CITY OF DOVER BOARD OF ADJUSTMENT
AGENDA
Wednesday, March 18, 2015 at 9:00 AM

City Hall Council Chambers
15 Loockerman Plaza, Dover, Delaware

ROLL CALL

APPROVAL OF AGENDA

APPROVAL OF MINUTES of February 18, 2015 Meeting

NEW BUSINESS

Applicant #V-15-05
1387 North DuPont Highway. 1387 DuPont Highway LLC, c/o Michael Hyansky has requested a variance from the requirements of Article 5 §4.7 of the *Zoning Ordinance* pertaining to the number allowed and setback requirements for signage. Subject property is zoned C-4 (Highway Commercial Zone) with a portion subject to the SWPOZ (Source Water Protection Overlay Zone – Tier 3 Excellent Recharge Area). The Tax Parcel is: ED-05-057.00-01-15.00-000. The owner of record is 1387 DuPont Highway LLC.

Applicant #V-15-06
623 Fulton Street. AVA Commercial LLC c/o Michael H. Harrington, Sr. has requested a variance from the requirements of Article 6 §3.6 of the *Zoning Ordinance* related to surfacing of parking areas and access drives. Subject property is zoned IPM (Industrial Park Manufacturing Zone). The Tax Parcel is ED-05-076.08-01-13.00-000. The owner of record is AVA Commercial LLC.

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 18, 2015

A Regular Meeting of the City of Dover Board of Adjustment was held on Wednesday, February 18, 2015 at 9:00 A.M. with Vice Chairman Ericson presiding. Members present were Mr. Hufnal, Colonel Ericson and Mr. Keller. Mr. Senato and Chairman Sheth were absent.

Staff members present were Mrs. Townshend, Mrs. Purnell, Mr. Cook and City Solicitor Nick Rodriguez. Mr. Senato and Chairman Sheth were absent.

APPROVAL OF AGENDA

Mr. Hufnal moved to approve the agenda as submitted, seconded by Mr. Keller and unanimously carried 3-0. Mr. Senato and Chairman Sheth were absent.

APPROVAL OF THE REGULAR BOARD OF ADJUSTMENT MEETING MINUTES OF JANUARY 21, 2015

Mr. Keller moved to approve the meeting minutes of January 21, 2015 with the necessary corrections, seconded by Mr. Hufnal and unanimously carried 3-0. Mr. Senato and Chairman Sheth were absent.

OPENING REMARKS CONCERNING DEVELOPMENT APPLICATION

Mrs. Townshend, Director of Planning and Community Development stated that the meeting would be conducted in accordance with the agenda. There are two items (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 adjourn 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 the agenda today was completed in accordance with code requirements. The meeting agenda was posted in accordance with Freedom of Information Act requirements

NEW BUSINESS

Applicant #V-15-03

20, 28, 30, 32, 40, and 48 South Kirkwood Street. Central Delaware Habitat for Humanity has requested a variance from the requirements of Article 4 §4.2 of the *Zoning Ordinance* pertaining to minimum lot width in the RG-1 zoning district for one-family detached dwellings. Subject properties are zoned RG-1 (General Residence Zone). The Tax Parcels are: ED-05-076.08-06-11.00-000, ED-05-076.08-06-12.00-000, ED-05-076.08-06-13.00-000, ED-05-076.08-06-14.00-000, ED-05-076.08-06-15.00-000, and ED-05-076.08-06-16.00-000. The owners of record are Central Delaware Habitat for Humanity and Bibleway Temple Church of God in Christ.

Mrs. Ann Marie Townshend, Director: Exhibits for the record: Staff Report and plans submitted by the applicant to include three (3) diagrams.

The legal notice was published in the Delaware State News on February 8, 2015, and the public was notified in accordance with the regulations.

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

Representative: Jocelyn Tice, Executive Director, Central Delaware Habitat for Humanity; Don Grower, Surveyor; John Baldwin, Chairman of the Trustee Board for Bibleway Temple Church of God in Christ.

Jocelyn Tice, Don Grower, John Baldwin were sworn in by Mr. Rodriguez.

Exhibits: Maps

Mrs. Tice stated that the applicant was requesting a lot size variance from 60 feet to 50 feet. Central Delaware Habitat for Humanity currently owns four (4) lots and the church owns the lot in the center. There are a total of five (5) lots and the intent is to swap the parcels so that the church has one full lot and Habitat for Humanity has five (5) contiguous lots. The variance would allow for fifty (50) foot of five (5) equal parcels.

Habitat for Humanity could build on the existing lots which vary in size from 100 feet to 37.1 feet. This would cause some difficulty in providing off-street parking as required per code as well as meeting the setbacks required by the City. They could build on these four (4) lots if not approved; however, the approval of the requested variance would allow for five (5) new homeownership opportunities, and such homes would be consistent with the residential nature of the surrounding. Across the street there are lots varying from 15 feet to 65 feet in width. The 50 foot lot width variance would be consistent with the remaining homes currently there and the Restoring Central Dover Plan released by NCALL and the Consolidated Plan in increasing homeownership to low income residents in the City of Dover. Even though Central Delaware Habitat for Humanity's mission is to target low income residents, all of their homeowners are stable and able to provide and maintain a mortgage.

Mr. Baldwin stated that the church agrees with the project for several reasons. It will consolidate the properties to be utilized better in the summer for outdoor activities. It will also bring neighbors closer to the church. Instead of having vacant lots that collect trash, there will be neighbors maintaining the properties. He thinks this is a great opportunity.

Bishop Holsey was sworn in by Mr. Rodriguez.

Bishop Holsey stated that he felt it was a winning situation of everyone involved (Central Delaware Habitat for Humanity and the church). There is currently nothing happening on the vacant lots. Once houses are built the lots will be maintained and it will be a nice area for all downtown. It is all about bringing in people and having a place to live. He will do whatever he

can to make it happen.

Mr. Hufnal stated that he thought it was a very worthwhile project. If the Board did not allow this to happen there would be some houses without parking availability due to the lot size. By approving the variance to allow 51.1 feet the applicant would have everything that is required including off street parking and you would get some standardization of what they are trying to build in the location.

