permit was issued. Mrs. Harvey replied yes a Building Permit was submitted and no the Building Permit was not issued. It was determined that it was a legal non-conforming use. The applicant was then informed that they needed to apply for a Use Variance to the Board of Adjustment.

Mr. Keller stated that he noticed in the information submitted and the photos (exhibits 3 and 4) that construction has commenced at the rear of the house. Mr. Lott replied that he was unaware the property was zoned C-2. He thought the property was still zoned residential. He realized that when the work commenced that he did not have the Permit and the individual that was doing the work knew the codes and they went above and beyond the codes. He was under the impression that things were being done in alignment with what the City required for that area that the Permit would be approved. Therefore, he assumed the Permit would be approved in at the end of November or beginning of December and therefore started the work. At the same time photos were taken of everything that was done. He was notified regarding the zoning of the property.

Mr. Hufnal mentioned that when the property was purchased 1993 it was originally zoned RG-1 and it was changed in the 1970's to C-2. He questioned whether Mr. Lott if he was aware of the change in the zoning at the time of purchase? Mr. Lott replied no, he was under the impression it was still residential.

Colonel Ericson questioned and asked for clarification of Mrs. Harvey comments in the Staff Response "it would deprive the applicant of a reasonable use of the building by not allowing the expansion of the dwelling to accommodate modern aspects of a kitchen and dining area." Mrs. Harvey replied that the applicant is very limited at the current time with what he can do as far as having family gatherings.

Colonel Ericson stated that it is adequate to live in the house, so he does not see how the applicant can say that reasonable use because the building is currently being used. It is a desire to expand, but it is not really depriving him the reasonable use of the building. Mrs. Harvey replied that the applicant mentioned in his report that he was limited with certain appliances and with things that he could do in that area, so therefore he is limited to what can be done in that area.

Mr. Keller stated that he agreed with Colonel Ericson the conditions are not peculiar to the building as opposed to the desires of the applicant necessarily to accommodate a greater number of people and family members at the family gatherings.

Mr. Lott stated that the current size restricts the use. His den is also their dining room. Photos were taken and submitted to show that the dining room itself consumes all the space that is in the den.

Colonel Ericson questioned how many people are currently living in the house? Mr. Lott replied on average four people.

Colonel Ericson questioned how many bedrooms are in the house? Mr. Lott replied four and they are all on the upper level.

Mr. Hufnal stated that in the Staff Report he noticed that the property lies with the Restoring Central Dover area and the Downtown Development District and emphasis was on improving the housing in this area and the applicant request to expand met the goals of the 2008 Comprehensive Plan and also the City 2015-2019 Consolidated Plan by supporting revitalization.

Mrs. Townshend replied that Mr. Hufnal was absolutely correct. When you look at some of the standards for variances consistency with the Comprehensive Plan is important and restoring Central Dover focuses on homeownership. In this case you have a homeowner and there is a focus on maintaining and improving existing housing stock. The other observation is that in the review it was reviewed as a Use Variance, but really it is an expansion of a non-conforming use which probably should be reviewed under an Area Variance standards which is not the deprivation of all reasonable use. It is the Exceptional Practical Difficulty standard. She thinks when you look at the criteria that relates to the character of the community and that the improvement of this property improves the character of the community and it is consistent with the character of the zone. From the standard of Exceptional Practical Difficulty again you are in an area that is very land constrained by virtue of being in the downtown and this allows that the Exceptional Practical Difficulty is that it makes it very difficult to have some of the modern conveniences and not expand the building. It was discussed whether this would be a candidate for rezoning rather than a variance, but even with a rezoning it would need a variance because of the size of the lot.

Colonel Ericson stated that he had no objection of what the applicant was trying to do and it makes sense to him, but the Board always get concerned about setting precedent. He looked at the Use Variance and asked why did they put a Use Variance. He asked if they wanted to amend the report to an Area Variance.

Mrs. Townshend recommended applying the Area Variance standard because it is an existing use and you are not allowing a use that isn't allowed. You are allowing expansion of the existing use which is non-conforming.

Mr. Hufnal stated that when you look at the addition on the back the expansion to the rear does not change the physical appearance or the character of the street and neighborhood, and certainly not detrimental to public welfare. It is an improvement that is in line with the standards that have been set in the Comprehensive Plan and Consolidated Plan.

Mr. Keller stated that his only hesitation with the application being submitted as a Use Variance there is a bit more rigid criteria that the Board must address and apply. The Use Variance criteria obligates the Board to determine that three separate criteria in fact exist. The first of which follows with comments by Colonel Ericson with which he agrees. Every application only appears before the Board because they have some peculiar interest in bringing about a variance into the existing Codes and Ordinances of the City regarding to building, etc. He is not necessarily convinced that that the desire to have additional family members with gatherings, dinners, etc. The photos represent with regard to improved or modern appliances it appears that the applicant has a smooth top stove microwave. He did not see a photo of refrigerator, but presumes there was a refrigerator in the kitchen. Mr. Lott replied that there was a refrigerator in the kitchen.

Colonel Ericson stated that if the Board is going with an Area Variance as opposed to a Use Variance he asked that the Planning Office provide an amended staff report.

Colonel Ericson moved to table application V-17-04 for additional criteria information. The motion was seconded by Mr. Keller and unanimously carried 4-0. Mr. Senato was absent.

Applicant #V-17-05

53 Roosevelt Avenue. JCD Investments LLC has requested a variance from the requirements of Article 6 §3.11 of the *Zoning Ordinance* pertaining to the maximum number of parking spaces to allow construction of three (3) parking spaces beyond the maximum eleven (11) permitted for a total of fourteen (14) spaces. Subject property is zoned C-4 (Highway Commercial Zone). The Tax Parcel is ED05-077.17-05-73.00-000. The owner of record is JCD Investments LLC.

Exhibits for the Record: Staff report, zoning exhibit, and statements and plans submitted by the applicant. Legal Notice was published in the Delaware State News on February 5, 2017. The public was notified in accordance with regulations.

Chairman Sheth questioned if there was any member present who had a conflict of interest and there was none.

Mr. Gregory Fusco and Mr. James Medved were sworn in by Mr. Rodriguez.

Representative: Mr. Gregory Fusco P.E, Key Engineers and Mr. James Medved, JCD Investments, LLC.

Mr. Fusco stated that the application before the Board today was for an Area Variance. Mr. Medved wishes to develop a medical office building at 53 Roosevelt Avenue. The property is just located off Route 13 South. Mr. Medved proposes to construct in the C-4 zone an approximately 2,520 S.F., one-story pediatric medical office. Together with the medical office Mr. Medved would like to construct 14 parking spaces on a bituminous surface associated with those site improvements will be stormwater management requirements that must be met, and lighting landscape buffing. The C-4 commercial district is also associated with the site adjoining towards Route 13, and directly behind the property is a residential district that is zoned R-8. There are also medical office buildings in the C-4 zone across the street on the opposite side of the property. Directly adjoining the property to the west is a salon in a residential dwelling. Directly behind the

salon is a large parking area. In accordance with the Municipal Code there is one (1) parking space required for every 300 S.F. of building area and this would translate into nine (9) parking spaces for the development. Mr. Medved wishes to propose fourteen (14) parking spaces. This proposal violates Article 6 §3.11 of the Municipal Code. You are not permitted to create any more than 25 percent additional parking that is required in the City. The 25 percent would be three (3) parking spaces. Mr. Medved is proposing five (5) parking spaces which is 55 percent beyond the required code. Mr. Medved office will have a total of seven (7) employees (two physicians and five staff members). They want to make sure that each employee has a parking space on site. This would leave seven (7) parking spaces for patients.

Colonel Ericson stated that the Board has covered this type of problem several times in the past and as he understands the rule of having a number of maximum parking spaces is an unusual requirement and it was really intended for the big boxes retail stores to cut down the area that the parking lots take were not needed. It is really not applicable to the smaller offices such as this, he asked if this was true? Mr. Diaz replied correct, revising the maximum parking standards has been on their work plan for a long time, but they are still working through a number of other needed changes to the Zoning Ordinance including those in the residential zone and in Article 5 the supplemental regulations. Possible changes to Article 6 are still down the line.

Mr. Keller stated that he would like to add that he believes in at least two (2) cases to his recollection, if not more, the Board has had several circumstances and the comments have been favorable to the City Staff as to readdressing and increasing that allowable number of parking places in situations very much alike, if not exactly like this circumstance as well.

Mr. Keller questioned whether either of the representative's present were managing members of the JCD Investments, LLC. Mr. Medved replied yes.

