CITY OF DOVER BOARD OF ADJUSTMENT
AGENDA
Wednesday, June 18, 2014 at 9:00 AM

City Hall Council Chambers
15 Loockerman Plaza, Dover, Delaware

ROLL CALL

APPROVAL OF AGENDA

APPROVAL OF MINUTES OF May 21, 2014 Meeting

NEW BUSINESS

Applicant #V-14-07
547 Pennsylvania Avenue. Nicholas Adams has requested a variance from the requirements of Article 4 §4.1 of the *Zoning Ordinance* to allow the construction of an addition to encroach into the front yard setback. Subject property is zoned R-8 (One Family Residence Zone). The Tax Parcel is ED-05-068.17-01-26.00-000. The owner of record is Nicholas A. Adams.

OLD BUSINESS

Applicant #V-14-06
328 North DuPont Highway. Kalpkish, LLC has requested a variance from the requirements of Article 4 §4.14 of the *Zoning Ordinance* pertaining to the front and rear setbacks. The applicant proposes subdividing the property into two parcels, front and rear. The new subdivision line would run between two existing buildings. Subject property is zoned C-4 (Highway Commercial Zone). The Tax Parcel is ED-05-068.13-01-79.00-000. The owner of record is Kalpkish, LLC c/o Kishor C. Sheth. *This application was heard on May 21, 2014 by the Board of Adjustment. At that meeting the public hearing was closed and action deferred. The applicant has filed case SB-14-04 with the Planning Commission, but the hearing schedule is to be determined.*

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
May 21, 2014

A Regular Meeting of the City of Dover Board of Adjustment was held on Wednesday, May 21, 2014 at 9:00 A.M. with Vice Chairman Ericson presiding. Members present were Mr. Hufnal, Colonel Ericson, Mr. Senato, and Mr. Keller. Chairman Sheth was absent due to a conflict of interest.

Staff members present were Mrs. Townshend, Mrs. Purnell, Mr. Cook, and City Solicitor Nicholas Rodriquez.

APPROVAL OF AGENDA

Mr. Keller moved to approve the agenda as submitted, seconded by Mr. Senato and unanimously carried 4-0. Chairman Sheth was absent due to a conflict of interest.

APPROVAL OF THE REGULAR BOARD OF ADJUSTMENT MEETING MINUTES OF MARCH 19, 2014

Mr. Senato moved to approve the meeting minutes of March 19, 2014 with the necessary corrections, seconded by Mr. Keller and unanimously carried 4-0. Chairman Sheth was absent due to a conflict of interest.

OPENING REMARKS CONCERNING DEVELOPMENT APPLICATIONS

Mrs. Townshend, Director of Planning and Community Development stated that the meeting would be conducted in accordance with the approved agenda. She reviewed the procedures for the meeting. She noted that approved variances expire after one (1) year if the approved project has not commenced; that all public notice for the application on this agenda were completed in accordance with code requirements; and the meeting agenda was posted in accordance with the Freedom of Information Act requirements.

NEW BUSINESS

Applicant #V-14-06:

328 North DuPont Highway. Kalpkish, LLC has requested a variance from the requirements of Article 4 §4.14 of the *Zoning Ordinance* pertaining to the front and rear setbacks. The applicant proposes subdividing the property into two parcels, front and rear. The new subdivision line would run between two existing buildings. Subject property is zoned C-4 (Highway Commercial Zone). The Tax Parcel is ED-05-068.13-01-79.00-000. The owner of record is Kalpkish, LLC c/o Kishor C. Sheth.

Mr. Cook, Planner I, submitted the following items for the record: staff report, site plan, photos, exhibit email, and a letter submitted by the applicant.

The legal notice was published in the Delaware State News on May 11, 2014, 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: Mr. Glenn Mandalas, Attorney on behalf of Kalpkish, LLC Owner.

Attorney Mandalas stated that they were seeking a variance for the Super 8 Motel. There is a portion of the property that has a restaurant and the wine and spirit store that fronts on the highway and the hotel has frontage on Oak Lane. The applicant is seeking to subdivide the property for various reasons to include his desire to make improvements to the business and remain competitive in the market with other similar businesses. The applicant is requesting a variance from the rear yard setback for the restaurant and the wine and spirits portion of the property. It would be a variance from 10 feet or the building height to approximately 3 feet or less, which is a 7 foot variance to the rear of the businesses that front on DuPont Highway. They are also requesting a variance from the side yard requirement for the motel property. The side yard of the motel property is the portion that backs up to the restaurant and wine and spirits. The variance is from a 25 foot side yard setback to 16.8 feet. This would be 8.2 foot variance request. If approved the variance would commit them to seek a subdivision, but nothing at the property is planned to change. The configuration of the building will remain the same. Under the banking industry for the financing terms for motel type properties are significantly different than the financing terms for other types of commercial endeavors. Jan Jenkins Senior Vice President and the Chief Lending Officer of the First National Bank of Wyoming had commented on this during their discussion. When he inquired about the distinction between hotel properties verses some other personal endeavors, she responded by stating that "the restaurant and the liquor store are rented and produce cash flow. They produce sufficient cash flow to service their respective debt (the debt the bank would hold on those buildings). That makes those properties more attractive to the bank and consequently we would provide a more attractive interest rate. The motel does not cash flow and even with the rental income from the liquor store and the restaurant would not cash flow. You can always look at the motel as a spec building every night. You don't know whether there will be sufficient tenants in your motel each night to service your debt. By subdividing out the restaurant and the liquor store with their respective cash flow, those properties are graded higher by the bank and are not looked at as troubled debts. The motel is another story, but the bank at least gets a portion of the total debt upgraded to a performing loan."

Exhibit
Email from Jan D. Jenkins

Attorney Mandalas also discussed a case of WAWA verses New Castle County Board of Adjustment. He stated that the case would add application to the variance request that has been made today. The WAWA convenient store was seeking to upgrade its facility by adding fueling stations. Some of the New Castle County environmental regulations prohibited WAWA from putting in the underground gasoline tanks in that particular area. WAWA argued that there were other convenient stores in the area that had grandfathered gasoline tanks and because of that WAWA had the inability to compete with other convenient stores who had the fueling stations. New Castle County argued that the variance in that instance was a use variance requiring a more difficult unnecessary hardship standard. Today we are seeking an area variance. WAWA was arguing in contrast with New Castle County that it was an area variance. It has a less burden and exceptional practical difficulties. The court acknowledged that the WAWA variance request did not fit neatly within the use or the area categories. Therefore it analyzed the variance request