Responding to Mr. Keller's question regarding the requirements for off street parking, whether on-street parking was allowed, Mrs. Townshend stated that two (2) off-street parking spaces are required.

Responding to Mr. Keller's question whether there was an agreement enforced whereby upon variance approval there was a transfer of ownership, Mrs. Tice stated yes, many grant applications have been written that have received funding for these projects. The church and Mr. Baldwin have given their full support from numerous letters. There is no formal Memorandum of Understanding between the church and Central Delaware Habitat for Humanity, but there has been documented support on numerous occasions of their intent. They are ready to schedule settlement to make that happen. It is their intent upon approval to start construction June 7, 2015. They are anxious to get the project started for new homeownership.

Responding to Mr. Keller's question with the hopscotch ownership and no actual contract enforced as to the intent, Mrs. Tice stated no, it is not a legal binding contract that has been signed. Mrs. Townshend stated that both property owners are party to the Board of Adjustment application. Both have signed the application as property owners, because both owners lot will be affected ultimately.

Responding to Mr. Keller's question whether all five lots were ever in joint ownership which is not the case, Mrs. Townshend stated no.

Vice Chairman Ericson opened a public hearing and after seeing no one wishing to speak closed the public hearing.

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

Mr. Hufnal moved that Application V-15-03 be approved and commented that the application was in conformance with Dover's 2008 Comprehensive Plan, the Restoring Central Dover Plan, the City's Consolidated Plan for Community Development, and the newly created Downtown Development District. All support redevelopment, and the proposal supported these goals as articulated in City plans and policies. The motion was seconded by Mr. Keller and unanimously carried 3-0. Mr. Senato and Chairman Sheth were absent.

Applicant #V-15-04
747 North DuPont Highway. Bankshares Realty LLC c/o Charles Owensby has requested a variance from the requirements of Article 6 §3.1 and §3.11 of the *Zoning Ordinance* for parking as related to the maximum allowed parking for the proposed use. Subject property is zoned SC-2 (Community Shopping Center) and a portion is subject to the SWPOZ (Source Water Protection Overlay Zone – Tier 3 Excellent Recharge Area). The Tax Parcel is ED-05-068.05-01-15.00-000. The owner of record is Bankshares Realty LLC.

Mr. Bill Cook, Planner, submitted the following items for the record: Staff Report, plans and supporting documents submitted by the applicant.

The legal notice was published in the Delaware State News on February 8, 2015, and the public was notified in accordance with the regulations.

Mr. Cook stated that the site is 747 North DuPont Highway commonly known to most people as the former Berry Van Lines site. As an overview map the appropriate exhibit is 1.2 which has an aerial photo of the existing site as well as the proposed location of the restaurant which is in the southwest corner of the parcel adjacent to DuPont Highway. The total property is 25 acres. The variance for parking is related to Article 6§3.11. There is a cap on parking such that the maximum number of spaces for a proposed use may not be greater than 125% of the minimum requirements in the *Zoning Ordinance*. Mr. Cook noted that the property is zoned SC-2 (Community Shopping Center) and not C-4 as stated in the application. The parking regulations for eating and drinking places are in Article 6§3.1. They require at least one (1) parking space for each four (4) seats and one space for each three (3) bar spaces. The applicant is requesting 170 parking spaces.

Mrs. Townshend stated that this is an application where she had a lot of discussion with the applicant. She also has had discussions with other restaurant chains that were looking to open in Dover, and believes that the City needs to reevaluate the parking standards for restaurants. She thanked the applicant for providing some examples of other ordinances in Delaware to review that have more realistic parking requirements. The parking maximum was added in 2009 to address the concerns that the Planning Commission had regarding large expanses of asphalt that were never used. There was a variance request several months ago for a dental practice that needed to exceed the maximum. There may need to be a revised parking maximum on some type of sliding scale. For example, if the parking requirements are less than a certain total number, an applicant would be able to provide 150% of the minimum parking spaces. When you have a small parking requirement it does not take much to exceed the 25% over the minimum. The City is likely to bring forward a text amendment to the City Council and Planning Commission in the near future to address this matter.

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

Representative: Dev Sitaram, Karins and Associates, President and Engineer for the Project;

Larry Weiland, Golden Corral Buffet & Grill, Real Estate Director.

Dev Sitaram and Larry Weiland were sworn in by Mr. Rodriguez.

Presentation

Mr. Sitaram stated that Mr. Cook explained the location and condition of the project. As he referred to the exhibits he mentioned the location of the frontage on North DuPont Highway and Leipsic Road. The property is part of a larger parcel and redevelopment of the Berry Van Line property. This is the first piece of the redevelopment of the larger parcel. Most of the property is currently paved. It is in the excellent recharge area and as it is taken through the Site Development process they will address the recharge issues that are currently not taking place on the property. Pizza Hut is located at the north of the parcel and Ichiban is located to the south of the property, which has gone through several use changes. Dover Downs is located to the east of the property. There is "right in and out" access to Route 13, and it is also connected to an existing roadway that provides access to Leipsic Road to the north. The proposed restaurant is 11,097 SF with 400 seats. The parking code requires the one (1) parking space for every four (4) seats; therefore, the minimum requirement is 100 parking spaces. However, he stated that Dover's code maximum is not usual for most municipalities or jurisdictions. A establishment normally has issues meeting the minimum requirements and not the maximum requirements. He has worked on several site plans for national as well as local restaurant chains and the maximum requirement for the City of Dover is a concern. The applicant has a resulting hardship for the public requirements for parking not being met, and situation could pose an undue hardship on the neighboring parcels that have parking.

