**CITY OF DOVER BOARD OF ADJUSTMENT**
**AGENDA**
**Wednesday, April 3, 2013 9:00 AM**

**City Hall Council Chambers**
**15 Loockerman Plaza, Dover, Delaware**

ROLL CALL

APPROVAL OF AGENDA

APPROVAL OF MINUTES OF September 19, 2012 Meeting

APPROVAL OF MINUTES OF January 16, 2013 Meeting

APPROVAL OF EXECUTIVE SESSION MINUTES OF January 16, 2013 Meeting

**NEW BUSINESS**

**Applicant #V-13-02:**
1004 South State St., ADP Properties, LLC has requested a variance from the requirements of Article 4 §4.14 of the *Zoning Ordinance* pertaining to the side yard and rear yard setbacks.

Subject property is zoned C-2A (Limited Central Commercial Zone). The Tax Parcel is ED-05-077.17-07-21.00-000. The owner of record is ADP Properties, LLC.

**Applicant #V-13-04**
105 North West St., Solid Rock Baptist Church has requested a variance from the requirements of Article 3 §1.14(a)iv of the *Zoning Ordinance* pertaining to the front yard setback for a church.

Subject property is zoned RG-1 (General Residence Zone). The Tax Parcel is ED-05-076.08-03-02.00-000. The owner of record is Solid Rock Baptist Church.

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**
**September 19, 2012**

A Regular Meeting of the City of Dover Board of Adjustment was held on Wednesday, September 19, 2012 at 9:00 A.M. with Vice Chairman Ericson presiding in the absence of Chairman Sheth. Members present were Mr. Senato and Mr. Keller. Mr. Sheth and Mr. Hufnal were absent.

Staff members present were Mrs. Townshend, Ms. Cornwell, Mrs. Harvey, and City Solicitor Rodriguez.

## APPROVAL OF AGENDA

*Mr. Keller moved to approve the agenda as presented, seconded by Mr. Senato and unanimously carried (Hufnal and Sheth absent).*

## APPROVAL OF THE REGULAR BOARD OF ADJUSTMENT MEETING MINUTES OF AUGUST 15, 2012

*Mr. Keller moved to approve the regular Board of Adjustment meeting minutes of August 15, 2012 with the necessary corrections, seconded by Mr. Senato and unanimously carried (Hufnal and Sheth absent).*

## OPENING REMARKS CONCERNING DEVELOPMENT APPLICATIONS

Mrs. Townshend, Director of Planning and Community Development, stated that the meeting will be conducted in accordance with the approved agenda as presented. She reviewed the procedure 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 applications on this agenda was completed in accordance with code requirements; and the meeting agenda was posted in accordance with Freedom of Information Act requirements.

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

## NEW BUSINESS

### Applicant #V-12-10:

100 Campus Drive, Delaware Technical Community College (DTCC) has requested a variance from the requirements of Article 6 §3.11 of the *Zoning Ordinance* pertaining to the maximum number of parking spaces.

Subject property is zoned IO (Institutional and Office Zone). The Tax Parcel numbers are ED05-057.00-01-01.00-000, ED05-057.01-01-08.00-000 and ED05-057.01-01-07.00-000. The owner of record is State of Delaware c/o Delaware Technical Community College.

Mrs. Tracey Harvey, Planner I, reviewed the staff report previously provided to members:

Mrs. Townshend stated that the legal notice was published in the Delaware State Newspaper on September 9, 2012 and the public was notified in accordance with the regulations.

**Representatives:** Mr. Gregory Moore, Becker Morgan Group and Mr. Bill Ayers, Delaware Technical & Community College. Mr. Moore was sworn in by Mr. Rodriguez.

Mr. Moore provided a presentation and reviewed the applicant responses to the Exceptional Practical Difficulties Tests. **(Attachment #1)**

Mr. Moore further stated that the site plan area in question was the Administrative Building off of West Denneys Road. They are proposing to add an additional 5,900 S.F. to the existing building, with a capacity of roughly twenty-seven (27) employees in the administration building. The building is designed for roughly thirty (30) people. He noted that all of the facilities throughout the state are expanding.