Mr. Hufnal questioned whether the parking was located in the rear and backs up to the parking for the hair salon? Mr. Fusco replied yes.

Mr. Keller questioned the plans for adequate fencing between the two properties, Mr. Fusco replied that they will be submitting a formal site plan after this step and it is the intent of the applicant to conform as best to the ordinance and provide solid opaque fencing with landscape buffering.

Mr. Hufnal commented that he was in favor of allowing the increase, because by not allowing the increase would force customers to park on the street and it is very dangerous near the intersection. It would very difficult to find ample parking without approving this increase. Mr. Fusco agreed with Mr. Hufnal's comments and stated that it was the testimony that he was going to provide.

Mr. Fusco stated that the City of Dover parking ordinance is great. The fact that you are minimizing the amount of impervious coverage is very rarely seen or done this way. He thinks the City is doing the right thing because we cannot handle the storm water and environmental aspects.

Chairman Sheth opened the public hearing.

Mr. John Russum was sworn in by Mr. Rodriquez.

Mr. Russum owner of the beauty shop inquired about how all of the parking spaces would fit the lot. When the property was purchased in the past the City would not allow the trees to be cut down. However, the trees do need to be cut down. He has to trim the trees frequently because they hanging over onto his property causing a parking problem. He wanted to know how this would work?

Mr. Keller questioned whether there were any restrictions on cutting the trees? Mr. Diaz replied that there are regulations on the clearing of woodlands. Upon his understanding this property was not considered woodlands.

Mr. Hufnal questioned whether the trees would fall under the Site Plan application? Mr. Rodriquez replied yes, it has nothing to do with the Board of Adjustment. This would be addressed by the Planning Commission.

Colonel Ericson questioned whether they are not allowed to cut down the trees they will not be able to get the number of parking places that they would like to have then it would be up to them whether or not they would like to continue construction of the building. The Board should not be involved in the decision regarding the trees.

Chairman Sheth informed Mr. Russum to express his concerns at the Planning Commission meeting.

Mr. Russum stated that he did not have anything asking the applicant having the medical center.

Colonel Ericson questioned the applicant about whether he was aware of the tree restrictions? Mr. Fusco replied it was discussed with the Planning Office and they were not informed that it was an issue.

Mr. Keller noted that in the Staff Report under Advisory Comments it states that "Improvements to the property are subject to Site Development Plan approval processes through the Planning Commission, and appropriate permits from the City of Dover Department of Planning & Inspections and other agencies." Consideration for the removal of the trees or allowing them to remain will subsequently be addressed and must be adhered to even after the variance considerations.

Chairman Sheth closed the public hearing after seeing no one else wishing to speak.

Chairman Sheth questioned if there was any additional correspondence for the record. There was none.

Mr. Diaz stated that he received a call from Mrs. Russum.

Mr. Hufnal moved to approve variance application V-17-05 based on the testimony given today and also to include the Advisory Comments to the applicant. The motion was seconded by

Colonel Ericson and was unanimously carried 4-0. Mr. Senato was absent.

Colonel Ericson moved to remove application V-17-04 from the table and finish discussion. The motion was seconded by Mr. Keller and unanimously carried 4-0. Mr. Senato was absent.

Mrs. Townshend stated that she provided responses to the criteria for an Area Variance. The nature of the zone that the property lies. The C-2 zone is a mixed use downtown zone. One-family dwellings are not permitted; however, existing one-family dwellings are permitted to continue. The character of the immediate vicinity and the contained uses therein. The immediate vicinity includes primarily residential uses. The property to the west is a church. The residential use is consistent with the immediate vicinity. To the east there are houses that have been converted to apartments. There is certainly a residential component to the neighborhood. Having spent a lot of time on the downtown redevelopment issues, if restrictions were removed, it may actually benefit the neighboring area through the investment in improving existing housing stock and keeping the homeowner in the area. The goal is to retain existing homeowners and to bring new homeowners into the area. Her response regarding a hardship: Failure to remove the restriction would result in an exceptional practical difficulty in that it would inhibit the improvement of the property to meet modern-day conveniences. It is an older house and if you are familiar with older houses you know that the kitchens are not quite what they are today and it affects the ability to retain homeownership and continue the improvement of the housing stock, which both of those are recognized goals in the 2008 Comprehensive Plan and the 2015-2019 Consolidated Plan, and the Restoring Central Dover Plan which is part of the City's Downtown Redevelopment District. While the property is zoned C-2 it is in a transitional area between the C-2 and RG-1 zones and therefore this variance would help to allow that property to maintain a viable homeownership use and be improved.

Colonel Ericson stated that was "well done" and other Board members agreed.

Chairman Sheth questioned the decline in homeownership? Mrs. Townshend replied that there has been a decline in the Downtown Development District which is the area which is the 225 acres in the downtown. We have an 86 percent rental rate and this is based on 2010 census. In the Restoring Central Dover study area which is a little larger there is a 75 percent rental rate. In this area in particular we have seen a loss of home ownership and it has been a priority through a number of identified plans to restore the level of homeownership.

Colonel Ericson stated that improving the housing stock is a worthwhile goal.

Mr. Keller commented that he hopes that the applicant can understand and respect the different types of criteria the Board is obligated to consider in the two different types of variance applications submitted, whether it is a Use Variance or an Area Variance. The Area Variance allows us to apply a bit of a lesser standard in the criteria that the Board has to evaluate. It is beneficial to the applicants in their case if there are any questions as to what was addressed and that we would afford the applicants to be able to speak.

Chairman Sheth thanked the applicants for their patience and informed them that the Board wanted to make sure they are making the decision. Mr. Lott replied that they respected that.

Mrs. Townshend stated that she wanted to clarify that the determination is that this application is an Area Variance because the Board is not deciding whether or not the property can be used as a residence. The Board is looking at whether that footprint as a residence can expand. Therefore, the Board is looking at the area and not the use.

Chairman Sheth opened the public hearing.

Chairman Sheth closed the public hearing after seeing no one else wishing to speak.

Chairman Sheth questioned if there was any additional correspondence for the record. There was none. Mrs. Townshend stated that she received a call from the church asking for the details.

Colonel Ericson moved to approve that the Use Variance application V-17-04 be changed to an Area Variance and the Staff Reponses under the current report on pages 3-5 be replaced by the Staff Report submitted to the Board during this meeting. Mr. Hufnal seconded the motion and unanimously carried 4-0. Mr. Senato was absent.

There was a brief discussion regarding applications and work being done without a permit.

Colonel Ericson moved to adjourn the meeting, seconded by Mr. Hufnal and unanimously carried 4-0. Mr. Senato was absent.

Meeting adjourned at 10:07 A.M.

Sincerely,

Maretta Savage-Purnell
Secretary

City of Dover
Board of Adjustment

March 15, 2017

V-17-06

Location:	Unaddressed parcel on the east side of North State Street, with project area at the intersection of North State Street and Columbia Avenue
Applicant/Owner:	Wesley United Methodist Church
Tax Parcel:	ED-05-068.13-01-02.00-000
Application Date:	February 7, 2017
Present Zoning:	ROS (Recreational and Open Space Zone)
Present Use:	Cemetery
Proposed Use:	No Change
Reviewed By:	Eddie Diaz, Planner I
Variance Type:	Area Variance
Variance Requested:	Variance to permit a sign type (an archway sign) not allowed by the *Zoning Ordinance* and to permit a sign height of 13 feet, above the 7-foot maximum allowed on an Urban Collector street

Project Description
The property known as Lakeside Cemetery (sometimes erroneously referred to as "Silver Lake Cemetery") is located at the intersection of North State Street and Walker Road. It is approximately bound by North State Street on the west, Pennsylvania Avenue on the south, and Silver Lake on the north and east.

The applicant is requesting an area variance from the requirements of the sign regulations in *Zoning Ordinance* Article 5 §4.7 to allow an archway sign, a sign type not addressed by the *Zoning Ordinance*, and to allow an increase in the maximum height for a freestanding sign located on frontage of an Urban Collector street and located adjacent to a residential zoning district. The height would be increased from a maximum of seven (7) feet to a proposed thirteen (13) feet. The use of the property as a cemetery is a permitted use within the ROS (Recreational and Open Space) Zone.

Adjacent Zoning and Land Use
The subject property is zoned ROS. The immediately adjacent properties across North State Street and Pennsylvania Avenue are all in the R-8 One Family Residence Zone, with the exception of two parcels also zoned ROS. These two parcels, located across North State Street from the cemetery at its northern end, are Richardson Park and a residual parcel formed by the intersection of North State Street and North Governors Avenue. The residentially-zoned parcels all appear to be one-family residences.