Mr. Weiland stated that the company had a brainstorming session six (6) months ago to identify markets that they wanted to go back to. They went through their list of places where they were and where they wanted to go. Dover was one of the markets where they wanted to come back to with a new prototype building. Mr. Weiland has been in the business with Golden Corral for 36 years. He said that this is the first site he has encountered where the desired parking is more than what a City allows. The business cannot be successful in their restaurants without the correct amount of parking. He stated that the concern about concrete with empty parking lots really plays in effect with only retail. Retailers like Walmart and the Mall worry about one thing and that is Christmas. Restaurants worry about parking on a daily basis. In the past, they looked at property in Houston that was owned by a big developer and the property had a massive parking lot and they wanted to ground lease two (2) acres, but was told that they could only ground lease it for eleven (11) months of the year. The developer did not want to lease it for the month of December because they needed the parking for retail uses. He understands the concrete issue, but again in restaurants use their parking all the time. He hopes that the Board will consider their request. Their thirty (30) year motto for the Golden Corral is "Making Pleasurable Dining Affordable". The restaurant does not serve alcohol, is not open late at night, and they are all about feeding families in Dover. As he referred to the demographic numbers there are many potential guests in Dover. They will do whatever it takes if the variance is approved to make Dover proud for the community and look good on the vacant property.

Responding to Colonel Ericson's question of how the applicant arrived at the number of a 170 parking spaces, Mr. Weiland stated that they took the total number of Golden Corral restaurants (600) and cultivated the ones that had the following: amount of parking needed, under parking, and under parked and underperforming. Because of the buffet concept and the lack of a bar, customers sit longer than in other types of restaurants. In order to be in the buffet business you have to do volume. Based on the criteria that were sent, it listed every restaurant that had more than 170 parking spaces. When you look at restaurants such as Olive Garden, Cheddars, and others, they have other parking to go to. Golden Corral is self-contained. By not allowing the necessary parking needed, it could affect other businesses and this is not what Golden Corral wants to do. He stated that 170 parking spaces was the minimum, he would prefer to see 190 parking spaces, but was not trying to push the candle further. The more parking, investment, and property they have to buy, they do not mind doing.

Responding to Mr. Hufnal's question whether there was an entrance to the right and behind the Café. Mr. Sitaram stated he had met with DelDOT regarding the regional transportation requirement and DelDOT has the connection of parcels along DuPont Highway so that traffic does not have to get back onto the highway to go from one property to another. The entrance is a future interconnection to Jefferic Blvd. Mr. Weiland stated that it is also important to the applicant. The entrance is needed and they do not want to cause any issues with traffic. All issues that have been proposed need to be approved in order for them to close on the property.

Responding to Mr. Hufnal's question whether the exit off the back of the property goes around to the hotel, Mr. Sitaram stated yes. Again, this is part of DelDOT's Regional Transportation Master Plan.

Responding to Mr. Keller's question whether they were aware of the contacts to date with the other owners regarding the cross easements, Mr. Sitaram stated that Mr. Owensby and Mr. Lee has tried to contact the property owner, but he was not sure if there was any contact regarding Cash Point. At one point, they were proposing to have the property integrated into the Site Plan, but it fell by the wayside. Currently, they are independently providing a connection to DuPont Highway without impacting the neighbors.

Responding to Mr. Keller's question whether the applicant would anticipate in the failure to gain the cross access easement, regarding contemplating any problems with the right in and right out onto Route 13, Mr. Sitaram stated no, this site plan is not solely based on that access. It is just a convenience to provide access to the other four (4) uses. (Hotel, Popeyes, Cash Point, Café). The connection is not mandatory.

Mr. Hufnal stated that he liked the applicant's comment regarding the variance allowing additional parking so that it would reduce the likelihood of the patrons coming in and seeking parking spaces on adjacent properties.

Mr. Sitaram stated that this was the true hardship with the situation of the code requirements on the number of parking spaces that this is going to be self-sufficient. He has worked on projects where parking has become a major issue on neighboring properties that also required police to enforce parking.

Responding to Mr. Hufnal's question whether there was a major parking problem at the Golden Corral facility in the past, Mr. Weiland stated that there were 146 parking spaces.
Responding to Mr. Hufanl's question whether it was over crowded with the 146 parking spaces, Mr. Weiland stated yes, this may be a company store, but the operator for this restaurant owns all the locations in Baltimore and Washington, DC and he is the most successful operator in this company.

Responding to Mr. Keller's question if Mr. Sitaram was the Engineer working for Golden Corral, Mr. Sitaram stated yes and he has been working on the site for the Equitable Owner Mr. Owensby. Mr. Weiland is working with Mr. Owensby and Mr. Sitaram to get this done. Mr. Weiland stated that they try to keep everything in the same family without any conflicts.

Mr. Weiland stated that when he took this back to Golden Corral and stated that there was a parking issue because he has never had this situation before, it was kind of different going backwards.

Mr. Hufnal commented that he was glad to see that the City was looking at the *Zoning Ordinance* provision that sets a maximum number for parking. It was indicated that it is a feature in other jurisdictions in Delaware that is larger than what we have.

Vice Chairman Ericson opened a public hearing and after seeing no one wishing to speak closed the public hearing.

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

Mr. Keller moved to approve application V-15-04 as submitted based upon the City's report and findings of February 18, 2015 with clarification as to the existing zoning, insightful testimony of the engineer and representative of Golden Corral, project as outlined in the report would not be out of character for the zone and surrounding uses, the proposed parking is considered quite reasonable with the demands of the industry as reported by the supplemental material provided with the City's report as well as the expressed statements of the City wherein there is being consideration to reevaluation of parking changes on this type of usage and perhaps text amendments, and motion would carry the recommendation also that the City would follow through with such address of those concerns. Mr. Hufnal seconded the motion and unanimously carried 3-0. Mr. Senato and Chairman Sheth were absent.

Mr. Hufnal moved to adjourn the meeting, seconded by Mr. Keller and unanimously carried 3-0. Mr. Senato and Chairman Sheth were absent.

Meeting adjourned at 9:49 A.M.