under the undue hardship test and exceptional practical difficulties test. The reason it is relevant is because of the comments made relating to the exceptional practical difficulties test. The first being that in the context of a use variance, economic hardship alone is not in of itself sufficient to justify the granting of a variance. When looking at the WAWA application in the context of an area variance the court made some more refine observations in the context of an on-going commercial business. When reviewing an area variance request the Board must look to whether a literal interpretation of the *Zoning Law* results in exceptional practical difficulties of ownership. There is something peculiar about owning this commercial endeavor that creates exceptional practical difficulties. The court further noted that economic benefit and/or hardship may constitute exceptional practical difficulties for the purpose of an area variance (which is being considered today) where the change sought is minimal. This is the first time that he was aware (this is a 2005 case) that a court has said in the context of an area variance where the change is minimal and contributes to economic benefit or competitiveness. The court was looking at whether or not a business could compete with other similar businesses in the area. "The economic hardship or competitiveness can only serve as a sole basis for the variance where the change is minimal. The court concluded that WAWA proposed addition of a fueling station was indeed minimal because in the current market place many convenient stores provided pumping facilities for their customers. The WAWA proposal would not change the character of the district. The court concluded by stating that economic competition is valid concern for an area variance. So, how does that case apply to what we are considering today in the context of a hotel, restaurant, and wine and liquor store? We have the burden of proving exceptional practical difficulty today. As Staff indicated and the WAWA case confirms that economic hardship alone cannot form the basis for granting a variance. However, as the WAWA case is instructive in it shows that economic competition
(the ability to compete in the market place), which is different than economic hardship, can form the basis for granting an area variance, but again the change has to be minimal. As we have demonstrated here if the variance is not granted the restaurant and the wine and liquor (spirit) store will be subject to the same unfavorable financing terms as the motel. Our ability to compete with other restaurants and spirit stores has been and will continue to be significantly diminished because of the burden of the motel financing requirements that they were required to live under because the other businesses are attached to the motel property. Not only will the change in this case be minimal but there will be no change. The building will look exactly as they look now, no reconfiguration of the structure; the character of the neighborhood will remain exactly as it is. So, where we have economic competitiveness as an issue and not plain economic hardship, and the change is indeed minimal. The court and WAWA demonstrates that it is sufficient to demonstrate an exceptional practical difficulty for the purpose of an area variance. He mentioned the four criteria and analysis from Staff. The legal standard is satisfied and the economic competitiveness will be hindered if the variance is not granted in the ability to make normal improvements to the business which are permitted uses will be diminished in the absent of a variance. With the ability to obtain more attractive financing you can see enhancements in the area of the neighborhood simply because there would be more money available to do improvements.

Responding to Mr. Keller's question of whether there would be any testimony by Mr. Gregory Scott, Attorney Mandalas stated no, unless there were some technical questions.

Representative: Mr. Gregory Scott, Professional Engineer, Scott Engineering Inc.

Mr. Gregory Scott was sworn in by Mr. Rodriquez.
Responding to Mr. Keller's question whether he had any presentation, Mr. Scott stated no.

Responding to Mr. Keller's question regarding the Site Plan dimension, and the minimal area involved with the request for the rear setback line for proposed lot number one (1) there were a couple of dimensions given on the plan at westerly corner of 7.0 foot +/- offset and a 7.2 foot +/- offset, he was thinking it would be a minimal 3 foot +/- request, Mr. Scott stated that the dimensions shown on the plan are from the main structure of the building at the first floor level off the proposed property line so the closet is 7.0 feet from the proposed property line. There is an overhang on the second story that has the balcony that projects over which would actually be closer. He stated that he did not have the dimensions, but they would be anywhere probably between 0-3 foot off the line. He would need to go back and calculate exactly what the setback distance would be. The line is certainly flexible.

Colonel Ericson stated if the Board of Adjustment approved 3 foot and it turned out that only 2 or 0 foot was needed then you would need to come back before the Board of Adjustment, therefore he would need the exact number.

Mr. Scott stated that originally the client wanted to hold the sidewalk that was there at one time as the setback. The client would want to go as close as 0 feet to the front building property line. When the line was placed they were not at 0 feet. He stated that they probably would be within ½ foot of the property line with the overhang of the second story.

Responding to Mr. Keller's question whether the request for the variance for the rear yard setback on that property would be 0 – ½ feet, Mr. Scott stated that the setback requirements would be 10 foot the height of the building. He stated that he could accommodate up to 1 foot easily. If they stay at 0 as a variance then whatever they have off of that is what was meant.

Responding to Mr. Keller's question whether he was correct that it is currently 7 and/or 7.2 feet off, Mr. Scott stated for the first floor. The overhang is even closer than that.

Responding to Mr. Keller's question whether the measurement is from the overhang or from the face of the structure, Mrs. Townshend stated that you would need to account for the overhang. If you allow for a 1 foot rear yard it would be able to accommodate that. If anything would move it would be the lot line.

Responding to Mr. Hufnal's question if it is closer than 1 foot then the survey would have to be adjusted or is there no room for adjustment, Mr. Scott stated that there is room for adjustment.

Responding to Mr. Hufnal's question if it is closer than 1 foot then he could move the line to make it one foot, Mr. Scott stated correct.

Responding to Mr. Keller's question whether the data column on the plan is reflects that the total area of the tax parcel is 3.35 acres and lot one (1) if a variance was approved as proposed indicates an area of 0.80 acres and the residual parcel noted as such would have a proposed of 3.35 acres, he is correcting that it should probably be the 2.55 acres, the difference between eight tenths of an acre and 3.35 total, Mr. Scott stated correct. Lot one (1) would be the smaller acre.

Responding to Mr. Keller's question whether the submission and commentary regarding Oak Lane status. It is indicated at a 50 foot width. Were they aware of any actual active dedication for Oak Lane at the 50 foot width? If Oak Lane was a parcel of a recorded subdivision, Mr. Scott stated that they have not found any record of a subdivision plan showing Oak Lane or any easement. They have not done an exhaustive title search of the property. There was a survey performed by Gerald Donovan & Associates in 1999 that was very vague on the area that he has shown as cross hatch between Oak Lane and this property indicating that it was residue lands of Louis Edgell that he retained. It was also between the little stub street that went up to this property to prohibit access coming across from there. Looking at the properties in the vicinity of Oak Lane and the surrounding areas they could find nothing that indicated that the residue parcels existed. Again, although they have not done an exhaustive title search on the property, but the monumentation that was found for the adjourning property lines actually butt right up to the property line for Kalpkish.

Mrs. Townshend stated that it was looked at by Staff and there was a discussion at the pre-application meeting about Oak Lane and whether it could be used as frontage. The original application that was submitted did not acknowledge that it was frontage. Staff looked at some of the history that was added to the report. Oak Lane is on the City's street list of a street maintained by the City. There are a number of places in the City where formal dedication did not happen for whatever reason. In the cases where the City has maintained the right-of-way as a City street for a number of years then it is considered a City street. Typically it is an excess of 20 years. The City has been maintaining it since the 1960's. In the 1960's the property was annexed into the City. From the time this property has developed the City has been maintaining the street. Therefore, we consider it a City street based on that.

Responding to Mr. Keller's question whether for acceptance if there was any formal City process or criteria that would be involved in acceptance of a street or land zoned by some entity that is seeking City acceptance, Mrs. Townshend stated that the City has a formal dedication process and it is typically with newer subdivisions. There are a number of places around the City that predate current processes where it is a City maintained street, City owned street used as such City funds to pave it and keep it up and formal dedication for whatever reason did not happen. These were the things that happened in the 1960's and 1970's. Because it has been consistently maintained by the City it is considered a City street.

Mr. Keller stated that these types of reservations for property protection from buffers are not uncommon to him that he has seen through the years and he wanted to know if there was an active act of dedication by virtue of a plan by the underline fee holder which he could only presume was Lewis Edgell whereby he retain a reservation and if there was any dedication subject to this reservation. It would play into whether or not this residual parcel (parcel to the larger of the two) as proposed would perhaps be without frontage as a legal matter, not a maintenance matter. Responding, Mrs. Townshend stated that Staff did not do an exhaustive search for dedications, but Staff did look at the history. Also responding, Mr. Rodriguez stated that he agreed with Mrs. Townshend that the City has it by adverse possession of the use for over 20 years and he did not think that was a question. The reservation by Mr. Edgell would be destroyed by adverse possession based upon the use of the City for 20 years. He certainly agrees with the research done by Mrs. Townshend.

Responding to Mr. Hufnal's question whether it was because of the use and the maintenance performed over the years by the City of Dover, Mr. Rodriguez stated yes, that is correct.

Responding to Mr. Keller's question if any action the Board of Adjustment took or gave consideration to for this application the residual parcel is noted on the plan would be considered to have Oak Lane frontage, Mr. Rodriguez stated correct.