A Zoning Map exhibit (Exhibit A) prepared by staff is attached to this report showing the subject property location and surrounding zoning.

Code Citations
Signage
The City of Dover sign regulations found in *Zoning Ordinance* Article 5 §4 determine the allowable number, type and dimensional characteristics of signage on a property according to:

- The type of use
- Proximity to residential uses
- Classification of roads on which the property has frontage

The subject property is considered a permitted, non-residential use located adjacent to a residential zone as defined by Article 3 §30.29 and Article 5 §4.3 of the *Zoning Ordinance.*

The City of Dover sign regulations distinguish three (3) types of roads for purposes of determining allowable signage. North State Street in this location (between Walker Road and Wyoming Avenue in the south of the City) is an "Urban Collector" as defined by Article 5 §4.3.

The entire "Sign Table" from *Zoning Ordinance* Article 3 §4.7 is presented in Exhibit B. The section pertaining to this project is highlighted in the middle of the table.

This section is what applies to "Nonresidential Uses adjacent to Residential Districts or Uses" as shown in the vertical text on the left, and shows the sign types, maximum number of signs, sign area, sign height, and minimum required setbacks and exclusion zones for signs on properties fronting "Urban Local/Collector" streets.

The provisions of the *Zoning Ordinance* in Article 3 §30.7, related to signs for permitted uses in the ROS district, refer to the provisions of the Sign Regulations in *Zoning Ordinance* Article 5 §4. When referring to the "Sign Table" in Exhibit B, and the listing of specific Sign Types allowed for "Nonresidential Uses Adjacent to Residential Districts or Uses," the code does not list archway signs as a permitted sign type. Because archway signs are not listed, there is no specific height limit for them; however, all other freestanding signs for this location are limited to seven (7) feet in height.

Archway signs are not specifically defined in Article 5, §4.3 of the Zoning Ordinance or in any other section. Based on shape, the sign is somewhat similar to a post and panel sign; however, post and panel signs are typically contemplated to be much smaller than the sign proposed, and are not intended for people to pass under.

Proposed Signage
The applicant submitted a Building Permit Application #17-94 on January 18, 2017 for the sign. The proposal is depicted in Exhibit C. The sign is 18 feet wide by 13 feet tall and displays the words "Lakeside Cemetery" along with the Methodist Church logo on the arch. The arch is affixed to two posts on either side, similar to a post and panel sign, but is tall and wide enough to walk and drive under. Based on the drawing provided, Staff estimates the sign area to be 25 S.F. (6.5 S.F. for "Lakeside," 6.5 feet S.F. for "Cemetery," and 12 S.F. for the Cross). The maximum sign area for most signs in this location is 32 S.F. (see Exhibit B).

The sign would be located at the intersection of North State Street and Columbia Avenue. At this location there is currently a 10-foot wide driveway leading into the cemetery. Because North State Street is a state-road, the applicant obtained DelDOT entrance permit #444369 to widen the driveway entrance to 18 feet; the driveway would taper back down to 10 feet without disturbing any graves. The sign would straddle the new driveway entrance. See Exhibit C for the current and proposed driveway configurations, the location of the sign relative to the driveway, and the entrance permit.

Exceptional Practical Difficulties Tests
Zoning Ordinance Article 9 §2 dictates the specific powers and duties of the Board of Adjustment with regard to granting variances. Specifically, the Board must determine:

> 2.1 Variance **–** The board shall have the authority to authorize variances from provisions of the Zoning Ordinance that are not contrary to public interest where the board determines that a literal interpretation of the Zoning Ordinance would result in undue hardship or exceptional practical

difficulties to the applicant. In granting variances, the board shall determine that the spirit of the Zoning Ordinance is observed and substantial justice is done.

2.11 Area Variance. A variance shall be considered an area variance if it relates to bulk standards, signage regulations, and other provisions of the Zoning Ordinance that address lot layout, buffers, and dimensions. In considering a request for an area variance, the board shall evaluate the following criteria and document them in their findings of fact:

(a) the nature of the zone in which the property lies;
(b) the character of the immediate vicinity and the contained uses therein;
(c) whether, if the restriction upon the applicant's property were removed, such removal would seriously affect neighboring properties and uses; and
(d) whether, if the restriction is not removed, the restriction would create unnecessary hardship or exceptional practical difficulty for the owner in his efforts to make normal improvements in the character of that use of the property that is a permitted use under the provisions of the Zoning Ordinance.

Review of Application

As part of the application, the applicant was asked to summarize how the requested variance relates to the criteria. (Exhibit D)

1. The nature of the zone in which the property lies.

   Applicant Responses:
   "No change required"

   Staff Response:
   As previously noted by Staff, cemeteries are a permitted use in the ROS district. No change of zoning is required to permit the sign, nor would any other zoning districts in the City be more permissive with regard to sign types and height given the location of the property.

2. The character of the immediate vicinity and the contained uses therein.

   Applicant Responses:
   "The character of the immediate vicinity is both historic and neighborhood. The cemetery is historic in that it was started on June 7, 1875 and has many prominent individuals buried there. See attached [Exhibit E]. Use will be unchanged and it is an active cemetery."

   Staff Response:
   Though not in the City's Historic District Zone, the cemetery and properties immediately to the south are in the Victorian Dover National Register Historic District (see Exhibit F). This federal designation, unlike the locally-designated Historic District Zone, has no City

regulations attached to it. However, the designation does indicate the character of the area. The individuals buried in the cemetery also add to the historic character of the area.

The residential properties across North State Street from the cemetery are not in the Victorian Dover Historic District but are of aged housing stock. In terms of bulk, setbacks, etc. the residential properties are typical of the R-8 Zone.

3. Whether, if the restriction upon the applicant's property were removed, such removal would seriously affect neighboring properties and uses.

Applicant Responses:
"Upon removing the restriction, the proposed archway project would enhance both the cemetery and the neighborhood's in that it would give clear indication as to the proper name of the cemetery as well as continuing the old Dover climate of the neighborhood. Additionally, the project will increase safety when entering or exiting onto N. State St."

Staff Response:
Staff interpretation of the *Zoning Ordinance* in the past has been that any freestanding structure displaying the name of a business or institution, or a logo, counts as a sign rather than a piece of public art. However, the applicant does intend the proposed archway sign to act as a piece of public art. The aesthetic merits and potential for neighborhood enhancement of any piece of public art are subjective; however, as the applicant shows in Exhibit G, there appears to be a strong tradition of similar cemetery archway signs throughout Delaware and the U.S. at large, and Staff considers this a point in the proposed sign's favor. The Board of Adjustment should listen closely to any public comments on the potential positive or negative effects of the sign on the neighborhood.

Staff believes any safety enhancements in the area due to the project would be on account of improvements to the driveway, rather than on account of the sign itself. Staff therefore does not consider safety improvements a point in favor of granting the variance.

4. Whether, if the restriction is not removed, the restriction would create unnecessary hardship or exceptional practical difficulty for the owner in his efforts to make normal improvements in the character of that use of the property that is a permitted use under the provisions of the *Zoning Ordinance*.

Applicant Responses:
"If the restriction was not to be lifted,
   a. It would impact safety in that the project will physically improve the entrance to the cemetery from its current form, which is very narrow and hard to maneuver.
   b. Prevent the improvement of being able to have an archway entrance that is currently inherent in many cemeteries throughout the state and country (see enclosed photos [Exhibit G])

c. Clearly provide the actual name of the cemetery, that has been an ongoing problem in the past, while at the same time being aesthetically pleasing."

Staff Response:
While any sign could properly display the name of the cemetery, based on the applicant's submission it appears that an archway sign would be the traditional way of doing so. Prohibiting the archway sign would therefore restrict the applicant from making "normal improvements in the character of the use of the property." Staff does not believe the omission of archway signs from the *Zoning Ordinance* is due to any local animus against them, but may rather be an oversight in the writing of the Sign Regulations. Their omission would be on account of them, for the most part, being specific to the unique nature of cemetery uses. Future iterations of the Sign Regulations may specifically address archway signs and the appropriate contexts for them.

Staff notes that granting a variance for sign type without also granting a variance for sign height would be impractical, as an archway sign limited to seven feet in height would have its lower edge too low to permit passage of people or vehicles. If archway signs are addressed in future iterations of the Sign Regulations their dimensional restrictions will most likely be different from those applying to other freestanding signs.