Sincerely,

Maretta Savage-Purnell
Secretary

City of Dover

Board of Adjustment

March 18, 2015

V-15-05

Location:	1387 North DuPont Highway
Applicant/Owner:	1387 DuPont Highway LLC % Michael Hynansky (Winner VW/Subaru)
Tax Parcel:	ED-05-057.00-01-15.00-000
Application Date:	February 12, 2015
Present Zoning:	C-4 (Highway Commercial Zone) SWPOZ (Storm Water Protection Overlay Zone- Tier 3- Excellent Recharge Area)
Present Use:	Automobile Sales and Service
Proposed Use:	Automobile Sales and Service
Reviewed By:	Bill Cook, Planner I
Variance Type:	Area Variance
Variances Requested:	Reduction in the required setback for a freestanding pylon sign Increase in the allowed number of wall signs

Project Description
The property is located at 1387 North DuPont Highway and is occupied by Winner Volkswagen/Subaru. The current property configuration consists of an automobile showroom and service facility building, recently renovated and located in the southwest corner of the property. An additional service building is located in the rear of the property behind the showroom.

Site Development Plan S-14-05 was approved by the Planning Commission at its meeting of April 21, 2014. Final Site Plan Approval was granted by the Planning Office on February 2, 2015. This plan adds another showroom which will be south of and adjacent to the existing building. Additional elements of the approved site plan include parking, landscaping, stormwater retention, entrance consolidation from North DuPont Highway, as well as provision for a future entrance from a realigned entrance drive leading to Dover Mall. The plan creates separate showrooms for each automobile brand, with the renovated building becoming the operations of the Subaru dealership, and the new building to be occupied by the Volkswagen dealership.

Building Permit #14-124 was issued on April 14, 2014 for renovations to the existing building. Building Permit #14-1238 was issued on February 5, 2015 for construction of the new building and improvements associated with the approved Final Site Development Plan.

The applicant is requesting an area variance from the requirements of the sign regulations in *Zoning Ordinance* Article 5 §4.7 for a reduction in the setback requirement for a freestanding pylon sign, and an increase in the number of wall signs.

Adjacent Zoning and Land Use

The subject property is zoned C-4 (Highway Commercial Zone). The immediately adjacent properties are retail/commercial and institutional uses. From North DuPont Highway, the property to the south and east of the subject property is occupied by Dover Mall and is zoned SC-3 (Regional Shopping Center Zone). North of the subject property are properties of the Delaware State Police zoned IO (Institutional and Office Zone). The parcels across North DuPont Highway are zoned C-4.

A small portion of the property is also within the SWPOZ (Source Water Protection Overlay Zone- Tier 3 Excellent Recharge Area). This overlay zone includes provisions related to impervious surface area and certain uses in order to protect ground water quality.

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 non-residential use and in a non-residential zone as defined by Article 12 (“Definitions”) of the *Zoning Ordinance.* C-4 (Highway Commercial Zone) is

among the non-residential zones specified. The property is not adjacent to residential uses or zones.

The City of Dover sign regulations distinguish three (3) types of roads for purposes of determining allowable signage. North DuPont Highway is an "Urban Principal Arterial" as defined by Article 5 §4.3:

> *Urban principal arterial:* US Route 13, Bay Road, and Court Street between 13 and Bay Road are considered to be urban principal arterials under the provisions of this ordinance. Delaware State Route 1 is not considered to be a road that will provide frontage for any parcel.

Table 1 below shows the maximum number, sign area, height, and minimum required setbacks and exclusion zones for signs on the subject site. The signage requested by the applicant is included in the table for comparison.

Table 1
Allowed and Requested Signage
Urban Principal Arterial
Non-Residential Uses Adjacent to Non-Residential Districts or Uses

Sign Type	Number	Max. Size	Max. Height	% of Total Wall Area	Setback (R.O.W.)	Exclusion Zone
Allowed Signage*						
Wall &	2/frontage	No max	N/A	< = 15%	N/A	N/A
Monument or Post and Panel &	1/entrance	100 S.F.	10 feet	N/A	10 feet	20 feet
Pylon OR **	1/frontage	100 S.F.	30 feet	N/A	15 feet	50 feet
Pylon**	1/frontage	150 S.F.	30 feet	N/A	31 feet	50 feet
Requested Signage						
Wall	4/building	No max	N/A	< = 15%	N/A	N/A
Pylon	1/frontage	100 S.F.	30 feet	N/A	9 feet	50 feet

* Excerpt from "Sign Table" found in *Zoning Ordinance* Article 5 §4.7.

** Denotes that an additional wall sign may be permitted/added in lieu of a freestanding pylon sign.

The sign regulations in the *Zoning Ordinance* are silent as to the number of signs permitted per building when multiple buildings are located on a parcel with common ownership or management. In past practice, the Planning Office has issued sign permits borrowing an interpretation of the language in *Zoning Ordinance* Article 5 §4.9.G that allows single buildings with multiple tenant spaces to have "at least" 1 sign per tenant space:

G. *Single buildings with multiple commercial tenant spaces or facades.*

1. Structures, such as shopping centers, which contain multiple commercial tenant spaces, are permitted to have at least one wall sign on each unit. This provision shall only apply to units on the first floor of the structure.

2. When a structure is designed so that there are distinctly different facades or sections of the building along a single frontage, at least one wall sign is permitted on each facade or section of the building.

3. Multi story office buildings with multiple tenants are permitted one wall sign per tenant. Signs shall not be located above the second story.

The Planning Office has typically allowed such tenant spaces to have two (2) wall signs per tenant space. Similarly, in the instance of multiple buildings on a common parcel, two (2) wall signs per building have been permitted.

When reviewing wall signage, the following definitions are important:

Wall area: For purposes of calculating wall area, the calculations shall include the height of the wall from ground level to the roofline (mansard roofs also count as wall area), multiplied by the width of the wall (including all architectural features).

Wall sign: Any sign, other than a projecting sign, which is attached to or painted on any wall of any building and projects from the plane of the wall less than 18 inches. A sign attached to the lower slope or face of a mansard roof, canopy, or awning shall be considered a wall sign for purposes of this ordinance. For purposes of this section only, a "wall" shall include any permanent architectural extension of a wall, including parapets, even if such extension projects beyond or above the enclosed portions of the building. Canopy, marquee, and awning signs are all types of wall signs.