Responding to Mr. Senato's question whether he would presume that 7.0, 7.2, 0-1/2 feet are speculative on what the applicant want in the approval of the current meeting. Are they definite as to exactly what is needed, Mr. Mandalas stated that for clarity as to the rear yard lot one (1) they are requesting a one (1) foot of a rear yard setback.

Responding to Mr. Senato's question that there is no question on the figures and the applicant is asking for one (1) foot, Mr. Mandalas stated correct.

Responding to Mr. Keller's question of the data column on the plan item #13 the cross access easement is hereby granted to parcel one (1) and to the residual parcel for the purpose of egress and ingress, and parking with the clarification on Oak Lane he thought that item #13 may be very pertinent if there was not public access from Oak Lane, but as the property exists today the major access to the rear hotel is via the northerly open area in any event. Is there any standard for cross access easements as to language or acceptance, Mrs. Townshend stated no, as long as it is noted on the plan, the Planning Office does not typically dictate the language for cross access easement.

Responding to Mr. Keller's question whether he could contemplate ownership and engineering certification signatures on the plan to come to the City, Mrs. Townshend stated yes, the next step in the process would be that it go before the Planning Commission and as part of the review that Staff does for the Planning Commission there is detailed review of the data column. Any correction that needs to be in the data column will be a part of the DAC (Development Advisory Committee) report and once the corrections that are required coming from Planning Commission, then they would submit their sealed plans that would be signed by the engineer and owner of record. The City would then sign it and it can be recorded.

Responding to Mr. Keller's question of the Staff report on page two (2) in the code citation breakdown box with what is required in the C-4 *Zoning* and the requested lot one (1) residual lot, he was not sure if they were requesting a 324.8 foot width or depth side yard, the only thing that he saw pertinent was the side yard which requires a 25 foot side yard and the applicant is requesting a 16. 8, Mrs. Townshend stated that the only area that the Board of Adjustment would need to make a decision on is the residual parcel regarding the side yard and parcel one (1) regarding the rear yard which is noted as two feet in the table, but if it was less than two feet in the table we would look at one foot. Staff put all of the bulk requirements in the table so that you would know where it rates with the requirements.

Responding to Mr. Keller's question whether it appeared that they were requesting those specific dimensions which are not the case, Mrs. Townshend stated no.

Mr. Mandalas stated that the 16.8 feet from the plan that is shown on the table is taken from the corner of the building and there is an overhang. The dimension should be taken from the overhang. He asked if this was correct, responding Mrs. Townshend stated correct.

Mr. Mandalas apologized as this is extremely important to this application. If it is not 16.8 feet what would they need to accommodate for the balcony; responding to Mr. Mandalas, Mr. Scott stated that without the drawing he could not state 100%, but he felt confident that within 1 foot they could make the line work from the overhang.

Responding to Vice Chairman Ericson's question if the Representative wanted to delay the meeting until next month so that the applicant could have exact measurements on both, Mr. Scott stated that based on the applicant's requirement to get the variance application done before the Planning Commission.

Vice Chairman Ericson stated that this is not the consideration, the consideration is having the information accurate and the Board of Adjustment does not want to give something that you do not need or do not want. If you are unsure of both measurements he would feel much more comfortable if you would present the Board of Adjustment with the exact measurements.

Mr. Senato stated that based on his previous comments and what he has heard his suggestion would be to defer the application until next month because as in the past there have been too many times that applicants have come up with speculative figures and now we have another one and he cannot clear in his mind to come up with exclusive answers to exactly what these figures are. He would like to have the exact figures.

Vice Chairman Ericson stated that he concurred with Mr. Senato thoughts.

Mr. Mandalas questioned if there was anything else the Board of Adjustment wanted to see the next time, Mr. Keller stated that if the motion passes he think that it would be appropriate to have all the references of dimensions and area, notations, on the two-story brick and block building which in essence the motel behind the restaurant where the 16.8 +/- feet is shown as well as the left side of the drawing 17.0 feet he questioned if the dotted line was the face of the building and the solid line was the overhang, responding to Mr. Keller, Mr. Scott stated correct.

Mr. Keller asked if it could be labeled for clarity when the dimension is corrected.

Mr. Senato stated that the Board of Adjustment's action needs to be as specific as possible so they can make a definite conclusion as to what is going on rather than speculation.

Mr. Keller stated that under the data column note #2 that he read, he questioned what improvements were on the site that are not shown, Mr. Scott stated curbing and gutter. He stated that not all the building was shown, they located physically the buildings in the vicinity of proposed variance, and they did not physically locate the back corners that are far away from that area. They are located based on plans that they had previously from aerials. They do not have physical dimensions from the property lines. They do not fall under the area of request.

Responding to Mr. Keller's question whether he was familiar with the Jerry Donovan survey of 1999, Mr. Scott stated correct.

Responding to Mr. Keller's question whether there were any improvements shown on that survey that is not reflected on the plan as above ground improvements, Mr. Scott stated that what is shown is that there were some changes in some of the connection between the buildings, the pool was removed, in the rear of the property some buildings were demolished and there is a path.

Responding to Mr. Keller's question whether in his estimation that there are no improvements not shown on this plan submission that would play into the requested variance offset, Mr. Scott stated correct.

Mr. Senato moved that application V-14-06 be deferred until next month in order to have exact measurements and dimensions for the overhang of both buildings and any changes. The motion was seconded by Mr. Hufanl and unanimously carried 4-0.

Vice Chairman Ericson declared the public hearing open.

There being no one wishing to speak, Vice Chairman Ericson declared the public hearing closed.

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

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

Meeting adjourned at 9:59 A.M.

Sincerely,

Maretta Savage-Purnell
Secretary

City of Dover

Board of Adjustment

June 18, 2014

V-14-07

Location:	547 Pennsylvania Avenue
Applicant:	Nicholas Adams
Owner:	Nicholas Adams
Tax Parcel:	ED-05-068.17-01-26.00-000
Application Date:	May 19, 2014
Present Zoning:	R-8 (One Family Residence Zone)
Present Use:	Single Family Residence
Reviewed By:	Tracey Harvey
Variance Type:	Area Variance
Variance Requested:	Allow a structure to encroach into the front yard setback.

Project Description

The applicant is requesting a variance from the *Zoning Ordinance* of Article 4 Section 4.1 Zoning Bulk and Parking Regulations. Specifically, they are requesting a variance to allow a structure to encroach into the front yard setback by 11 feet. The required front yard setback is 25 feet; this request would result in a setback of 14 feet. The proposal is to construct a two (2) car garage attached to the existing house.

Adjacent Land Uses

The adjacent properties are residential uses. The properties to the north, south, and west are all zoned R-8 (One Family Residence Zone) where the attached garages are located in the front or side entry of the properties. The easterly side of the property backs up to Silver Lake.

Code Citation

Zoning Ordinance Article 4 Section 4.1
Bulk and parking regulations for one-family residence zones [are as follows]:

	R-8
Minimum required:	
Lot area	8,000 SF
Lot width (ft.)	70
Lot depth (ft.)	100
Front yard (ft.)	25
Side yard (ft.)	10
Total Side yard (ft.)	20
Rear yard (ft.)	30
Off-street parking	
Per dwelling unit	2
Maximum permitted:	
Building height	
Stories	2½
Feet	35
Lot coverage	35%

Zoning Ordinance, Article 12 definition of front yard: An unoccupied area fully open to the sky between the street line and the setback line. The minimum width of the front yard is equal to the setback.

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. In order to grant a variance, the Board must determine in that exceptional practical difficulties exists.