Responding to Vice Chairman Ericson question as to whether the aerial photograph was taken when classes were in session, Mr. Moore stated that the aerial photo included in his presentation was taken on July 4, 2007 when the campus was closed.

Mr. Moore stated that this will be a statewide Administration Building and the additional staff would be needed because the facilities are growing in the other three (3) DTCC locations.

Mr. Moore stated that in 2007 the City recognized unused parking in areas such as Lowes and Home Depot and proposed Article 6 §3.11 which limits the total parking to 25% above the minimum amount required. He expressed his opinion that DTCC was different because they built parking to meet their needs and because of this it creates a hardship. The other hardship and code that concerned him was the Institutional Office (IO) Zone that the City Hall, Library, DTCC, and many others are zoned and have the same exact parking requirements. The hardship for DTCC is created because they are compared to many different facilities and are expected to abide by one (1) parking code that represents each individual case.

Mr. Moore compared Delaware State University (DSU) to DTCC, stating that DSU is a residential campus and the calculation for parking was based on the building square footage. All of the residential housing is allowed to have more parking. Freshmen and sophomore students are not allowed to bring cars on campus; therefore, DSU has a lower demand for parking. DTCC has no residential housing, and students either drive or commute by bus which causes the hardship compared to DSU and other facilities.

Mr. Moore further stated that the overall hardship and Exceptional Practical Difficulty is based on the following circumstances. This building, although part of the Terry campus, has a statewide function. The park and ride is a community facility and DelDOT function. If the 200 spaces in the community park and ride area were eliminated, DTCC would be below the thresholds for total parking. The calculations show that if the park and ride spaces were not counted at DTCC and the twenty-two (22) requested spaces were counted, DTCC would be under the maximum parking requirement. He stated that there will be additional staff once the building is expanded; the peak use of the parking lot is during the fall semester; there are times

when cars park on the grass if needed; and there is a parking demand needed at DTCC for the twenty-two (22) spaces.

Mr. Moore stated that he received a letter dated September 18, 2012 from Mr. Dave Truax, Fire Marshal. **(Attachment #2)** The Fire Marshal supports the planned addition of the parking lot on the east side of the Administration Building which would give more access to the building and for staging of fire equipment. The additional parking would create an island for a fire hydrant to be located.

Mrs. Townshend stated that in terms of the parking comparison between DTCC and DSU the IO Zone parking requirement is one (1) space per 300 S.F. of floor area and Article 6 of the *Zoning Ordinance* also provides for parking requirements specifically for colleges and universities that specifies five (5) seats in the main auditorium, cafeteria or gymnasium. This is the standard held by DSU in addition to providing parking for their dormitories one (1) for every three (3) dormitory beds. It is based on the campus and not the building. In the case of DTCC, the parking calculation is based on floor area of buildings.

Responding to Vice Chairman Ericson question whether park and ride parking was included in the DTCC parking calculation, Mrs. Townshend stated that the 1,333 available spaces at DTCC include the park and ride area.

Mr. Moore further stated that there are twenty (20) different uses that fall under the IO Zone and that parking calculation is similar for most of them. However, the parking as specified in the code does not meet the needs for DTCC. There is a hardship in the way the code is written.

Responding to Mr. Keller question if the Administration Building (B-6A) was built at the same time as the rest of the campus and if it was part of the original campus site plan, Mr. Moore stated that he did not know if the present Administration Building (B-6A) was built at the same time as the main campus or if it was part of the original site plan. He stated that it was all contiguous property.

Also responding to Mr. Keller's question, Mrs. Townshend stated that the DTCC campus has evolved over time, and it would take some research to determine when the building was constructed.

Responding to Mr. Keller question whether Mr. Moore knew how the park and ride came to be part of the campus. Mr. Moore stated that he assumed that the land for the park and ride area (based on the survey) was part of the new Scarborough Road from the land that was exchanged between DTCC and DelDOT. He believed it was built as part of the construction of Scarborough Road, but was not aware of the exact details.