Sign: Any device visible from a public place whose essential purpose and design is to convey either commercial or noncommercial messages by means of graphic presentation of alphabetic or pictorial symbols or representations.

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.

Unified Comprehensive Sign Plans

Zoning Ordinance Article 5 §4.8.A specifies the purpose and criteria for Unified Comprehensive Sign Plans. Such plans, submitted for review and approval by the Planning Commission, are intended for campuses and complexes that “have signage needs that may not be adequately

addressed by traditional sign regulations." The subject property qualifies for such a plan based on the total linear feet of frontage on a principal arterial road (minimum 400 feet), and the number of principal structures under common management and operation (minimum 3).

Section 4.8.B.1 related to the design guidelines for Unified Comprehensive Sign Plans specifies the physical and design criteria for signs over which the Planning Commission has the flexibility to modify (italics added):

> 1. Unified campuses and complexes applying for a unified comprehensive signage plan may not be held to the *height, size, number* and *area* regulations for signs found in other subsections of this section. However, the number, type and size of signs proposed may not be excessive, and must be in proportion to the scale of the buildings and the uses on the site.

The applicant has indicated the intention to apply for a Unified Comprehensive Sign Plan for the property, but such an application has not yet been filed.

Non-Conforming Signs

Zoning Ordinance Article 5 §4.10.B specifies the conditions and procedures for removal of non-conforming signs. Removal is required when exterior renovations encompass more than 75% of the exterior of the principal building, as well as other conditions. Non-conforming freestanding signage shall not be required to conform, but their non-conformity cannot be expanded. Section 4.10.B.2 stipulates that no new signs shall be placed or sign permits issued until non-conforming signs are removed.

Applicant's Proposed Signage

The applicant has submitted 10 pages illustrating existing and overall proposed signage for the property. They are provided as "Exhibit B" in its entirely, but staff has labeled each page to provide ease of reference to details pertinent only to this application. A Site Plan sheet provided by the applicant is also provided as "Exhibit C" and shows the location of the proposed pylon signs.

Pylon Sign

Note that two (2) existing pylon signs are present on the site in front of the existing building. They are non-conforming as to the "exclusion zone" requirement for 50 feet of separation, and one sign is non-conforming as to the setback from the right of way (See Exhibits B-2, B-3). Both existing pylon signs are planned for removal.

The proposed pylon sign for which a variance is sought is the Subaru sign shown on Exhibit B-7, with the location shown on the lower left of the site plan (Exhibits C, B-6). As shown in the Exhibits and in Table 1, the proposed pylon sign is less than 100 square feet in area, and the proposed setback from the right of way line is 9 feet. The variance is for a 6 foot reduction in the setback requirement from 15 feet to 9 feet. The sign regulations define that a setback is from the

right of way line to any portion of a sign (i.e. not to the post or column support point on the ground.)

Wall Signs
Note that three (3) existing wall signs are present on the face of the existing building. They are non-conforming as to the number of signs. (See Exhibit B-2).

An elevation rendering of the remodeled existing buildng with proposed exterior wall signage is shown in Exhibit B-4, with dimensional details of the signs shown in Exhibit B-5. The signage consists of three (3) illuminated channel letter signs applied to the building façade, and one (1) internally illuminated Subaru brand logo sign applied to a masonry element of the façade.

The applicant intially planned to submit standard Sign Permits for the wall signage as an interim measure to provide building identification while the adjacent new Volkswagen building is under construction, with a Unified Comprehensive Sign Plan for the entire property planned for submission while the new building is under construction. Staff reviewed the proposed Sign Permit application for the Subaru building signage and concluded that various code definitions determined that the proposed wall signage consisted of four (4) signs, which was in excess of what was allowed.

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 was not directly to each question (Exhibit D), therefore staff has provided passages from the applicant below as they relate to the questions.

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

   Applicant Responses:
   "The nature of the zone in which the property lies is C-4 highway commercial. As you are aware the property is on the north side of the city. The neighboring properties are a mixture of commercial, educational, and governmental. The neighbors to the south are the Dover Mall and Dover Downs. To the north are Delaware State Police, Sonic and Wawa. Across the street is Delaware State University, the former Tiger Direct, HH Gregg, Lowe's, CF Schwartz Toyota, Chick-Fil-A and a hotel."

   Staff Response:
   The C-4 (Highway Commercial Zone) allows a wide variety of commercial uses, including automobile sales and repair. Most other large automobile dealerships on DuPont Highway in Dover are zoned C-4 also. Freestanding pylon signs and generous wall signage is typical of businesses located on highway corridors such as DuPont Highway in order to identify businesses and provide easy wayfinding to drivers in this busy commercial corridor.

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

   Applicant Responses:
   (Refer to applicant's response to #1)

   Staff Response:
   The character of the surrounding area is a mix of commercial, retail, and other uses as is typical a divided highway "strip" corridor.

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

   Applicant Responses:
   "If we are granted a variance to allow four wall signs and a variance of six feet to allow Subaru sign to be nine feet from the property line, this would not seriously affect the neighboring properties. The subject property was developed over 40 years ago as a multiple franchise automobile dealership. At one time the Carlson family had Volkswagen, Audi and Subaru in this location. The current owner is trying to redevelop the property with the existing building being Subaru only and building a new Volkswagen facility."

   Staff Response:

Staff concurs that the proposed signage does not impose a serious effect on neighboring properties and uses. The removal of the existing non-conforming pylon signs (sited too close together) and replacing them with the proposed pylon signs gives an updated and less cluttered presentation. Dover Mall's signage is located significantly south of the subject property. In the event of a reconfigured north entrance to Dover Mall, the Dover Mall property will still have significant road frontage on which to locate new signage, if they choose to do so, without being within the 50-foot "exclusion zone" of the new Winner Subaru/Volkswagen pylon signs.

The placement of four (4) wall signs, exceeding the allowed two (2) per frontage, could be addressed through a Unified Comprehensive Sign Plan.