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 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 Response:

This property lies in the R8 zone on the southwestern shore of Silver Lake at 547 Pennsylvania Avenue in the City of Dover. This is a detached single family house in a quiet and nicely kept residential community. The existing house is a single story, wood frame constructed with a partial basement. The house currently does not have a garage. It appears an attached garage had existed and is currently closed in for additional living space by previous owners. The house is surrounded on each side and across the street by single family houses with attached garages.

Staff Response:

The property is zoned R-8 (one Family Residence Zone) and the use as a single family residence which is permitted in the zone. The homes in the neighborhood have attached garages in the front or on the side of the properties. The rear of the property backs up to Silver Lake which is identified as a water body in the *Zoning Ordinance* Article 5 §11.221. Water bodies and wetlands shall be left as permanent open space. No development, filling, piping or diverting shall be permitted, except for required roads as outlined in Article 5§ 11.22 in the *Zoning Ordinance*. The setbacks for water bodies require all buildings, structures, and impervious surfaces to be setback at least 100 feet from the top of bank from wetland areas greater than 0.25 acres in size and from all water bodies as outlined in Article 5§ 11.222 of the *Zoning Ordinance*.

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

Applicant Responses:

The character of the immediate vicinity of this house is a quiet and nicely kept residential community. Pennsylvania Ave is wide and adequately allows for vehicular traffic. This property backs up to Silver Lake along the easterly property line. There is no rear yard vehicle access. The rear yard of the property is stepped with wood decks, patios, brick walks, retaining walls and planting beds. There is a small brick patio, a wood deck/dock, and concrete bulkhead at the lake shoreline.

Staff Response:
The area is a single family residential neighborhood. The minimum front yard setback requirement within the R-8 Zoning District is 25 feet. The properties located on the east side of the street have their driveways and garages located in the front of their properties as there is no rear yard access for vehicles. Silver Lake is located along the property lines of these properties.

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

Applicant Responses:
If this restriction was removed there is no negative impact to this community. Other surrounding homes have attached garages with front yards and paved drives. There would be approximately 24 feet of front yard between the side of the garage facing the street and the street curb. Two off street parking spaces are proposed to be provided similar to surrounding properties.

Staff Response:
There would not be a negative affect on the neighboring properties as the construction of the garage in the front of the property would be compatible with the other homes in the community which also have garages at the front of the house. Even with construction, a lawn area and driveway access with parking would exist.

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:
This property owner desires to make normal improvements to the use of his property permitted under the R8 zoning ordinance. The proposed 2 car garage improvement fits in with and enhances this residential community. Previous property owners enclosed a former attached garage increasing interior living space leaving no provision for indoor vehicle storage or covered parking. Unlike his neighbors this restricts this property owner to parking two vehicles outdoors in all weather conditions.

Staff Response:
The denial of the variance would not create an exceptional practical difficulty as a garage is considered to be an amenity and not a necessity. There is no exceptional practical difficulty as the owner has the option to convert the additional living space that was previously converted from a garage back to a garage and not encroach into the front yard setback. With the construction of the proposed garage, the property will exceed the 35% lot coverage requirements for the R-8 (One Family Residence Zone). The existing impervious areas including the proposed garage results in a total lot coverage of 38.25% exceeding the 35% lot coverage requirement by 3.25%.

Variance Recommendations:

Staff recommends denial of the area variance for reasons as follows:

- The applicant has not demonstrated exceptional practical difficulty. The applicant has a paved driveway for parking; a garage is not a necessity. The property provides two off street parking spaces.

- The applicant has the option of converting the increased living space back into a garage without encroaching into the front yard setback.

- The construction of the proposed garage and the existing impervious areas exceeds the 35% lot coverage requirement for the R-8 (One Family Residence Zone).

- Approval of the requested variance may set a precedent for other residential property owners to encroach into the setback.

William Byler Jr.

Architect, Inc.

CITY OF DOVER AREA VARIANCE REQUEST

RESPONSE TO CRITERIA

Area Variance Request – 11 foot front yard setback in a R8 zone.

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

This property lies in a R8 zone on the southwestern shore of Silver Lake at 547 Pennsylvania Avenue in the City of Dover. This is a detached single family house in a quiet and nicely kept residential community. The existing house is single story, wood frame constructed with a partial basement. The house currently does not have a garage. It appears an attached garage had existed and is currently closed in for additional living space by previous owners. This house is surrounded on each side and across the street by single family houses with attached garages.

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

The character of the immediate vicinity of this house is a quiet and nicely kept residential community. Pennsylvania Ave is wide and adequately allows for vehicular traffic. This property backs up to Silver Lake along the easterly property line. There is no rear yard vehicle access. The rear yard of the property is stepped with wood decks, patios, brick walks, retaining walls and planting beds. There is a small brick patio, a wood deck / dock, and concrete bulkhead at the lake shoreline.

There are other single story and two story residences surrounding this property to the north, south, and west. Each with front or side loaded single or two car garages with paved driveways. Garages are not out of the ordinary for this community.

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

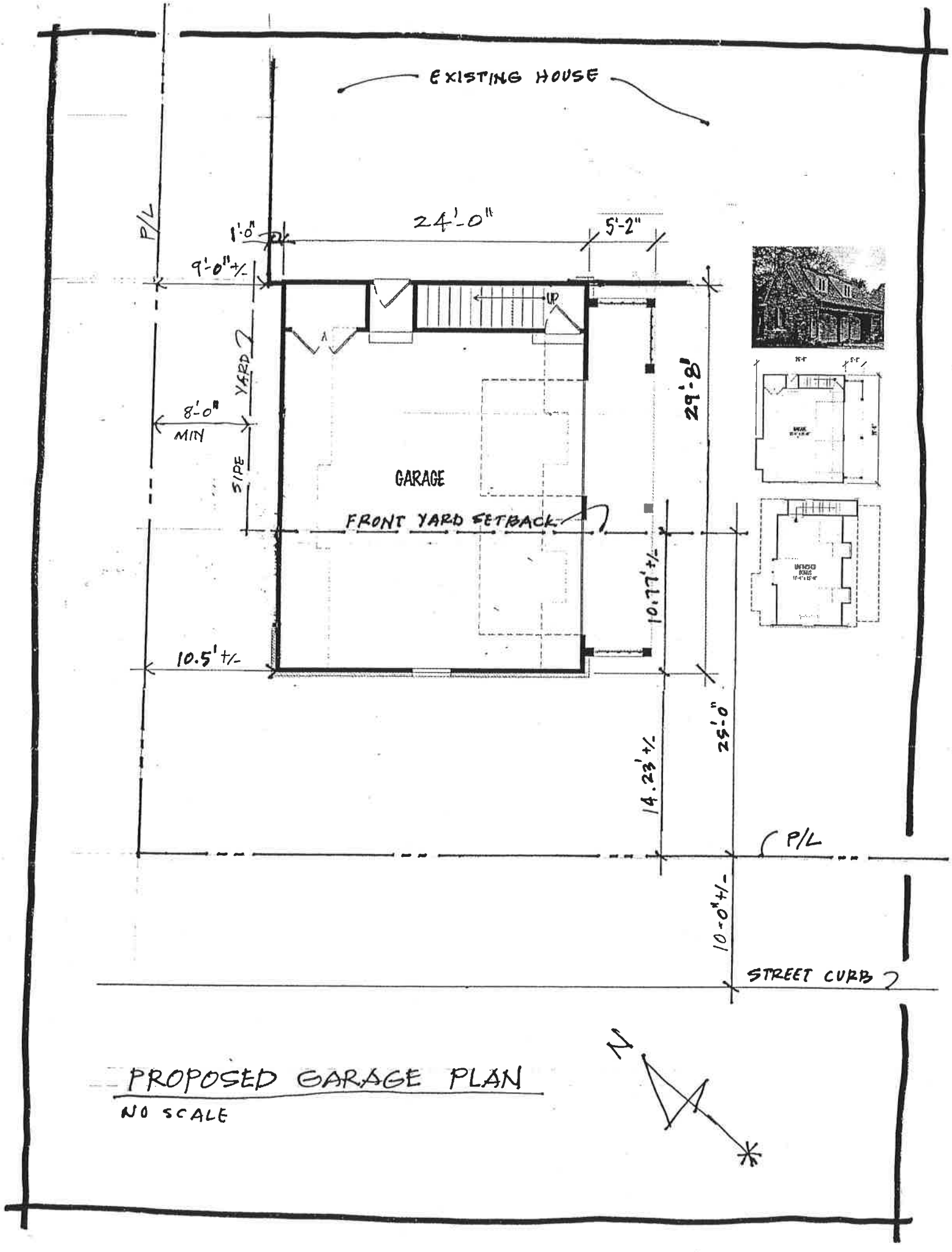
If this restriction was removed there is no negative impact to this community. Other surrounding homes have attached garages with front yards and paved drives. There would be approximately 24 feet of front yard between the side of the garage facing the street and the street curb. Two off street parking spaces are proposed to be provided similar to surrounding properties.