Responding to Mr. Keller question whether under the agreement between DelDOT and DTCC, could DelDOT amend the number of spaces dedicated to the park and ride, Mr. Moore stated he was unsure of the details of the agreement between DTCC and DelDOT, specifically as to whether the number of park and ride spaces could be relieved, eliminated, or reduced. One of the variance criteria is to demonstrate whether the surrounding area would be affected by the

allowance of additional parking area. Mr. Moore stated that it will not. This is a heavy traveled area, main commuter road that is surrounded by commercial facilities.

**Representative**
**Mr. Bill Ayers**, Director of Administration at DTCC and representing the owner was sworn in.

Responding to Mr. Keller's earlier question about the various functions in the administration building, Mr. Ayers stated that the administration function related to the Office of the President is college wide. There are similar administrative components located at the Terry Campus to serve the specific needs of the Terry Campus, but the Office of the President serves all of the campuses. He did not know the specifics of the agreement of the park and ride area, but it was an agreement with DelDOT when they acquired some of DTCC land during the Scarborough Road expansion.

Mr. Ayers further stated that for twenty-five (25) years he has served in the administrator capacity at DTCC. He worked at three (3) of the campuses and can attest that parking has been a problem at all of the campuses. His comments were as follows:

1. The college understands city staff forwarding the recommendation to the Board based on standard formulas. Planners need a better way to measure true demand.
2. The college appreciates the environmental impact on watersheds. During the summer DTCC constructed two (2) bio-retention areas. DTCC is a good steward of the land. DTCC would be willing to do something similar in regard to the new parking lot if necessary.
3. DTCC does not like to spend money on parking lots, but would rather spend the money on students' success. The students are customers. Students, guests, and visitors expect available parking when they come on the campus.

Responding to Mr. Senato question regarding how many additional employees would be at the new building, Mr. Ayers stated that there are currently forty-six (46) employees in the administration building. There are numerous employees of the Office of the President that are now housed at the Terry campus who would move to the Office of the President addition, and there are additional positions that will be coming into the new building. He was not sure of the exact number, but estimated approximately ten (10).

Mr. Senato asked how much usage the park and ride lot gets per week. Mr.Ayers estimated the usage of the park and ride lot on average would be approximately 50 vehicles per week. In the parking lot there are currently 234 spaces.

Mr. Senato asked what the distance was between the building addition and the park and ride lot. Mr. Moore stated that the distance is at least 2,000 feet.

Based on the number of spaces typically used in the park and ride lot, Mr. Senato indicated that on a daily average there are 184 spaces not being used that is within roughly a ¼ mile of the Office of the President addition. He asked if there was access to public transportation near the Office of the President. Mr. Ayers stated that the DART buses currently do not have a stop

location around the administration building; however, in the future there may be a possibility of having a stop location. He was not sure of the practicality or the wait time for students using the bus. This would depend on the route they are utilizing which would be a 15-30 minute waiting period.

Mrs. Townshend clarified that the buses are not a campus shuttle system, it is part of the DART transportation system and a schedule is published.

Responding to Mr. Senato question about whether there was a covered bus shelter near the park and ride, Mr. Ayers stated that the stop locations do provide covered seating areas. There are a lot of college wide meetings held in the central conference room at the Administration Building as well as visitors, and he would estimate that there are 10-15 additional vehicles daily. The proposed parking would be used solely for staff and visitors to the Administration Building. The fall semester has the heaviest parking demand. Regular complaints are received from the Office of the President on the Terry campus that students are utilizing the Office of the President parking area while attending class. New signage has been installed at the entrance of the existing lot indicating Office of the President parking only.

Mr. Keller stated that the 234 spaces allocated for the park and ride lot seem to be more than an abundant amount of spaces for that purpose. He questioned whether there could be a specific designation for the twenty-two (22) spaces that are being requested in the parking lots. He stated that there may already be a problem with people not paying attention to signs for designated parking. The ring road is at a very low speed limit and there is signage for the caution of pedestrians. He would not expect safety concerns to be exacerbated in the parking lots and the other common crossing areas.