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:
"At one time, three double face brand signs were on this location. Today there are two pylon signs with signage on the building. The current plan is to re-locate the brand signs to meet the City of Dover Exclusion Zone and to re-locate the placement of the Subaru sign out of the drive lane. The placement of the Volkswagen sign will be in front of the new Volkswagen facility. The existing Subaru facility that is being remodeled is over 40 years old and has challenges with setbacks inherent to older properties in the city. If the restrictions are not removed, the exceptional practical difficulty would be getting people to drive around the facility safely and finding their way around the facility."

Staff Response:
The location and setback of the existing facility does propose challenges with regard to locating a new pylon sign since the existing building is closer to the road. Locating such a sign at the required 15 foot setback near the proposed entrance could potentially introduce conflicts with vehicle circulation.

However the exceptional practical difficulties standard has not been fully demonstrated. Even with a sign sited at the required 15 foot setback, it appears that there would be more circulation space in front of the existing structure than the proposed new structure. The type of sign proposed may introduce burdens that other sign types may not. For example a monument sign could be sited near the entrance. The required setback for a monument sign is 10 feet. There are alternative locations on the site, such as the northwest corner of the property, where a pylon sign may be able to be installed while complying with the 15 foot setback requirement.

Staff finds no exceptional practical difficulty for the wall signs since the Planning Commission can address the issue through the established Unified Comprehensive Sign Plan process.

Variance Recommendations:
Staff recommends approval of the variance related to the pylon sign for reasons as follows:

- The variance for the Subaru pylon sign setback reduction from 15 feet to 9 feet would be in keeping with the character of the zone. The replacement of two non-conforming signs, and the placement of a new Volkswagen pylon sign farther south on the property would be an improvement over what currently exists.

Staff does not recommend approval of the variance related to the wall signage on the Subaru building for reasons as follows:

- The submission of a Unified Comprehensive Sign Plan for review and approval by the Planning Commission is the proper process for obtaining this additional signage.

Advisory Comments:

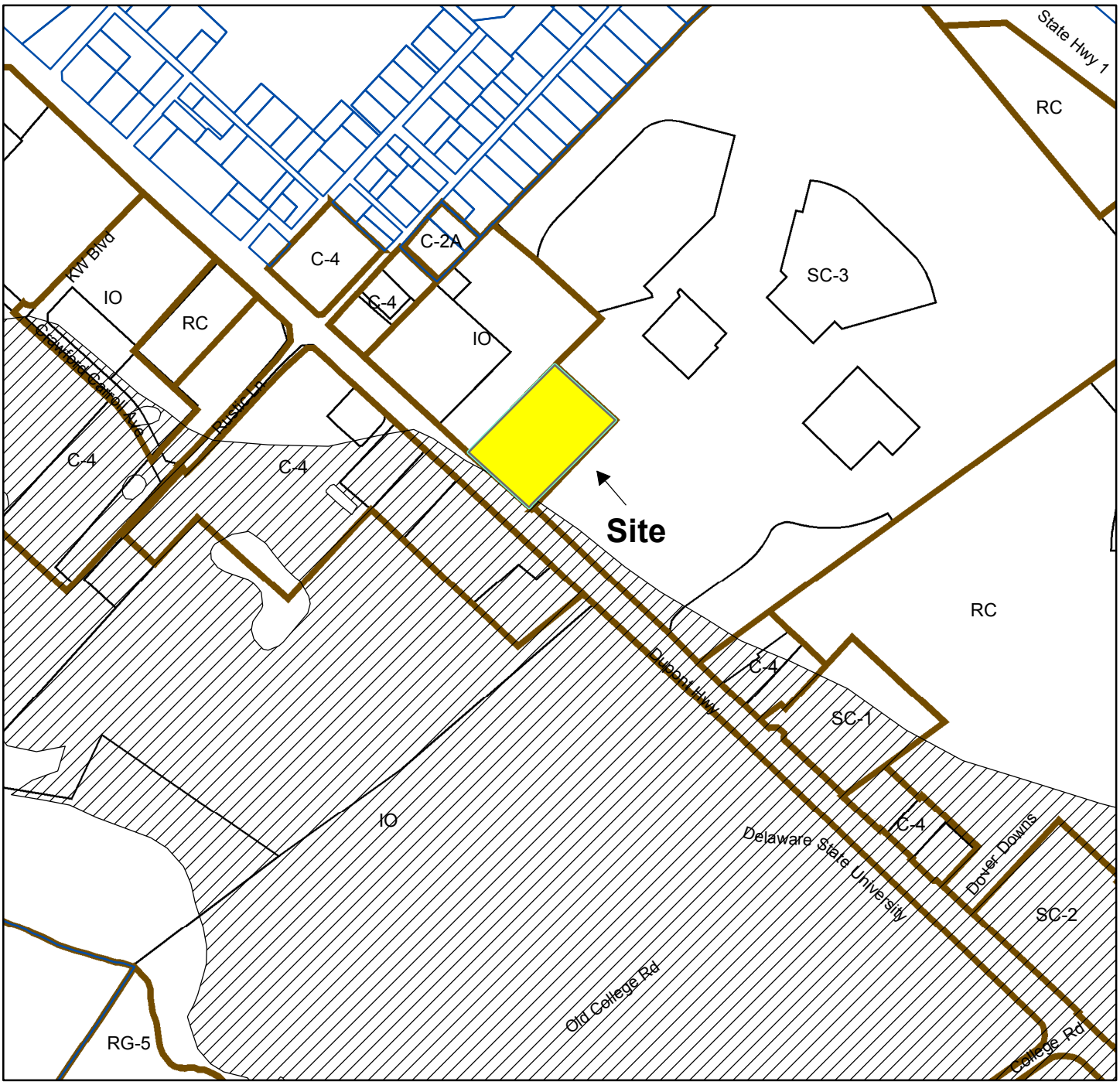
- Information presented on Exhibit B pages B-8, B-9, and B-10 are not part of this variance request, and no action regarding the approval or denial of that signage presented will be part of this action.
- Variances become null and void if work has not commenced within one (1) year of the date the variance was granted. At present there is no provision for extension.