P.O. Box 104 • Kenton, DE 19955

Phone: (302)653-3550 • Fax: (302)-653-6595

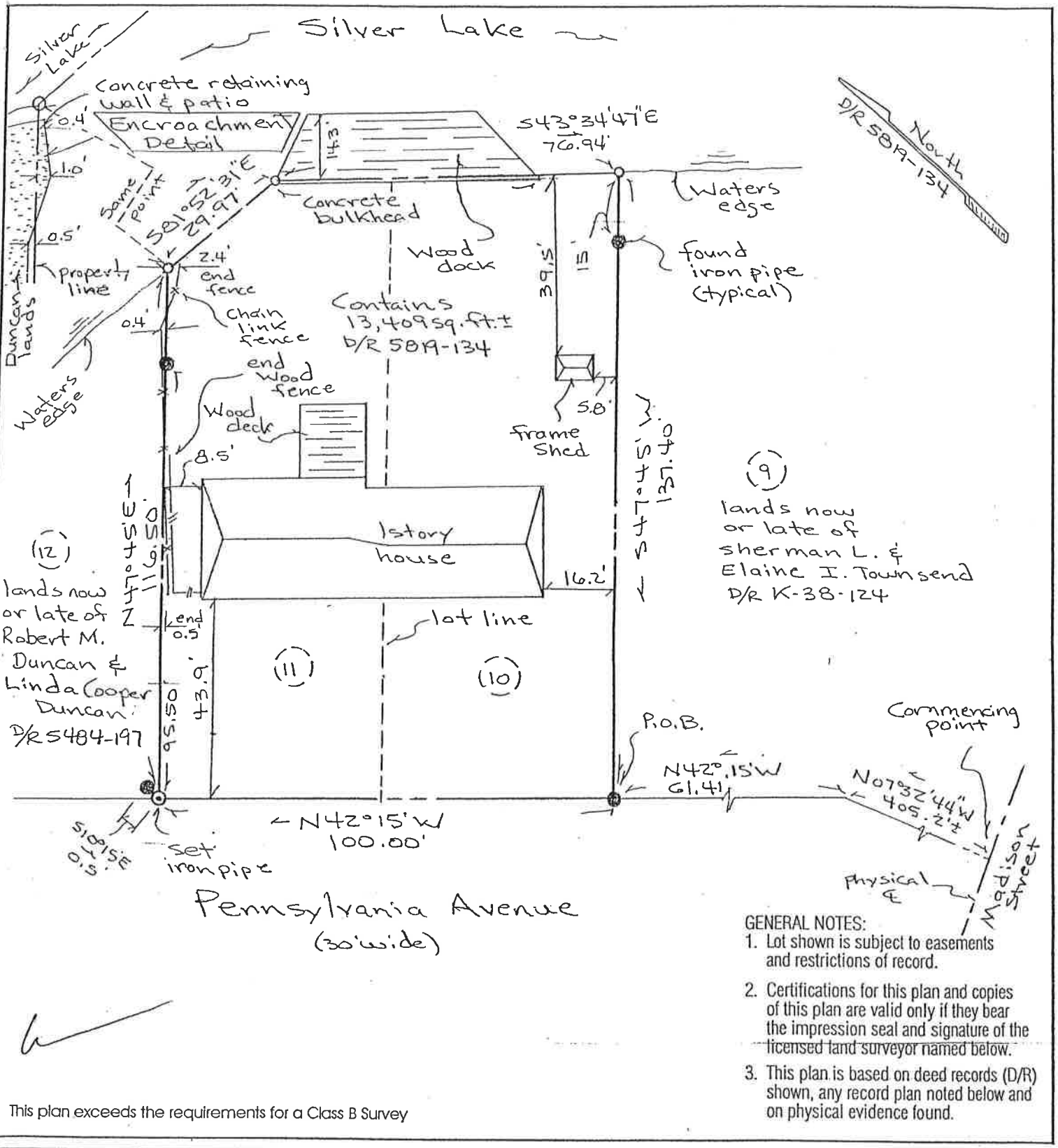
4. Whether, if the restriction is not removed, the restriction would create unnecessary hardship or exceptional practical difficulty for the owner in his efforts to make normal improvements of that use of the property that is permitted uses under the provisions of the zoning ordinance.

This property owner desires to make normal improvements to the use of his property permitted under the R8 zoning ordinance. The proposed 2 car garage improvement fits in with and enhances this residential community. Previous property owners enclosed a former attached garage increasing interior living space leaving no provision for indoor vehicle storage or covered parking. Unlike his neighbors this restricts this property owner to parking two vehicles outdoors in all weather conditions.



PROPOSED GARAGE PLAN

NO SCALE



GENERAL NOTES:

1. Lot shown is subject to easements and restrictions of record.
2. Certifications for this plan and copies of this plan are valid only if they bear the impression seal and signature of the licensed land surveyor named below.
3. This plan is based on deed records (D/R) shown, any record plan noted below and on physical evidence found.

This plan exceeds the requirements for a Class B Survey

Boundary Survey Plan
of property to be conveyed to:

Nicholas A. Adams

Thomas B. Emory Development - Lots 10 & 11
(PB#1 Pg#102) - #547 Pennsylvania Avenue
City of Dover - Kent County - State of Delaware

McClure Associates INCORPORATED

Professional Land Surveying
140 Mifflin Road
Dover, Delaware 19904
(302) 674-4558