Variance Recommendations:
Staff recommends approval of the variance for the archway sign with increase in maximum height from seven (7) feet to thirteen (13) feet for reasons as follows:

- The proposed sign is in keeping with the character and nature of the use as a cemetery.
- The proposed sign is not anticipated to seriously impact surrounding uses.
- Archway signs are omitted rather than specifically prohibited in the *Zoning Ordinance*, and their omission appears to be an oversight rather a deliberate act to serve a local public purpose.
- Limiting the sign height to seven feet would impose a hardship because people and vehicles would be unable to pass under the arch.

Advisory Comments to Applicant:

- Variances become null and void if work has not commenced within one (1) year of the date the variance was granted. At present there is no provision for extension of variance approvals.
- The property is unaddressed and an address number is not proposed as part of the sign. If an address number is contemplated for the property, please contact the Fire Marshal's Office at 302-736-7010 to discuss.

GUIDE TO ATTACHMENTS

Exhibit	Description/Author	# Pages
A	Zoning Exhibit Map (Staff)	1
B	"Sign Table" reproduced from *Zoning Ordinance* Article 5 §4.7 (Staff)	1
C	Project Summary (Applicant)	7
D	Criteria Responses (Applicant)	1
E	List of notable individuals buried at Lakeside Cemetery (Applicant)	1
F	Downtown Historic Districts (Staff)	1
G	Comparable cemetery archway signs (Applicant)	1

City of Dover

Board of Adjustment

March 15, 2017

V-17-07

Location:	1032 S. Little Creek Road
Applicant:	Craig Reeves
Owner:	Tudor Enterprises LLC
Tax Parcel:	ED05-077.12-01-02.00-000
Application Date:	February 9, 2017
Present Zoning:	C-1A (Limited Commercial Zone)
Present Use:	Snow Cone Shop (not open yet)
Proposed Use:	Snow Cone Shop
Reviewed By:	Ann Marie Townshend, AICP
Variance Type:	Area Variance
Variance Requested:	To allow a roof sign and to allow window signage that exceeds 50% of the window (measured by staff at 60%).

City of Dover

Board of Adjustment

March 15, 2017

V-17-08

Location:	868 South State Street
Applicant/Owner:	868 South State Street LLC
Tax Parcels:	ED-05-077.17-03.49.00-000,
Application Date:	February 10, 2017
Present Zoning:	R-8 (One Family Residence Zone)
Present Use:	Day Care Center
Proposed Use:	Day Care Center
Reviewed By:	Tracey Harvey/Ann Marie Townshend, AICP
Variance Type:	Area Variance
Variances Requested:	1. To increase the number of children allowed in a Day Care Facility from 50 to 95. 2. To increase the building coverage on the lot from 20% to 23.7%. 3. Applicant requested a variance related to parking, but staff's review determined that such a variance was not necessary.

Project Description
The applicant has requested two area variances from the requirements of the *Zoning Ordinance*; 1) Article 5§ 14.31 pertaining to the maximum number of children in a day care center in a residential zone; 2) Article 3§ 1.14 (a) (v) pertaining to maximum building coverage of a day care center in a residential zone. The applicant is proposing to construct a building addition to the existing building addressed as 868 South State Street. The existing site has 2,576 SF of building space, and the applicant is proposing to construct an additional 1,038 SF to the existing site with the total floor area to total 3,614 SF when construction is completed. With this addition, the day care center will have a building coverage of 23.7% and would care for 95 children.

Zoning and Adjacent Land Uses
A Zoning Map exhibit (Exhibit A) prepared by staff is attached to this report showing the subject property location and surrounding zoning.

The subject property is zoned R-8 (One Family Residence Zone) and located on South State Street. The adjacent properties are a mixture of residential, commercial and office uses. The properties to the north and south of the subject property are zoned RGO (Residence and General Office Zone). The properties to the east across South State Street are the Khan Professional Building, zoned C1-A (Limited Commercial Zone), and the YMCA, zoned IO (Institutional Office Zone). The properties to the west across the alley front South Bradford Street and are zoned RGO (Residential and General Office) and R-8 (One Family Residence Zone) and are developed with a mix of office and residential uses.

Code References
The maximum number of children permitted in day care centers in residential zones is limited to 50 children according to the provisions of Article 5 §14.31 of the *Zoning Ordinance.* The applicant is proposing to increase the number of children from 50 to 95.

Article 3§ 1.14 (a) (v) of the *Zoning Ordinance* states that "The sum of areas covered by all principal and accessory buildings shall not exceed 20% of the area of the lot." The applicant is proposing to construct an addition to the existing building that will increase the square footage of the building from 2,576 SF to 3,614 SF. This accounts for 23.7% of the lot.

Exceptional Practical Difficulties Tests

Zoning Ordinance Article 9 §2 dictates the specific powers and duties of the Board of Adjustment with regard to granting variances. Specifically, the Board must determine:

2.1 Variance **–** The board shall have the authority to authorize variances from provisions of the Zoning Ordinance that are not contrary to public interest where the board determines that a literal interpretation of the Zoning Ordinance would result in undue hardship or exceptional practical difficulties to the applicant. In granting variances, the board shall determine that the spirit of the Zoning Ordinance is observed and substantial justice is done.

2.11 Area Variance. A variance shall be considered an area variance if it relates to bulk standards, signage regulations, and other provisions of the Zoning Ordinance that address lot layout, buffers, and

dimensions. In considering a request for an area variance, the board shall evaluate the following criteria and document them in their findings of fact:

> (a) the nature of the zone in which the property lies;
> (b) the character of the immediate vicinity and the contained uses therein;
> (c) whether, if the restriction upon the applicant's property were removed, such removal would seriously affect neighboring properties and uses; and
> (d) whether, if the restriction is not removed, the restriction would create unnecessary hardship or exceptional practical difficulty for the owner in his efforts to make normal improvements in the character of that use of the property that is a permitted use under the provisions of the Zoning Ordinance.

Review of Application

As part of the application, the applicant was asked to summarize how the requested variance relates to the criteria. The applicant's response is provided below along with a staff assessment of the application in accordance with the required criteria.

1. The nature of the zone in which the property lies.

   Applicant Responses:

   Commercial Property in area includes:

   a. Khan Professional Building, 1113 S. State St
   b. YMCA of Delaware, Aquatic Center, 1137 S. State St.
   c. Michael Ambruso Funeral Home, 1175 S. State St.
   d. Dr. Jack R. Milligan, 766 S. State St.
   e. Dr. Tetzner, 804 S. State St.
   f. Computer Store, 822 S. State St.
   g. Residence, 826 S. State St.
   h. Mike Braun "Micromotors," 834 S. State St.
   i. Kidd's Professional Building, 850 S. State St.
   j. Mom's House Inc. Of Dover, 864 S. State St.
   k. Landmark-Science & Engineering, 880 S. State St.
   l. Dr. Bautista, Residence, 878 S. State St.
   m. Health Medical Center, 888 S. State St.
   n. Formerly D. Bautista doctor's office, 896 S. State St.
   o. Professional Building, on the corner of Wyoming and S. State St.
   p. Professional Physicians Bldg., Bradford Ave., (directly behind 868 S. State St.)

   Staff Response:

   The applicant provides a list of commercial uses in the area but did not address the nature of the zone. The property is zoned R-8 (One Family Residence Zone). The adjacent property to the north is zoned R-8 and is utilized as day care center as well. The adjacent property to the south is zoned R-8, and is presently being utilized as a rental dwelling. The other surrounding properties are a mixture of commercial and office uses.

The applicant has responded to the area variance criteria for 2,3, and 4 in the narrative listed below. Staff responses follow the response from the applicant.

This request is a win-win situation for all concerned.

Dover gains:

Improves the continuous growing need for daycare in a high density employment area. Improve those needs by minimum variance adjustments rather than new building and zoning problems associated with adding new facilities.

Boosts city employment opportunities with impact on unemployment problems.

Dover citizens benefit by closer job opportunities.

Dover city economy benefits immediately from use of local contractors, sub-contractors and suppliers.

Inner-city long-term economy benefits with cash influx from employees and local merchants in support of this addition.

Some of my desire to contribute to the local area, as a responsible community member, are limited by current restrictions. One example is esthetics. A significant portion of addition costs will directly contribute to community esthetics.

Current daycare tenant gains:

This improvement, in addition to increasing capacity, will significantly improve our use of internal space, resulting in greater efficiencies. These efficiencies could significantly offset future inflationary forces thereby contributing to local price stability.

The added revenue will contribute extensively to the local economy as payroll and spending for added services go back into the city.

Addition allows significant improvement to children's safety through playground accessibility and supervision.