City of Dover

Department of Planning & Inspections

Exhibit A

Application No.: V-15-05



Plan Title: New Winner VW/Subaru Showroom Signage
Address: 1387 N DuPont Hwy
Parcel ID: ED-05-057.00-01-15.00-000
Variance Type: Area Variance, Signage
Subject Parcel Zoning: C-4 (Highway Commercial Zone)
Owners: 1387 DuPont Highway LLC
Date: 3/2/2015

Legend

- Subject Property
- Zoning
- Dover Parcels

N
W E
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0 435 870 1,740 Feet

City of Dover

Board of Adjustment

March 18, 2015

V-15-06

Location:	623 Fulton Street
Applicant/Owner:	AVA Commercial LLC % Michael H. Harrington, Sr.
Tax Parcel:	ED-05-076.08-01-13.00-000
Application Date:	February 13, 2015
Present Zoning:	IPM (Industrial Park Manufacturing Zone)
Present Use:	Vacant parcel, used as parking for adjacent parcels
Proposed Use:	Parking for adjacent parcels
Reviewed By:	Bill Cook, Planner I
Variance Type:	Area Variance
Variances Requested:	Variance from material requirements for surfacing of parking areas and access drives.

Project Description

The property is at 623 Fulton Street located on the north side of Fulton Street west of the railroad tracks between Ridgely Street and the railroad tracks. The site is currently not occupied by structures. According to information submitted by the applicant and stated later in the "Responses to Criteria", the site has been used as off-street parking for the use of the adjacent parcels and uses. Staff notes that the properties to the east and south of the subject property appear to have common ownership with the applicant. The majority of the subject property is surfaced in crushed stone and there is an entrance from Fulton Street. This improvement was made in recent months without authorization from the City. It was identified by Code Enforcement staff and a violation (14-4464) was issued. This application was initiated as a result.

The applicant is requesting an area variance from the requirements of *Zoning Ordinance,*Article 6 §3.6 related to the requirements for surfacing of parking areas and access drives.

Adjacent Zoning and Land Use
A Zoning Map exhibit (Exhibit 1) prepared by staff is attached to this report showing the property and surrounding zoning. The applicant has also provided "Exhibit A" showing the boundary of the property and surrounding properties, and "Exhibit B" showing photographs of the subject property and street views showing the surrounding context.

The subject parcel is zoned IPM (Industrial Park Manufacturing Zone). The adjacent properties have various commercial and industrial uses distributed among three (3) different zoning designations. The property to the east of the subject property, addressed as 601 Fulton Street, is zoned C-3 (Service Commercial Zone). A Conditional Use Site Plan (C-09-08) was approved by the Planning Commission at its meeting of November 16, 2009. This plan to allow a medical transport company to occupy a portion of the existing building, which was zoned M (Manufacturing Zone) at the time. There are other properties zoned C-3 nearby.

The property to the west, addressed as 641 Fulton Street, is zoned IPM and is occupied by a residence. A large property to the north is zoned IPM. The south side of Fulton Street across from the subject property is zoned M (Manufacturing Zone).

Code Citations: Parking
The parking requirements for the IPM zoning district are found in *Zoning Ordinance,* Article 4 §4.16. The requirement is one (1) parking space per 800 S.F. of floor area or one (1) per employee whichever is greater.

The parking requirements for C-3 zoning district are found in *Zoning Ordinance,* Article 4 § 4.15. The requirement is one (1) parking space per 300 S.F. of floor area or one (1) per employee whichever is greater.

Many surrounding uses may be non-conforming as it relates to parking requirements since businesses and uses have changed over time without the requirement for site plan development.

The requirements for drainage and surfacing of parking areas are given in the *Zoning Ordinance*, Article 3, §3.6. The Code excerpt is as follows:

Article 6 Section 3.6 Drainage and Surfacing

(a) All open permanent parking areas and access drives shall be properly drained and all such areas shall be provided with paved asphalt, concrete or other hard, paved, dust free surfaces.

(b) All permanent parking areas shall be enclosed with upright concrete curbing at least six inches in height. The planning commission may relax this requirement for a portion of a parking area when there is a demonstrated need to convey Stormwater to a proposed or approved Stormwater management area. Curbing shall not be required for loading areas, handicapped access and for parking spaces accessory to a one family or two-family residence (see also article 6, section 5.3).

The current text language pertaining to draining and surfacing in Article 6 §3.6 has been part of the *Zoning Ordinance* since its adoption by City Council on September 13, 1999.

Per *Zoning Ordinance* Article 6 §3.3, accessory parking for a principal use is permitted on the same lot, or another lot, provided that all required spaces are located within 150 feet walking distance of the lot containing the principal use. Such parking spaces shall conform to the regulations of the district in which they are accessory, and are subject to conditions through deed restriction that bind the owner to maintain the required number of spaces.

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:
   "The property is located in the Industrial Park Manufacturing (IPM) zone to the west of the railroad tracks. This location is bordered on the north by unimproved lands of William Humphreys & Company, on the east by other lands of Ava Commercial, LLC, on the south by Fulton Street, and on the west by a vacant residential dwelling (zoned IPM). Ava Commercial, LLC also owns the property across the street on the south side of Fulton Street."

   Staff Response:
   The subject property is located in an industrial zone. The parking area supports the adjacent industrial and commercial uses.

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

   Applicant Responses:
   "Besides the adjacent dwelling, this portion of Fulton is industrial/commercial in nature. The property to the east is the home of Prime Care Medical Transport (601 Fulton Street) and a mechanics shop. The property across the street on the south side of Fulton Street is Gede Insulation (37 Ridgely Street)."

   Staff Response:
   The parking area on the subject site supports the adjacent uses. Many adjacent uses also have on-site parking.