Drawing number- MA: 07-04-12

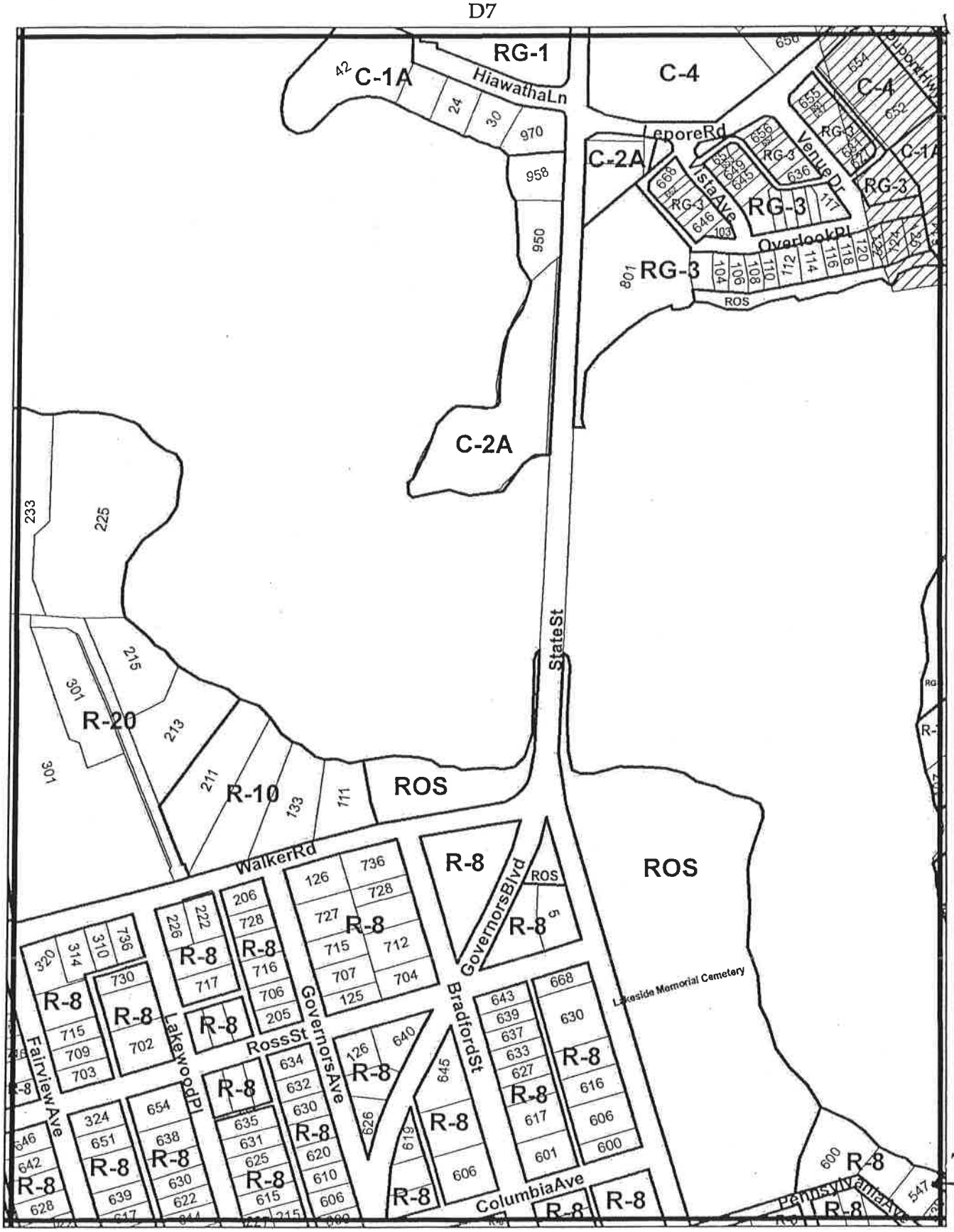
Drawing by- W.M'Clure

Scale- 1" = 30'