Current limited security, both during and after operating hours, will be greatly enhanced.

Landlord gains:

Obviously, I would like to realize the maximum financial return on this property. Current restrictions severely prevent this.

Although operating within current codes, I personally feel responsible for safety improvements and have devoted significant thought and construction costs to improvements.

Also, considerable thought and costs have been devoted to internal improvements for disability access.

Expanded parking is needed to support the increase in children and employees.

2. The character of the immediate vicinity and the contained uses therein.

Staff Response:

The existing building is 2,576 S.F. and accommodates 50 children with 12 attendants. There are 10 parking spaces located both in the front and in the rear of the building. A Conditional Use application for a day care center with 70 children was approved by Planning Commission on September 17, 1990; however, the Department of Services for Children, Youth and Their Families Licensing Services approved a license capacity of 50

children. There is a day care center to the north of the existing site that is zone R-8 (One Family Residence Zone), and the property to the south of the site is zoned R-8 and currently being utilized as a rental dwelling. The surrounding properties are zoned RGO (Residence and General Office), C1-A (Limited Commercial Zone) and IO (Institutional and Office). The properties to the west across the alley front South Bradford Street and are zoned RGO (Residential and General Office) and R-8 (One Family Residence Zone) and are developed with a mix of office and residential uses. The current use of the site is not out of character for the area. The proposed expansion would not be out of character with the area, as the area is mixed use and not strictly residential. Access would be from a combination of the alley and South State Street.

3. Whether, if the restriction upon the applicant's property were removed, such removal would seriously affect neighboring properties and uses.

   Staff Response:
   The proposed building addition would be located in the rear of the property and adjacent to an existing day care facility. The properties are separated by a wooden fence, so the proposed addition and increase in building coverage to 23.7% would not have a visual effect on the neighboring properties.

   Staff cannot determine whether the increase in the number of children will have an effect on the neighboring properties. The applicant did not provide any data regarding the traffic patterns of drop off and pick up times at the site. The increase in number of children drives the increase in parking spaces, most of which are located off the alley between South Bradford Street and South State Street. One of the properties across the alley to the west is used as an office building and has a comparable size parking lot off the alley.

4. Whether, if the restriction is not removed, the restriction would create unnecessary hardship or exceptional practical difficulty for the owner in his efforts to make normal improvements in the character of that use of the property that is a permitted use under the provisions of the Zoning Ordinance.

   Staff Response:
   The applicant did not provide sufficient information to demonstrate that there is an unnecessary hardship or exceptional practical difficulty that requires a variance for normal improvements to the property. To demonstrate unnecessary hardship or exceptional practical difficulty, the applicant must address the specific harm that would come from not granting the variance. A desire to use a property more intensively than permitted by zoning is not by itself grounds for variance. Potential benefits to the City are also not grounds for a variance.

Variance Recommendations:
Staff recommends denial of the variance for the reasons as follows:

- The applicant has not provided sufficient information to determine whether there would be adverse effects on neighboring properties by removing the restrictions on building coverage and on the number of children permitted in the daycare.
- The applicant has not provided sufficient information to determine that an exceptional practical difficulty exists that necessitates the variances in order to make normal improvements to the property or use.
- Staff has determined that a variance was not required for an increase in the number of parking spaces, as the parking requirement is based on the number of children and attendants, and the proposed number is sufficient to meet this requirement.

Advisory Comments to the Applicant:

- If granted, variances become null and void if work has not commenced within one (1) year of the date the variance was granted. At present there is no provision for extension.
- If the variance is approved, a Site Development Plan is required prior to any modifications to the building or the site.

GUIDE TO ATTACHMENTS

Exhibit	Description/Author	# Pages
A	Zoning Exhibit Map (Staff)	1
B	Applicant Statement and Responses to Criteria	2
C	Existing Conditions and Plan (Applicant)	2
D	Proposed Parking Plan (Applicant)	1
E	Site Plan Addition (Applicant)	1

Project Description
The applicant is requesting a variance from the Supplementary Sign Regulations as specified in the *Zoning Ordinance*, Article 5 §4.7 and §4.9 (3). The applicant is requesting to install a roof sign on the building. Roof signs are not listed in the table of permitted sign types. Additionally, the applicant has installed window signage that exceeds 50% of the window area.

Adjacent Land Uses
The property immediately south of the subject property is the remainder of Tudor Business Park (of which this building is part) and is zoned C-3 (Service Commercial Zone). The property immediately west of the subject property is a residence that is zoned C-3 (Service Commercial Zone). The properties to the north, across South Little Creek Road, are zoned RG-3 (Group Housing Zone) and make up the neighborhood of Barrister Place.

Code Citations
Signage
The City of Dover sign regulations found in *Zoning Ordinance* Article 5 §4 determine the allowable number, type and dimensional characteristics of signage on a property according to:

- The type of use
- Proximity to residential uses
- Classification of roads on which the property has frontage

The subject property is considered a permitted, non-residential use located adjacent to a residential use as specified in Article 5 §4.3 of the *Zoning Ordinance.*

The City of Dover sign regulations distinguish three (3) types of roads for purposes of determining allowable signage. South Little Creek Road is an "Urban Collector" as defined by Article 5 §4.3.

The entire "Sign Table" from *Zoning Ordinance* Article 5 §4.7 is presented in Exhibit B. The section pertaining to this project is highlighted in the middle of the table.

This section is what applies to "Nonresidential Uses adjacent to Residential Districts or Uses" as shown in the vertical text on the left, and shows the sign types, maximum number of signs, sign area, sign height, and minimum required setbacks and exclusion zones for signs on properties fronting "Urban Local/Collector" streets.

When referring to the "Sign Table" in Exhibit B, and the listing of specific Sign Types allowed for "Nonresidential Uses Adjacent to Residential Districts or Uses," the code does not list roof signs as a permitted sign type. Because roof signs are not listed, they are presumed to be prohibited. For the purposes of this evaluation, the provisions regarding "wall signs" are highlighted in the "Sign Table."

As it relates to the window signage, *Zoning Ordinance* Article 5 §4.9 A specifies that "Window signs shall not cover more than 50 percent of any window exclusive of window and/or door frame." To evaluate this, staff utilizes the definitions of "Sign Face" and "Sign Area" as specified in *Zoning Ordinance* Article 5 §4.3:

Sign area: The area of the smallest geometric figure, or the sum of the combination of regular geometric figures, which comprise the sign face. The area of any double-sided or "V" shaped sign shall be the area of the largest single face only. The area of a sphere shall be computed as the area of a circle. The area of all other multiple-sided signs shall be computed as 50 percent of the sum of the area of all faces of the sign.

Sign face: The surface upon, against or through which the sign copy is displayed or illustrated, not including structural supports, architectural features of a building or sign structure, nonstructural thematic or decorative trim, or any areas that are separated from the background surface upon which the sign copy is displayed by a distinct delineation, such as a reveal or border.

Based on this evaluation, the window sign exceeds 50% of the window and requires a variance in order for a permit to be issued. Based on staff's measurements, the sign area is approximately 60% of the window.

Exceptional Practical Difficulties Tests

Zoning Ordinance Article 9 §2 dictates the specific powers and duties of the Board of Adjustment with regard to granting variances. Specifically, the Board must determine:

2.1 Variance – The board shall have the authority to authorize variances from provisions of the Zoning Ordinance that are not contrary to public interest where the board determines that a literal interpretation of the Zoning Ordinance would result in undue hardship or exceptional practical difficulties to the applicant. In granting variances, the board shall determine that the spirit of the Zoning Ordinance is observed and substantial justice is done.

2.11 Area Variance. A variance shall be considered an area variance if it relates to bulk standards, signage regulations, and other provisions of the Zoning Ordinance that address lot layout, buffers, and dimensions. In considering a request for an area variance, the board shall evaluate the following criteria and document them in their findings of fact:

(a) the nature of the zone in which the property lies;
(b) the character of the immediate vicinity and the contained uses therein;
(c) whether, if the restriction upon the applicant's property were removed, such removal would seriously affect neighboring properties and uses; and
(d) whether, if the restriction is not removed, the restriction would create unnecessary hardship or exceptional practical difficulty for the owner in his efforts to make normal improvements in the character of that use of the property that is a permitted use under the provisions of the Zoning Ordinance.

Review of Application

As a part of the application, the applicant was asked to state how the requested variance relates to the above four criteria. The applicant's responses are provided below, along with a staff assessment of the application in accordance with the required criteria.

1. The nature of the zone in which the property lies.

   Applicant Responses:
   "a.) Commercial zone/does allow signage."