Responding to Mr. Keller question as to the ability to restrict use of the park and ride lot by the pubic, Mr. Ayers stated that based on the existing agreement with DelDOT, the park and ride lot is accessible to the public and DTCC has no ability to restrict public use of the lot. An estimate of fifty (50) vehicles per day was given; however, if vehicles arrived there would be no way for DTCC to restrict access to those spaces. Mr. Ayers suggested that another agreement could be developed or structures installed to separate the lot. He stated that he was not aware of any initiative taken by DTCC to contact DelDOT to see if any accommodations could be made.

Responding to Vice Chairman Ericson question as to whether the park and ride spaces should be counted toward the DTCC campus parking count, Mrs. Townshend stated that since the park and ride facility can be used by patrons of the campus it cannot be separated, which could support the case for exceptional practical difficulty since DTCC has limited control over the 234 spaces.

Mr. Ayers stated that DelDOT has limited control over the spaces because anyone can park there. There are different factors that affect the daily usage of the parking lot. If the price of gas increased to $5 a gallon he would anticipate see a spike in mass transit usage which would affect the parking level. He stated that there are variables that no one has control over.

Mr. Keller asked how we arrived at the number of 234 spaces allocated for the park and ride. Mrs. Townshend stated that the count of 234 park and ride spaces was provided by the applicant. Each lot is assessed with their own number of parking spaces.

Responding to Vice Chairman Ericson question about the land ownership, Mr. Moore stated that DTCC owns the land (Planning Office Note: the owner of record is State of Delaware c/o DTCC).

Responding to Mr. Senato question about whether the applicant could eliminate the park and ride spaces from the parking count, Mr. Moore stated that the applicant would agree to take the park and ride spaces out and put the spaces to the side; however, staff was including the park and ride spaces in the total number because the park and ride is located on DTCC land. Also responding, Mrs. Townshend stated that the area is used by park and ride, patrons, car poolers, and people who come to the conference center. The 234 spaces cannot be eliminated from the overall parking calculation. She indicated that the Board of Adjustment's role is to determine if the constraints related to the park and ride create an exceptional practical difficulty that would justify a variance as it relates to maximum parking.

Responding to Mr. Keller's earlier question about the number of employees in the building, Mr. Moore referred to the presentation and explained that the cross section would be open office space with cubicles for staff, but that the building would accommodate approximately 30 employees.

*Vice Chairman Ericson declared the public hearing open.*

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

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

*Mr. Senato moved to approve the parking variance for the additional 22 spaces for Application #V-12-10, located at 100 Campus Drive, seconded by Mr. Keller and unanimously carried (Hufnal and Sheth absent).*

*Mr. Keller moved to adjourn the meeting, seconded by Mr. Senato and unanimously carried (Hufnal and Sheth absent).*

**Meeting adjourned at 10:02 A.M.**

Sincerely,

Maretta Savage-Purnell
Secretary

**Attachments to Original Minutes**

**Attachment #1 - Presentation provided by Mr. Gregory Moore Delaware Technical**

**Community College for Parking Variance 9/19/2012.**

**Attachment #2 - Correspondence from Mr. Dave Truax, Fire Marshal, dated September 18, 2012.**

**CITY OF DOVER**
**BOARD OF ADJUSTMENT MINUTES**
**January 16, 2013**

A Regular Meeting of the City of Dover Board of Adjustment was held on Wednesday, January 16, 2013 at 9:00 A.M. with Vice Chairman Col. Ericson presiding. Members present were Mr. Senato, Mr. Hufnal, and Mr. Keller. Mr. Sheth was absent.

Staff members present were Mrs. Townshend, Ms. Cornwell, Mrs. Harvey, Mrs. Purnell, Mrs. Melson-Williams, and City Solicitor Rodriguez.

## APPROVAL OF AGENDA

*Mr. Keller moved to approve the agenda with the necessary changes of the agenda format: To revise the agenda as follows: Discussion of meeting minutes format after the meeting, addition for approval of meeting minutes for September 19, 2012, and reverse the applicant presentation, V-13-01 to be first on the agenda, and V-12-15 to be second on the agenda, seconded by Mr. Hufnal and unanimously carried (Sheth absent).*

## APPROVAL OF THE REGULAR BOARD OF ADJUSTMENT MEETING MINUTES OF November 14, 2012 and September 19, 2012

*Approvals will be discussed after New Business.*

## OPENING REMARKS CONCERNING DEVELOPMENT APPLICATIONS

Mrs. Townshend, Director of Planning and Community Development, stated that the meeting will be conducted in accordance with the approved agenda as amended. She reviewed the procedure 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 applications on this agenda was completed in accordance with code requirements; and the meeting agenda was posted in accordance with Freedom of Information Act requirements.