Date- 7/18/12

EDOS - 68.17-01-26

FB# 107 pg. #60



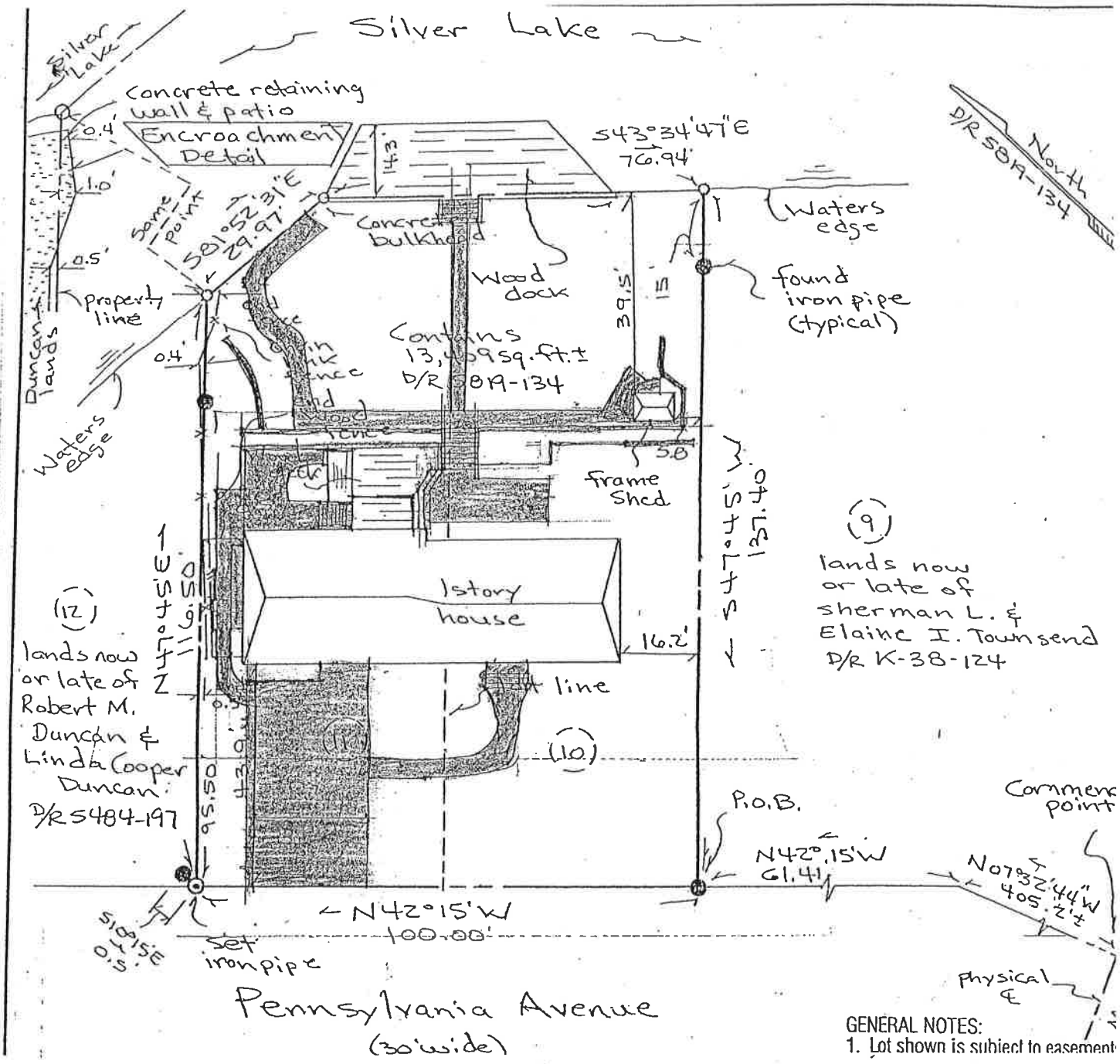
City of Dover Zoning Map Book

E7

4-11-13

N

0 75 150 300 450 600 Feet



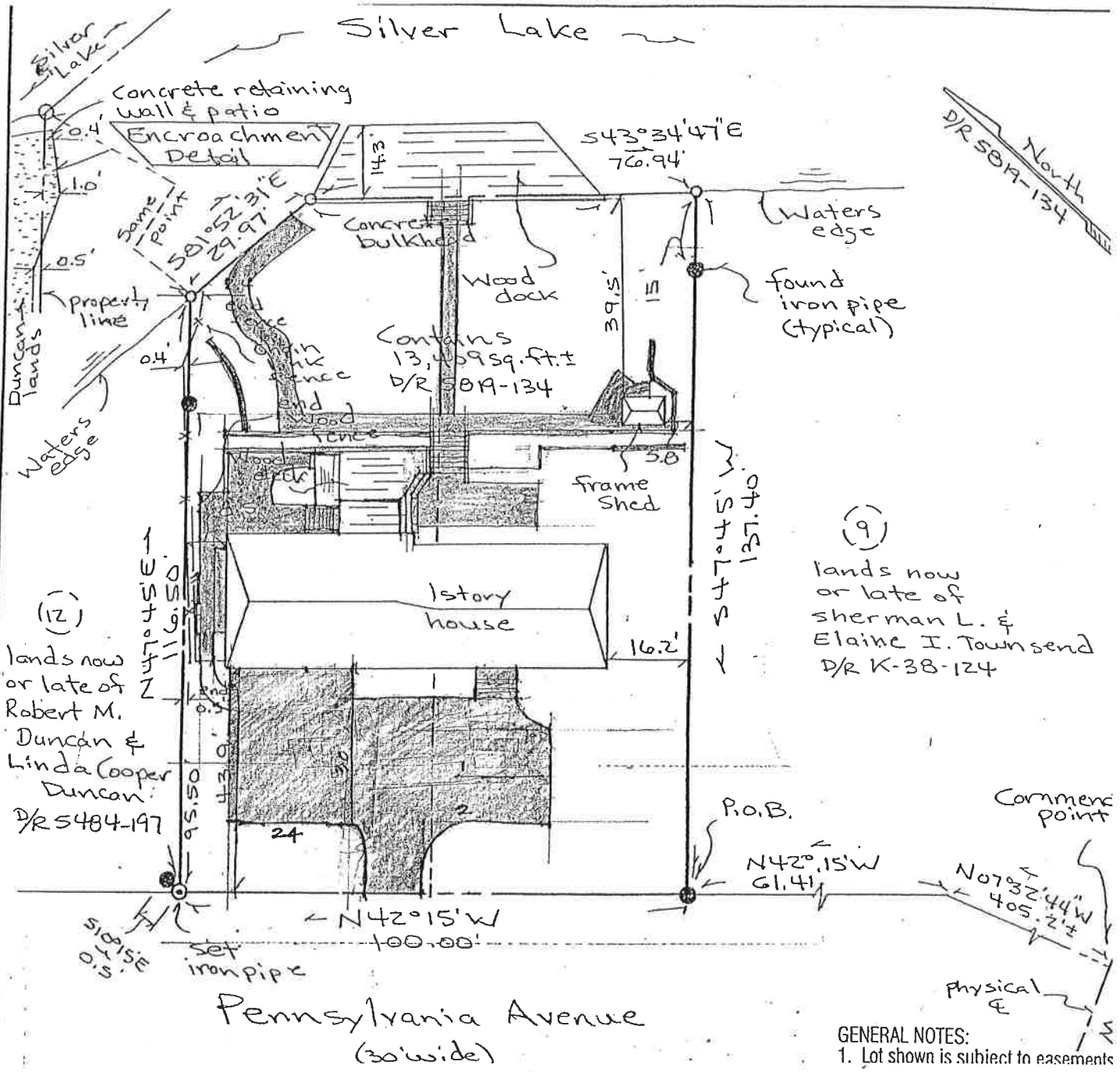
GENERAL NOTES:
1. Lot shown is subject to easement

SITE PLAN MODIFIED BY WILLIAM BYLER JR
TO SHOW OTHER AREAS OF IMPERVIOUS SURFACES (EXISTING)

1" = 30'

EXISTING LOT SIZE = 13,409 SF

EXISTING IMPERVIOUS SURFACE = +/- 4250 SF = 31.7%



GENERAL NOTES:
1. Lot shown is subject to easements

SITE PLAN MODIFIED BY WILLIAM BYLER JR
TO SHOW OTHER AREAS OF IMPERVIOUS SURFACES (PROPOSED)
1" = 30'

EXISTING LOT SIZE = 13,409 SF

PROPOSED IMPERVIOUS SURFACE = ±4490 SF = 33.5%

ALLOWABLE LOT COVERAGE = ~~40%~~ (5363 SF)
35%

Section 4.10. R-20, R-15, R-10, R-8, RM-1, RM-2 planned neighborhood design option and recreation and open space zone (ROS).

Bulk and parking standards for PND within the following zones: R-20, R-15, R-10, R-8, RM-1, RM-2, as well as Bulk and Parking Standards for the ROS zone are as follows:

		One-Family Detached Dwellings	One-Family Lot Line Dwellings	Duplex Dwellings	Multiplex Dwellings
Minimum requirements per dwelling unit:					
	Lot area (sq. ft.)	7,500	6,000	4,500	4,000
	Lot width (ft.)	70	65	40	
	Lot depth (ft.)	100	90	100	
	Off-street parking spaces	2	2	2	2
Minimum requirements per building:					
	Front yard (ft.)	25	20	25	30
	Minimum side yard (ft.)	8	—	—	10
	Total side yards (ft.)	20	30	10	30
	Rear yard (ft.)	30	40	30	20
	Lot width (ft.)				80
	Lot depth (ft.)				80
Maximum permitted:					
	Building height				
	Stories	2½	2	2½	3
	Feet	35	24	35	35
	Lot coverage	40%	45%	45%	50%
	Number of dwelling units per building	1	1	2	5

(Ord. of 6-10-1996; Ord. No. 2010-12, 6-4-2010)

V-14-06 328 North DuPont Highway

Kalpkish, LLC has requested a variance from the requirements of Article 4 §4.14 of the Zoning Ordinance pertaining to the front and rear setbacks. The applicant proposes subdividing the property into two parcels, front and rear. The new subdivision line would run between two existing buildings. Subject property is zoned C-4 (Highway Commercial Zone). The Tax Parcel is ED-05-068.13-01-79.00-000. The owner of record is Kalpkish, LLC c/o Kishor C. Sheth. *This application was heard on May 21, 2014 by the Board of Adjustment. At that meeting the public hearing was closed and action deferred. The applicant has filed case SB-14-04 with the Planning Commission, but the hearing schedule is to be determined.*

- A copy of the staff report presented at the 5/21/2014 Board of Adjustment meeting is provided.

- A copy of the letter dated 6/2/2014 from the applicant in response to requested revisions is provided.

- A copy of Plan Sheet C-1 with revisions dated 5/30/2014, submitted to the Planning Office on 6/2/2014 is provided.

- If you have questions, please contact Planning Staff at 736-7196.

City of Dover

Board of Adjustment

May 21, 2014

V-14-06

Location:	348 North DuPont Highway
Applicant/Owner:	Kalpkish, LLC c/o Kishore C. Sheth
Tax Parcel:	ED-05-068-13-01-79.00-000
Application Date:	April 11, 2014
Present Zoning:	C-4 (Highway Commercial Zone)
Present Use:	Hotel, Retail
Reviewed By:	Bill Cook, Planner I
Variance Type:	Area Variance
Variance Requested:	*Zoning Ordinance*, Article 4, Section 4.15 - Front Yard, Rear Yard

Project Description:

The applicant is proposing to create two (2) parcels of land from an existing 3.35 acre +/- parcel, on the site currently occupied by Super 8 Motel. The parcel would be subdivided into a 0.80 acre +/- parcel ("Lot #1) with frontage on North DuPont Highway, and a 2.55 acre +/- parcel with frontage on Oak Lane. Two buildings exist on the current lot. A new lot line running in a north-south direction is proposed between the existing building located at the front of the existing lot, and the building located at the rear of the existing lot.