Staff Response:
Staff concurs that the commercial zone allows signage. Additionally, the sign area proposed for the roof sign is compliant with the permitted sign area for wall signs according to the "Sign Table."

2. The character of the immediate vicinity and the contained uses therein.

Applicant Responses:
"a.) The immediate vicinity contains a surrounding residential neighborhood, a local elementary school area, entertainment facilities such as a karate and gymnastics structure enabled for children, as well as a dance conservatory. Furthermore, there is a mobile home park and within the plaza the business lies, there are multiple establishments and shopping opportunities. The plaza rests only minutes away from a highway, fast food chains and a multitude of grocery stores."

Staff Response:
Staff concurs with the applicant regarding the character of the surrounding area. Additionally, other tenants in the shopping strip where the subject business is located utilize roof signs (See Exhibit E), as the building architecture lacks wall area that would make wall signs practical.

3. Whether, if the restriction upon the applicant's property were removed, such removal would seriously affect neighboring properties and uses.

Applicant Responses:
"a.) The sign would create major benefits to the business, both visually and financially.

i.) Visually, the sign's main purpose would be to start and create a brand that will last for a long duration of time. My business hopes to eventually become a franchise and multiply across, not only the state, but potentially the tri-state area and further. There is a color scheme in the sign that reflects the interior of the business and will continue to be a theme throughout the existence of the business.

ii.) Financially, the sign will bring in a large influx of people and will be able to be seen from a wide range with the bright and eccentric colors. It will intentionally draw in customers and market to the exact characteristics of people that we will need in our establishment, in order to make it thrive. The sign will be able to be seen from the main road and will bring in food, car and bus traffic and will play a tremendous part in our marketing and advertising plan."

Staff Response:
If the restrictions were to be removed with regard to the proposed roof sign and window signage, there would not be an adverse effect on neighboring properties. Similar signage is used for the neighboring businesses without an adverse impact to neighbors.

4. Whether, if the restriction is not removed, the restriction would create unnecessary hardship or exceptional practical difficulty for the owner in his efforts to make normal improvements in the character of that use of the property that is a permitted use under the provisions of the *Zoning Ordinance*.

   Applicant Responses:
   "a.) The loss at hand is that the roof is the only safe area to place the sign for the establishment. Any other placement of the sign on the property would result in hazard to incoming customers, employment, and bystanders. The sign will be slightly smaller than other signs in the plaza. In order to ensure the safety, the sign will be placed by Kent County Signs, which is a well known company throughout the county. They will place the sign strategically so that it is displayed properly and safely as well as up to code with the regulations. For property maintenance reasons, the owner of the property will not allow for a sign to be placed on the side of the building. This request, made by the owner, is to prevent destruction of the area and maintain its outer appearance. Because of a sign on the side, the owner will only allow a sign to be placed on the roof, where a pervious business once placed theirs.

   Staff Response:
   As it relates to the request for a roof sign, staff concurs with the applicant that the roof is the only practical location to place a sign on the building that would be visible and legible from the road. This presents an exceptional practical difficulty in placing signage to bring people into the business. The applicant did not present a justification for the window signage as it relates to the exceptional practical difficulty evaluation.

Supplemental Information Filed Subsequent to Application:
"There are sources concerned about the coverage in the storefront windows in my establishment. Eddie Diaz, code enforcer, stated that there is nearly 100% total coverage (See pictures attached) I have requested to Extreme Graphics, the producer of the letterings located on the window and door, that I want 50% or less of window coverage. Extreme Graphics stated after the work was complete that approximately 38% of the window was covered with the letters. This low coverage provides ample vision for those inside and outside of the building. In addition, the letters are the smallest available letters provided by the graphics company. Unlike the large, blocky lettering with a white background, the letters have a fine font that allow for the window to have coverage under the initially requested 50% coverage. The lettering on the windows doubles as a menu to the establishment and is essential to the success of the business/future franchise. The menu is not only a unique marketing strategy, but it is coordinated with the theme colors and font to provoke a recurring color scheme that is carried throughout the store. The menu will be for the convenience of the customers to be able to see their viable options. This will maximize efficiency of the workers and create a steady flow to provide quick service, which will be one of the attributions to make the establishment appealing. I ask that you see the vinyl on the windows be granted as seen as less than 50%, as it is necessary and is in no way, a detriment or hazard to the well being of others, but is an aide for employees and customers to move efficiently and swiftly throughout the place of business."

Staff Response:
The *Zoning Ordinance,* Article 5 §4.9 A limits window signs to no more than 50% of the window or door. This is evaluated by measuring the sign area on the sign face, using the definitions provided by Article 5 §4.3. Therefore, the evaluation that indicates that the window sign utilizes only 38% of the window is inconsistent with the definitions. It appears that this number was reached by totaling the area of the opaque letters. The Board of Adjustment may consider the details provided in the above statement in evaluation of a variance request to allow the window signage as proposed by the applicant.

Variance Recommendation
Staff recommends approval of the variance for the allowance of a roof sign based on the following:

- The proposed variance would not be out of character for the zone and the surrounding uses.
- Other tenant spaces in the subject strip center utilize roof signage, as have prior tenants in the subject tenant space, as evidenced by the brackets that previously supported this signage.
- The architecture of the building presents an exceptional practical difficulty in placing wall signage that would meet the needs of the tenant and meet the requirements of the sign regulations.

Staff recommends denial of the variance for the allowance of the proposed (existing) window signage based on the following:

- The applicant has not demonstrated that an exceptional practical difficulty exists that would necessitate such signage.
- The applicant has not provided calculations to indicate the sign area in accordance with the *Zoning Ordinance.*

Advisory Comments to the Applicant

- If granted, variances become null and void if work has not commenced within one (1) year of the date the variance was granted. At present there is no provision for extension.

GUIDE TO ATTACHMENTS

Exhibit	Description/Author	# Pages
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G	Photos of Proposed Signage (Applicant)	Envelope
H	E-mail of February 17, 2017 from Xtreme Graphix	1

City of Dover

Board of Adjustment

March 15, 2017

V-17-09

Location:	1310/1324 Forrest Avenue
Applicant:	IDE^3 Associates, Inc.
Owner:	Margaret H. Johnson
Tax Parcels:	ED-05-076.10-01-01.00-000, ED-05-076.10-01-02.00-000, ED-05-076.10-01-03.00-000, ED-05-076.10-01-04.00-000, ED-05-076.10-01-04.01-000
Application Date:	February 6, 2017
Present Zoning:	C-2A (Limited Central Commercial Zone) COZ-1 (Corridor Overlay Zone)
Present Use:	Vacant
Reviewed By:	Eddie Diaz
Variance Type:	Area Variance
Variance Requested:	To allow in increase in the maximum permitted height in the COZ-1 (Corridor Overlay Zone) from two stories and 35 feet to 3 stories and 41 feet.

Previous Variance Applications
This variance application is a resubmission of application V-16-06, initially reviewed by the Board of Adjustment on June 15, 2016. In its initial review of V-16-06 the Board of Adjustment opted not to approve or deny a variance, instead giving the applicants the opportunity to present an alternative project design or further evidence in support of their case at a future meeting. Board action was deferred until the October 19, 2016 meeting of the Board of Adjustment, at which the applicants requested to withdraw the application. The Board accepted the request to withdraw, and discussion at the meeting indicated that future re-application would be permitted if the applicants later decided a variance was still desired.

The major difference between V-16-06 and this new application is that the new application requests a variance for three stories rather than four stories. This smaller building also results in a smaller parking space count and lower impervious surface coverage than the original submission.

Project Description
The applicants are requesting a variance from the *Zoning Ordinance,* Article 3 §27.66(a), pertaining to the maximum permitted building height in the COZ-1 (Corridor Overlay Zone). The applicable provisions state "Buildings shall be limited in overall height to 35 feet and shall not exceed two stories."

The applicants propose two new buildings on the site:

- A one-story retail building located at the front of the site facing Forrest Avenue.
- A three-story apartment building located behind the proposed retail building and extending to the rear of the property.

A variance is requested to allow an increase in height from the maximum permitted two stories and 35 feet to three stories and 41 feet to allow construction of the three-story apartment building as proposed.

Exhibit B (1 page) shows the site location.

Exhibit C (9 pages) shows the existing condition, proposed site plan, interior floor plans, building elevations, and renderings.

Any site development would be subject to the Planning Commission Site Development Plan review processes and would require a parcel consolidation plan. The content of the exhibits shown should be considered preliminary as they relate to the site plan elements and architecture.