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

## NEW BUSINESS

### Applicant #V-13-01:

127 South DuPont Hwy., Lin Properties, LLC has requested variances from the requirements of Article 4 §4.15 of the *Zoning Ordinance* pertaining to the front yard and rear yard setbacks.

Subject property is zoned C-4 (Highway Commercial Zone). The Tax Parcel is ED-05-077.06-01-61.00-000. The owner of record is Lin Properties, LLC.

Ms. Janelle Cornwell, Planner II, submitted the following items for the record: staff report, written statements provided by the applicant, and site plan. The legal notice was published in the Delaware State News on January 6, 2013, and that the public was notified in accordance with regulations.

**Representatives:**

Mr. Kyle Burchard, of Harrison French and Associates, and Tim Glass, of Lane Engineering LLC, were sworn in by Mr. Rodriguez, to testify on behalf of Lin Properties LLC.

Mr. Burchard testified that there was an existing convenience store with gas pumps at the location and the proposal was to remove the store and gas pumps and replace with a design friendly, visual appealing 7-Eleven convenience store and fueling center. The adjustment to the site was in conformance with the Comprehensive Plan Design. Handouts of the presentation were distributed to the Board of Adjustment members. The proposed site plan displays the building closer to the intersection and providing landscaping near North DuPont Highway and Loockerman Street, moving the canopy to the rear of the building away from the roadways. Lin Properties LLC is requesting variances for the front yard and rear yard setbacks. There is a DelDOT right-of-way dedication required along the street frontage of North DuPont Highway. The store is coincident with the adjacent properties at the store front in its current location. This creates a variance situation on the front yard of approximately five (5) feet. Due to the requirement of 7-Eleven fuel to have separation between the building and the fuel canopy at sixty (60) feet for appropriate safety distance for allowing the movement of cars backing up from the convenience store, coming through the canopy sixty (60) foot dimension has been set forth across the country as the right measure to keep the customer safe and reduce the number of incidents. This would be the placement of the canopy into the rear yard setback approximately 15 ½ feet.

There is an existing cross access alley that runs behind the property from Loockerman Street. There is a curb cut at Loockerman Street that is thirty (30) feet wide and the property line is set back eight (8) feet from the edge of the entrance. The canopy which is set back two (2) feet from the property line is set back ten (10) feet from the travel way on the cross access easement.

Responding to Mr. Keller question regarding the width of the cross access easement; Mr. Burchard stated that it was variable and was not a specified width, but from the property line to the edge of the parking across from the alley it was thirty-two (32) feet.

Responding to Mr. Keller question if the alleyway was a private access with across easement or was it dedicated right-of-way as a City, Mrs. Townshend stated that it was not a public alley dedicated to the City.

Responding to Mr. Keller question regarding any limitations to the usage as a cross access easement, Mr. Burchard stated that it was a cross access easement and he did not have the details of the cross access easement for the benefit of the shopping center. He stated that he was not sure of the history of the existing gas station.

Responding to Mr. Keller question if the Board of Adjustment could contemplate any restrictions on the usage of the cross access easement with traffic coming and going more frequently with the gas pumps at the rear location or access problems in the future, Mrs. Townshend stated that some of the issues are yet to be determined in terms of going through the entrance plan approval process with DelDOT as to what access they will allow.

Responding to Mr. Senato question as to how could the Board of Adjustment make a decision if DelDOT had not reviewed the entrance plan, Mrs. Townshend stated that the information that was presented to the Board of Adjustment members is based on the discussion with DelDOT. The Board of Adjustment role is to determine whether the variance should be granted based on the legal criteria for a variance and state a municipal code for the one (1) foot at the rear and the 24.85 feet at the front. The Board of Adjustment are determining whether the variance request is consistent with the character of the zone and the area, whether there is an Exceptional Practical Difficulty that will give them few options other than to encroach into setbacks.