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

   Applicant Responses:
   "Please refer to Exhibit A. Ava Commercial, LLC intends to redevelop the subject property, Parcel 14.00, and is in negotiations to acquire Parcel 12.00. This area is in a "transition" phase at this time because redevelopment plans are not yet finalized. However, there is an immediate need to accommodate parking for employees of the surrounding businesses. Therefore, crush and run gravel was placed as a less permanent surface as opposed to asphalt. Gede Insulation and Prime Care Medical Transport combined have a significant number of employees and the demand for off-street parking

is high. Approximately 20-25 vehicles use the parking area on a daily basis. The remaining vehicles park on Fulton and Ridgely Streets. Prior to the creation of the parking area, the only parking spaces available were on both sides of Fulton and Ridgely Streets. This made it more difficult for the ambulances to quickly and safely access Division Street."

Staff Response:
The area consists principally of older industrial and commercial uses that likely do not comply with current requirements for parking. The allowance of a stone parking area would not adversely affect these uses. Fulton Street dead-ends at the railroad tracks, and the area is not an area with high visibility.

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:
"There will be a parking component to the redevelopment of this area. This gravel parking solves an immediate parking need for the existing businesses to accommodate their employees. If the area variance is not granted, approximately 20 to 25 more cars will park along Fulton and Ridgely Streets. This will place an increased burden on all businesses in the area to accommodate employees and safely gain access to Division Street."

Staff Response:
Staff concurs that the area will likely redevelop over time however such a timeline cannot be predicted. Allowing the stone parking area provides off-street parking for existing businesses until the area redevelops. The requirement for asphalt and curbing makes establishment of off-street parking for existing businesses and uses costly.

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

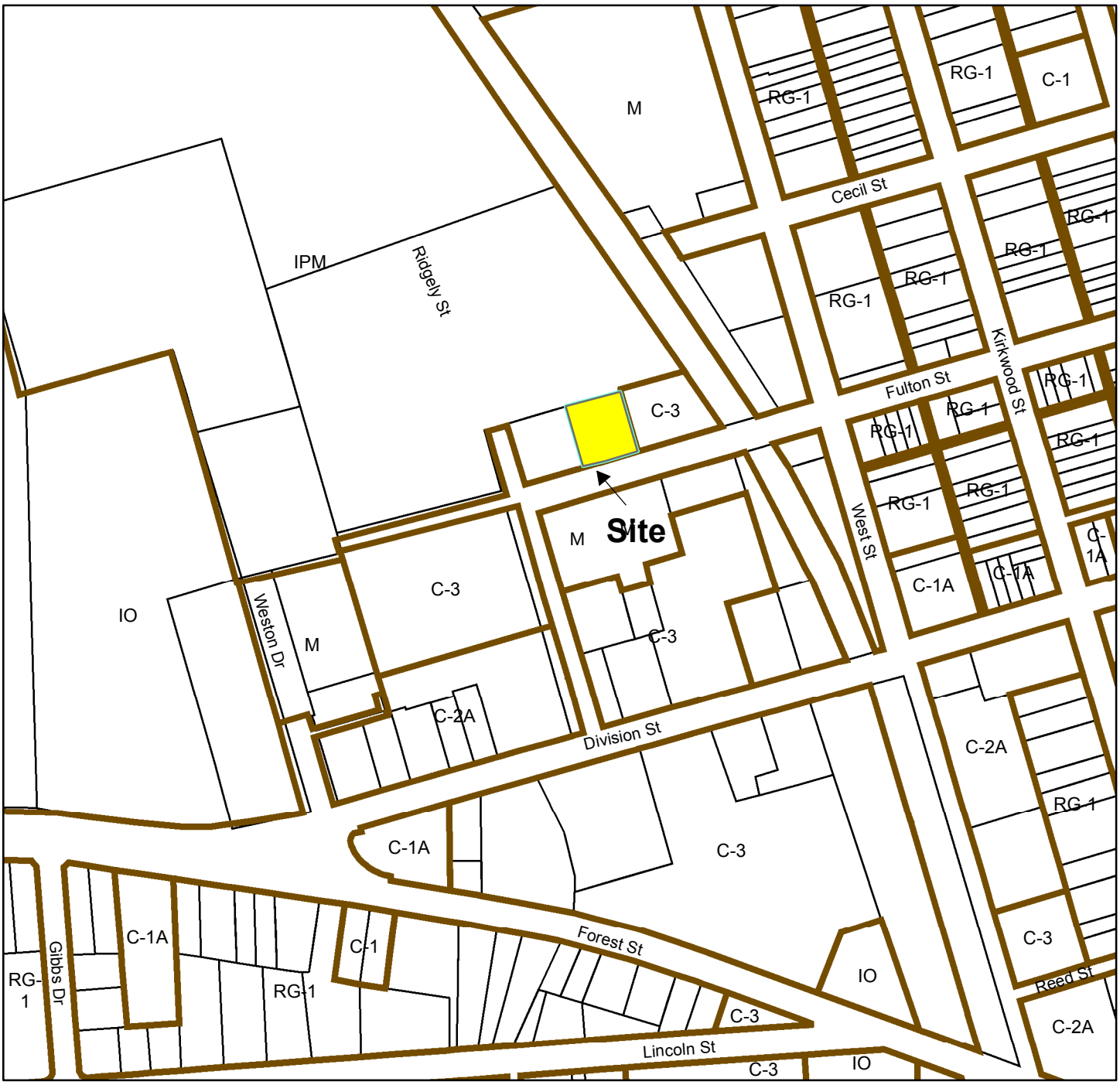
- The use of stone for parking is not inconsistent with the nature of similar industrial areas where such non-conforming surfaces exist.
- The use of stone for parking on this site does not pose aesthetic, health/safety, or drainage issues. The site is on a dead-end street surrounded by industrial and commercial uses, and is not visible from principal thoroughfares.
- The parking area does not serve the general public and is intended for use by employees of the surrounding commercial properties.

City of Dover

Department of Planning & Inspections

Exhibit 1

Application No.: V-15-06



Plan Title: Lands of AVA Commercial LLC
Address: 623 Fulton St
Parcel ID: ED-05-076.08-01-13.00-000
Variance Type: Area Variance, parking surface
Subject Parcel Zoning: IPM (Industrial Park Manufacturing Zone)
Owners: AVA Commercial Highway LLC
Date: 3/2/2015

Legend

- Subject Property
- Zoning
- Dover Parcels

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