Adjacent Land Uses
Refer to the Zoning Map (Exhibit A). The property is located south side of Forrest Avenue between June Lane and Independence Boulevard, across from Greentree Village shopping center. The area is primarily a mix of commercial uses facing Forrest Avenue, including restaurants, retail uses, and services. Within the immediate area residential uses are

typically located on streets feeding to Forrest Avenue and behind the commercial uses that front Forrest Avenue.

The subject properties are the site of former residences which have since been demolished. Former residences (now zoned commercial) can be found at various points along Forrest Avenue, including the properties located immediately west of June Lane. Some are residential structures still used as residences, while others are occupied by commercial uses.

Code Citations

C-2A (Limited Central Commercial Zone)
The *Zoning Ordinance,* Article 3 §14 outlines uses permitted in the C-2A Zone, which include apartments and multi-family dwellings. The "Zoning Bulk and Parking Regulations" in *Zoning Ordinance* Article 4 §4.14 state that maximum permitted building heights in the C-2A Zone are:

- 75 feet and shall not exceed six (6) stories.

COZ-1 (Corridor Overlay Zone)
The subject properties and surrounding properties are within the COZ-1 (Corridor Overlay Zone). This overlay zone includes additional provisions related to building design, landscaping, parking layout, and height among other criteria.

- Within the COZ-1, building heights are limited to 35 feet and shall not exceed two (2) stories.

As with parking regulations, there are instances where bulk standards or other dimensional criteria (such as height) are stated in various sections within the *Zoning Ordinance,* such as in the base zoning, overlays, or supplemental regulations. In cases where multiple standards are given, the more stringent standard applies.

Building Height
Zoning Ordinance Article 12 provides the following definitions related to height:

- *Height:* The vertical distance measured from the average elevation of the finished grade at the front of the building to the highest point of the roof for flat and mansard roofs and to the mean height between [the] eave and ridge for other types of roofs.
- *Story:* That part of any building, exclusive of cellars but inclusive of basements, comprised between the level of one finished floor and the level of the next higher finished floor, or if there be no higher finished floor, then that part of the building comprised between the level of the highest finished floor and the top of the roof beams.
- *Basement:* A story in a building having a floor below the finished grade at any point on the periphery of the building and having a structural ceiling level at least four feet above the average finished grade along each side of the building facing a street (see Cellar and Story).
- *Cellar*: A space in a building with a structural ceiling level less than four feet above the average finished grade along any side of the building facing a street.

Staff notes that buildings exceeding two (2) stories and/or 35 feet are present at various sites on or near Forrest Avenue. This condition can exist for several reasons. Some examples, include multi-family housing such as the 3-story Dover Country Club apartments and Brandywine Court apartments/condos located on the north side of Forrest Avenue near the intersection with Mifflin Road, are legal non-conforming and predate the COZ-1. Woodmill Apartments, located adjacent to the subject properties, is three (3) stories, but is not located in the COZ-1.

The Grande Apartments, located on the north side of Forrest Avenue near the intersection of Saulsbury Road, is a senior apartment complex with buildings four (4) stories in height. This project was approved through a PND (Planned Neighborhood Design – Senior Citizen Housing Option) process whereby the Planning Commission has the ability to relax requirements related to dimensional requirements "where the developer can demonstrate that such action is desirable and consistent with the objectives of this ordinance and the comprehensive plan."

Dover High School is located within the COZ-1. At its meeting of September 16, 2010 the Board of Adjustment granted a variance V-10-10 to allow construction of a three (3) story building 60 feet in height with architectural features up to 85 feet in height.

Exceptional Practical Difficulties Tests

Zoning Ordinance Article 9 §2 dictates the specific powers and duties of the Board of Adjustment with regard to granting variances. Specifically, the Board must determine:

2.1 Variance **–** The board shall have the authority to authorize variances from provisions of the Zoning Ordinance that are not contrary to public interest where the board determines that a literal interpretation of the Zoning Ordinance would result in undue hardship or exceptional practical difficulties to the applicant. In granting variances, the board shall determine that the spirit of the Zoning Ordinance is observed and substantial justice is done.

2.11 Area Variance. A variance shall be considered an area variance if it relates to bulk standards, signage regulations, and other provisions of the Zoning Ordinance that address lot layout, buffers, and dimensions. In considering a request for an area variance, the board shall evaluate the following criteria and document them in their findings of fact:

(a) the nature of the zone in which the property lies;
(b) the character of the immediate vicinity and the contained uses therein;
(c) whether, if the restriction upon the applicant's property were removed, such removal would seriously affect neighboring properties and uses; and
(d) whether, if the restriction is not removed, the restriction would create unnecessary hardship or exceptional practical difficulty for the owner in his efforts to make normal improvements in the character of that use of the property that is a permitted use under the provisions of the Zoning Ordinance.

Review of Application

As a part of the application, the applicants were asked to state how the requested variance relates to the above four criteria. The applicants' responses are provided below, along with a staff assessment of the application in accordance with the required criteria.

1. The nature of the zone in which the property lies.

   Applicant Response:
   Section 27. - Corridor overlay zone 1 (COZ-1)
   Base Zone C-2A
   A. The base zone permits apartments and Multi-family dwellings.
   B. C-2A zone permits building heights of 75 feet but not to exceed 6 stories.
   C. The COZ limits building heights to 35 and shall not exceed two stories.
   D. To foster coordination and linkage among corridor properties and with adjacent lands; Taken from Zoning Ordinance Article 3
   E. To preserve the functionality and efficiency of the roadway for traffic movement; Taken from Zoning Ordinance Article 3
   F. To achieve a visually balanced streetscape environment which is friendly to the pedestrian and motorist alike. Taken from Zoning Ordinance Article 3"

   Staff Response:
   The applicants' response accurately states some of the major objectives of the Corridor Overlay Zone as well as the limits on height set by the C-2A Zone and the Corridor Overlay Zone. The project will be evaluated for its relationship to the major objectives of the COZ when it undergoes review for application to the Planning Commission.

   The proposed three-story building is consistent with the C-2A zone, but inconsistent with the requirements of the COZ-1.

2. The character of the immediate vicinity and the contained uses therein.

   Applicant Response:
   "The subject property is currently surrounded by commercial, retail, residential, apartment style dwellings. Immediately to the East of the property is the Betsy Ross and a retail business. Across the street is Greentree Shopping Center. The property directly behind the site is Woodmill Apartment. Woodmill Apartments are three story apartment buildings with a gable roof…yielding a roof height of approximately 40+ feet."

   Staff Response:
   The immediate vicinity of the subject properties, as seen from Forrest Avenue, is mostly commercial. The subject properties are south and across the street from the Greentree Village shopping center. To the east of the subject properties is a restaurant (Betsy Ross Pizza) and a retail store (Salvation Army, formerly a drug store). To the west are 1 ½ story residential structures of undetermined use. The subject site was previously occupied by similar structures. Farther west are a gas

station, automobile service business, and small shopping center. The property abutting the subject property at the rear is Woodmill Apartments.

3. Whether, if the restriction upon the applicant's property were removed, such removal would seriously affect neighboring properties and uses.

   Applicant Response:
   "The proposed 3-story building is located in the center rear of site. It is 235' from the road with a proposed 1-story commercial building between it and the road. The east/west side property lines are 83.50' & 111.50' from the building. There is 120' between it and the 3-story apartment complex located adjacent to the rear (south) of the site. We do not see this having a significant negative impact on the local community. It should be noted that there are existing four story buildings within the COZ."

   Staff Response:
   Staff concurs with the applicants' description of the proposed site layout. The applicants appear to be arguing that the proposed building would not negatively impact neighbors because there are already similar multifamily residential properties nearby, some taller than the subject building. Noting that all of these residential properties have specific reasons for being allowed three or four stories as detailed above in the Code Citations section of this report, staff does nevertheless agree that the building would not be out of character for the area based only on height. Overall impact based on architecture and site layout is somewhat subjective, and further review would fall under the purview of the Planning Commission and staff's evaluation of a Site Development Plan upon submission.

4. Whether, if the restriction is not removed, the restriction would create unnecessary hardship or exceptional practical difficulty for the owner in his efforts to make normal improvements in the character of that use of the property that is a permitted use under the provisions of the Zoning Ordinance.

   Applicant Responses:
   "a. Site Geometry:

   The exceptional practical difficulty is in the site geometry, being long and narrow create design challenges while trying to maintain and adhere to all governing regulations pertaining to City, Del-DOT and Conservation District. The site restrictions do not provide for an easy balance of egress, circulation, parking and Stormwater management; therefore forcing the design of the building to go vertical.