The applicant is requesting an area variance from the *Zoning Ordinance* Article 4 §4.15 for the reduction of the rear yard for "Lot 1" from 10 feet or equal to building height to approximately 3 feet or less. For the "Residual Parcel" to be located in the rear of the current property, the applicant requests a reduction of the right side yard requirement from 25 feet to 16.8 feet +/-.

The original application submission requested waivers for the rear yard requirement for "Lot #1," and the front yard and lot width requirements for "Residual Parcel." At the time it was believed that the "Residual Parcel" would not have frontage on Oak Lane due to a reputed strip

of residual lands ranging from approximately 1 foot to 20 feet located between Oak Lane and the subject property. Prior surveys showed the strip of land as reserved by Louis Edgell. The applicant was unable to substantiate through deed research that the strip of land currently exists, believing that the reserved lands were extinguished through right-of-way dedication for Oak Lane, and that the subject property does in fact front along Oak Lane. Staff research found that the subject lands were annexed to the City in December, 1963. Aerial photographs dating before that time show a driveway or (likely unimproved) road leading to the vicinity of the houses that remain today. Staff determined that since the full 50 foot right-of-way is fully maintained by the City, is on official City maps, and is on the Department of Public Works list of maintained public streets, for purposes of this application the subject property has frontage on Oak Lane.

This application is associated with application SB-14-04 for a minor subdivision of 348 North DuPont Highway. This case is scheduled to be heard before the Planning Commission at its meeting of June 16, 2014, pending the outcome of the variance application.

Adjacent Land Uses

The property is located on the southwest side of North DuPont Highway and is zoned C-4 (Highway Commercial Zone). The adjacent property to the north, Silver Lake Apartments, is zoned RG-2 (General Residence Zone) and has a private entrance drive off North DuPont Highway. Nearby properties also zoned C-4 include a Friendly's restaurant immediately adjacent to the subject site to the south, and another commercial property (Sound of Tri-State) located across Oak Lane farther southeast. Four residential properties are located on Oak Lane directly across or visible from the subject property and are zoned R-8 (One-Family Residence Zone).

Code Citation

	C-4 - Required	Requested – "Lot 1"	Requested – "Residual Lot"
Minimum required:			
Lot width (ft.)	150' per building	199.5'	324.8'
Lot depth (ft.)	150'	175.3'	348.4'
Front yard (ft.)	30'	30'	30'
Side yard (ft.)	25'	25'	16.8'

	Rear yard (ft.)	10' or equal to building height: Lot 1 Building= 17.2" Residual Lot Building= 19.3"	<2'	67.3'

Exceptional Practical Difficulties Tests
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.

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

Applicant Responses:
"The property is located within a C4 zone, which is a highway commercial zone, and the properties in this area are of like zoning. The zone in which this property is located includes, as permissible uses, those uses traditionally associated with commercial areas surrounding a well-traveled highway. Such uses include Motels and eating establishments, theaters, offices, and retail establishments. The present uses of the property (which are not proposed to change) are permitted uses, consistent with the nature of the zone."

Staff Response:

The requested variance is consistent with the nature of the zone in which the property lies. The property is zoned C-4 (Highway Commercial Zone), which is the highway zone characterized by a wide variety of commercial, retail, and hospitality uses. The existing motel use is permitted in the zone, and the subdivision of the parcel into two parcels does not impact the present use on the resulting two properties.

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

   Applicant Responses:
   "The present uses of the property complement the character of the immediate vicinity. Restaurants, motels, and wine and spirit stores are prominent on DuPont Highway. In this commercialized zone, the character of the immediate vicinity includes a density of commercial establishments, providing the retail consumer with a multitude of consumer options without the necessity of excessive travel."

   Staff Response:
   The requested variance does not change the character of the immediate vicinity at the present time. The zoning will remain the same and the hotel use, allowed within the C-4 (Highway Commercial Zone), is expected to continue. While single family residences are found across Oak Lane, this condition is not unusual along parts of DuPont Highway where some residences pre-dated commercial development on the highway, as well as annexation to the City.

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

   Applicant Responses:
   "Because there is no proposal to reconfigure the existing structures on the property, there would be no effect on neighboring properties and uses. The proposed variance merely recognizes the present use of the property and permits its continuation."

   Staff Response:
   The applicant proposes continued use of the property as a motel, which would not impact neighboring properties any differently than at the present time. Any future redevelopment of the property would likely initiate Planning Commission review, at such time impacts of such development to neighboring properties or uses would be considered.

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:
   "Given the present nature of the financing industry, if the variance is not granted (and the property is not ultimately subdivided), the owner will have difficulty obtaining financing and making normal repairs and improvements to the motel portion of his property. This

difficulty will be a detriment to his ability to be competitive in the marketplace with other similarly situated motels in the vicinity. If the owner is unable to make such normal and traditional repairs and improvements, rather than maintaining the property as a motel property on a prominent highway in the City, the property could become dilapidated and create a tarnished appearance in one of the City's main corridors."

Staff Response:
Based on the information presented, the applicant wishes to subdivide the property into two parcels to that he can obtain financing to make improvements to the motel. While the consideration of exceptional practical difficulty should not be exclusively financial, the financial difficulty can be considered by the Board in review of a variance application. In this case, the ability to obtain financing to improve the property is used to justify the variance. According to the applicant, the ability to subdivide the property into two parcels would allow the applicant to obtain financing to make improvements to the property. As presented by the applicant, the exceptional practical difficulty relates to ability to obtain financing to improve the existing uses and buildings on the property, not to expand the buildings and uses.

Staff recommends that evidence be presented by the applicant that the ability to obtain financing for improvements to the existing buildings is hindered without the proposed subdivision that requires the requested variances.

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

- The proposed variance would be in keeping with the character of the zone and the surrounding areas and may actually improve the character of the area due to the ability to improve the existing buildings on the property
- There is no development proposed as a part of this variance request, so there would be no detraction from the character of the area.
- The applicant has indicated that his ability to obtain financing to improve the existing improvements on the property could be hampered unless the property can be subdivided.

SCOTT ENGINEERING, INC.
Consulting Engineers • Surveyors • Land Planners

June 2, 2014

Mr. Bill Cook
City of Dover
Department of Planning and Inspections
P.O. Box 475
Dover, DE 19903

RE: Board of Adjustment Application for Variance
Super 8 Motel
348 N. Dupont Highway
Dover, DE
Tax Map Parcel #ED-05-068.13-01-79.00-000
SEI Project No. M-4101

Dear Mr. Cook:

In accordance with your comment letter dated May 21, 2014, we have revised the plan for the upcoming Board of Adjustment meeting on June 18, 2014, and are enclosing eight (8) copies of the plan for your use. The plan has been revised to address your comments as follows.

1. The precise location of each building from the proposed property line has been shown. The location dimensions are based upon the nearest point of each building to the property line, which is the decorative cornice at the top of the building which overhangs the first floor. The proposed or requested rear building setback line for Lot #1 has been shown on the plan. Our client is requesting a reduction down to 1 foot. The proposed or requested right side building setback for the Residual Parcel has been shown on the plan. Our client is requesting a reduction down to 10 feet.

2. The building overhang has been labeled to provide clarity.

3. The acreage has been corrected in the plan view for the Residual Parcel.

4. The acreage for each parcel in the Data Column has been corrected to be consistent with the plan.

If you have any questions or require additional information please let me know.

Sincerely,

SCOTT ENGINEERING, INC.

Gregory R. Scott, P.E

Encl.

Received
JUN 02 2014
Planning & Inspections

22 Old Rudnick Lane • Suite 2 • Dover, Delaware 19901 • Tel.: 302-736-3058 • Fax: 302-736-3059
info@scottengineering.com • www.scottengineering.com