Mr. Senato stated that there were two (2) accesses into the building and the one on the south end will be removed and on the north end there will be an egress for automobiles. He wanted to know if there were any problems that may arise with DelDOT that they were not aware of because the application is still in discussion. Responding to Mr. Senato, Mrs. Townshend replied that the application needed a decision from the Board of Adjustment in order for the applicant to proceed with the Site Plan. The applicant cannot go to Planning Commission until there is a decision on the variance. There are always changes to the site following Planning Commission and sometimes based on the Planning Commission decision. In order to utilize a cross access easement for entrance the City will have to work with them through the site plan process to make sure all documentations are in place.

Responding to Mr. Hufnal question regarding the reason why the building was redistributed to the front and the gas pumps in the rear over what was originally there, Mr. Burchard stated because of the size of the store and in order to make it work financially for the development at that particular site. With all the setbacks the existing canopy is currently within the front yard setback and from a visual standpoint it functions better from the streetscape that is more in conformance with the goals of the Comprehensive Plan. The alignment of pumps makes better use of the space for the 7-Eleven fuel requirements or the safety separation between the canopy and the storefront.

Mr. Burchard stated that they have been working on minimizing the setbacks variances to be requested.

Responding to Mr. Keller question regarding what was the act of the dedication of the additional right-of-way by DelDOT or if was it a requirement of DelDOT in order to bring about the new right in and right out on Route 13, Mr. Burchard stated that there was a meeting held with DelDot to discuss any possible requirements that they saw with the entrance closing. Per their master plan there is a widening for Route 13 that will occur in the future.

Mr. Senato stated that it was a small alley and there will be one egress on DuPont Highway and the main traffic will come from East Loockerman Street going into the alley as a usage to get to the pumps. They alley is not very wide and there is another business with traffic.

Responding to Mr. Senato question regarding if the front of the building would face pumps and the rear of the building would face the street, Mr. Burchard replied yes. The elevation that is facing South DuPont Highway with windows and lightning landscaping in front that will try to give a community feel to the coverage. This will close once access that is closest to the

intersection that tends to reduce congestion. There will be an entrance off of Loockerman Street and DuPont Highway. There are no barriers stopping cars from coming into the area from Loockerman Street.

Responding to Mr. Senato question regarding if part of the canopy was encroaching, Mr. Burchard stated that the canopy structure was represented on the handout from the edge of canopy to the property line and the variance was requesting one (1) foot, but it was actually two (2) feet to the property line. There was some distance from the pumps to the property lines and there was another eight (8) feet near the effective through lane and cross access.

Responding to Mr. Senato question regarding if the canopy could be shrunk, Mr. Burchard stated that the rear yard setback was ten (10) feet minimum or equal to the height of the structure. The canopy was 17 ½ feet tall to the top, therefore; the effective setback was 17 ½ feet from the rear property line. The canopy with the set by 7-Eleven standards and to reduce the actual canopy width was not something that can be offered.

Responding to Mr. Hufnal question regarding if the sixty (60) foot distance between the pumps and the building was a 7-Eleven requirement, Mr. Burchard replied yes.

Responding to Mr. Hunfnal question regarding if putting what you want there would cause an Exceptional Practical Difficulty, Mr. Burchard replied yes, to maintain the safety for the customers; it would not be possible to make the development work on this site without the variance.

Responding to Mr. Hufnal question regarding the other building and pumps that they were very close to the front door of the building, Mr. Burchard stated that looking at the handout the white on the aerial with the front represents that configuration. The 7-Eleven convenience store was a primary function of the use that doesn't work because they want to have the canopy away from the building in order to function properly to keep the gas use separate, but still have access to the convenience store.

Responding to Colonel Ericson question regarding if a smaller 7-Eleven convenience store could be built and still meet the code requirements or use the existing store currently on site, Mr. Burchard stated that they needed a store of the proposed size, the building can only go so narrow before it effectively does not work with the interior layout of the store. There is some potential for the width of the building and keeping the same amount of total square footage to work with the program inside.