   We have listed Staff's previous comments regarding the footprint restrictions to the two story building:

   "The limitation of two (2) stories would impose a challenge for this and other properties and uses as it relates to the building footprint and also for the provision and

location for parking. However staff notes that while a two-story building height may force a building footprint to "spread" over the lot, a four-story building would have a similar effect if it can be assumed that a taller building would have more dwelling units or greater square footage. This would force a greater requirement for parking which would similarly consume lot area."

While we agree that constructing a three or four story building will yield additional parking requirements. We disagree that the overall effects of building the square footage vertically would have a similar effect to the two story building because the additional footprint square footage over the two stories does [sic] create any additional impervious area.

b. Competitive Disadvantage
    a. We site [sic] Competitive Disadvantage as an exceptional practical difficulty as we do economic competiveness.
    b. As Staff has pointed out there are numerous apartment buildings within the vicinity of this site that are over two stories
        i. The Grande which is a 4 story building, exceeding total heights of more than 55'. This building was approved by Planning Commission through a PND; however, no Board of Adjustment. This building is within the COZ and although we are not supposed to speak in terms of precedence, there has been a precedence set by allowing the four story building within the COZ
        ii. The Woodmill apartments are located directly behind our site are not within the COZ are 3 stories with a gable roof, placing the height to the ridge at about 45'. This set of apartments is visible from Forrest Avenue.
        iii. Dover Country Club is a 3 story apartment building
    c. It is our assumption that these apartments were constructed to maximize the site from a coverage perspective, addressing parking, Stormwater, Landscaping, open area to their advantage to remain competitive with surrounding apartment buildings. Unfortunately all of this effort is tied back to economic competitiveness
    d. There is specific case law that speaks to exceptional practical difficulty and categorizes variance requests into two categories, 'Use' and 'Area' . This case law is the Board of Adjustment of New Castle County vs. Kwik-Check Realty.
    e. Quote, 'we hold that the Superior Court correctly distinguished the two types of variances and prescribed less burdensome test where an area variance is in issue…'
    f. The quote goes on to state that the rationale which we approve, is that a use variance changes the character of the zoned district by permitting an otherwise proscribed use…whereas an area variance concerns only the practical difficulty in using the particular property for permitted use. 'Accordingly, given the differing purposes and effects of the two types of

variances .a lesser standard of the owner's 'exceptional practical difficulties is appropriate for obtaining an area variance.

g. 'The board also contends that even under the exceptional practical difficulties of ownership test, The Superior court erred in holding that economic consideration, standing alone, may be a sufficient justifications for the grant of an area variance. We decline to place such restriction on the meaning of the exceptional practical difficulties of ownership. The inability to improve one's business, or stay competitive as a result of an area limitations, may be a legitimate exceptional practical difficulty that would justify a grant of a variance. Such practical difficulty is present where the requested dimensional change is minimal and the harm to the applicant if the variance is denied will be greater than the probable effect on the neighboring properties of the variance is granted.
h. The ruling goes on to say…'the board should take into consideration the nature of the zone in which the property lies, the character of the immediate vicinity and the uses contained therein, whether, if the restriction upon the applicant's property were removed, such removal would seriously affect such neighboring property and uses: whether, if the restriction is not removed, the restriction would create and unnecessary hardship or exceptional practical difficulty for the owner in relation to his efforts to make normal improvements in the character of that use of the property which is a permitted use under the use provisions of the ordinance.
i. To us, this suggests that if the Board denies the variance request, we believe that the harm done to the owner for wanting to be competitive would be far greater than the harm imposed on the community because the variance request is within general character of the surrounding area. We simply do not see how the community would be negatively impacted by a three story apartment building when a +/- 46' tall apartment building exists directly behind this proposed apartment building and is visible from Forrest Avenue.
j. In Summary, we maintain that:
    i. The site is long narrow and difficult
    ii. The present design positively addresses the needs of the COZ by placing a less than two story building at the front of the parcel
    iii. The site is fully maximized and adheres to the code regulations
    iv. That there is precedence for a four story apartment building within the COZ
    v. That the owner has made an appropriate attempt at the design to bring the height down to using an attractive parapet design element to keep the overall height in normal character of the surrounding
    vi. That the owner has the right not to be competitively disadvantaged."

Staff Responses:

The applicants have asked for consideration of two different practical difficulties: the geometry of the site, and "competitive disadvantage." Each of the two potential practical difficulties are addressed below.

a. Site Geometry

Staff understands the applicants' response to previous Staff comments regarding "building spread." While every additional dwelling unit in an apartment complex will require parking under City code requirements, and therefore add to impervious surface coverage no matter where it is located, a dwelling unit and its parking on the ground will always generate more impervious surface than parking on the ground and the dwelling unit on top of surface that is already impervious (another dwelling unit). Staff therefore agrees that increasing height is a good way to limit impervious surface on small sites while having a total building floor area that would otherwise only be possible on a larger site.

However, Staff disagrees with the applicants' assertion that the site is unusually long or narrow, at least by the standards of the Corridor Overlay Zone. The site is 455 feet long, with 236 feet of frontage on Forrest Avenue and a total area of 2.61 acres. A number of other properties within the Corridor Overlay Zone have similar dimensions, and were developed under current or previous site layout standards without exceeding two stories:

- Salvation Army Building at 1278 Forrest Avenue, 455 feet by 150 feet, 1.75 acres
- Cardiology Consultants and Eastern Shore Natural Gas at 1100-1110 Forrest Avenue, 1000 feet by 220 feet, 4.7 acres
- Brookdale Dover Assisted Living Facility at 150 Saulsbury Road, 670 feet by 285 feet, 4.37 acres

It is true that there are currently no apartment complexes within the Corridor Overlay Zone meeting the two-story limit. However, this may not be because the site development standards place a larger burden on residential properties. Rather, it may be because new multifamily residential uses were not permitted in commercial zones (most of the area in the COZ is zoned for commercial or industrial) until 2014.

b. Competitive Disadvantage

Staff concurs that "The inability to improve one's business, or stay competitive as a result of area limitations, may be a legitimate exceptional practical difficulty that would justify a grant of a variance." From the applicant's initial response, it is not clear what specific competitive disadvantage is contemplated. However, some supplemental information given by the applicants (Exhibit E) sheds some light on the matter. The applicants claim that "with respect to the apartment building, due to the economies of scale regarding construction and management of such facilities, it would not be economically feasible to limit the building to 2

stories as the number of units would be too small for the project to be viable."

It is fairly common for multifamily projects to be unable to realize a return on investment for their developers unless a minimum number of units are constructed. If this project, as a whole, cannot be built unless a certain number of dwelling units are provided, then an exceptional practical difficulty may be found because the area and other proposed uses of the site would limit where the units can be built. There are twelve dwelling units on the third floor of the proposed building, and it is not clear where else they could be built. Possibilities include the open space on the east side of the site and above the retail units; the applicants will have to speak as to why these locations are not feasible options. If there are no feasible options for their location other than the third story, then an exceptional practical difficulty would be found.

It is important to note that while a variance may be granted to ensure the applicants can realize a return on investment and thus build the project, the purpose of the variance should not be to allow the applicants to maximize the return on their investment by allowing a use greatly more intensive than that allowed by zoning. The applicants' willingness to build three stories rather than four as in the original variance request should be considered favorable in this regard.

Variance Recommendation

Staff tentatively recommends approval of the variance for the increase in height to a total of 3 stories for reasons as follows:

- The proposed three story apartment building would not be out of character for the area.
- The development's requirement for a minimum number of dwelling units combined with the dimensions of the site may present an exceptional practical difficulty. There are few places dwelling units could be built on the site other than the third floor, and there may be specific reasons (yet to be explained) why the units cannot be built in the remaining open space or above the retail units.

Advisory Comments to the Applicant

- If granted, variances become null and void if work has not commenced within one (1) year of the date the variance was granted. At present there is no provision for extension.
- Improvements to the property are subject to Site Development Plan approval processes and appropriate permits from the City of Dover Department of Planning & Inspections and other agencies.

GUIDE TO ATTACHMENTS

Exhibit	Description/Author	# Pages
A	Zoning Exhibit Map (Staff)	1
B	Location Map provided with previous variance application (Applicant)	1 (11" x 17")
C	Site Plan, Floor Plan, Elevations, and Renderings, proposed (Applicant)	9 (11" x 17")
D	Applicant Responses	4 (8.5" x 11")
E	Applicant Supplemental Information	2 (8.5" x 11")