Responding to Mr. Keller question regarding if the information stated above was done would it make a difference with the locations of the pump stations and/or canopy to the extent of eliminating the need still for a variance for the rear yard setback from the canopy, Mr. Burchard stated not without additional front yard variance. They would be able to reduce the rear yard variance. With the option of eliminating a rear yard variance it would need to be evaluated and come before the Board of Adjustment for consideration of additional front yard variance. This could be amiable and something that could be looked at.

Responding to Mr. Keller question regarding if the landscape was a requirement of the developing plan, Mrs. Townshend stated they are required to plant trees on-site in accordance with the tree plantings requirements and they are also required to have an arterial street buffer at the front of the site. They can request a waiver from the Planning Commission to make the arterial street buffer narrower, but they will need to have ten (10) feet. At the current time the applicant is showing a setback of 24.85 feet. There is a potential to have a larger variance in the front yard to bring it to twenty (20) feet and a smaller variance at the rear of the site. This would give more room along the back edge.

Responding to Mr. Hufnal question if the setback of 24.85 feet could be twenty (20) feet instead, Mrs. Townshend stated from the City perspective in terms of code it would be a reasonable option and you would have less of a variance towards the rear. The total gross variance is the same.

Mr. Hufnal stated that it was not an access in the front and it would make sense to reduce it to the twenty (20) yard setback and bring the back in further so that it does not overlap into the cross easement access.

Mr. Burchard stated that they were not into the cross access at the rear. He suggested that it be moved forward 4.85 feet and this would reduce the amount of the rear variance requested.

Mr. Hufnal stated that they would be eliminating the access in the front which would be landscaped. The 4.85 feet would give more access to the pumps.

Mr. Burchard stated that with the 4.85 feet it would be almost fifteen (15) feet away from the travel way for the cross access easement.

Mr. Senato stated that this would be a better option because there could be problems in the alley with turning due to the width. If you had more footage going towards the front it would give larger vehicles more turning power.

Mr. Burchard stated that it was a variable option that would still work with the site requirements to reduce the rear yard variance and increase the front yard variance by the same amount.

Mr. Burchard further stated that they have talked about revamping the site, facelift, landscaping, conforming with the existing surrounding development, and keeping all mechanical equipment screened on top of the building. Having the canopy at the rear keeps the operation away from the public view, but makes it accessible to the customers with the access points that are being proposed. Shutting down the entrance closer to the intersection ultimately helps the traffic flow. The function of the canopy at the rear is set back far enough to allow for safe movement in and out on the alley side as well as movement on the store side. The concerns with DelDOT access off of Loockerman Street will be addressed. They will need to get the entrance permit approval prior to getting operation license at the site. DelDOT is gate keeping with making sure that all traffic issues are addressed appropriately through their detailed access permit review. They do not envision any surrounding utility issues with the site. They are preserving what is not an official cross access ability for the rest of the shopping center at the entrance to the north. They are blending in with the surrounding development and upgrading it to be more in-conformance

with the Comprehensive Plan. They are willing to work with the considerations about front and rear yard variance to the City satisfaction.
Responding to Mr. Keller question regarding the property to the immediate north if there were any contemplation of adverse impact with other users or cross access easement, Mr. Burchard stated that there is no explicit cross access easement alley that goes to the entrance. It just functions that way. They are not proposing any provision for anyone using that access.

Responding to Mr. Keller question regarding the absent of any formal cross access easement to the north that they do not contemplate any barrier construction or curbing, Mr. Burchard replied no, this was all open asphalt except for the tanks which is concrete surface. He stated that they are not changing the flow but taking out the potential conflict with the access near the entrance.

Responding to Mr. Senato question referring to the project description and if it was amended it would allow the building to be located twenty (20) feet from the right-of-way along South DuPont Highway instead of the 24.85 feet, Mr. Burchard replied correct.

Responding to Mr. Senato question referring to the project description and if it was amended the canopy would be located 5.85 feet from the rear property line instead of the one (1) foot, Mr. Burchard stated it would be 6.85 feet.

Mrs. Townshend asked if the number could be rounded to six (6) feet. She also stated that in regards to the waiver for arterial street buffer the City will still need ten (10) feet of landscaping.

Responding to Mr. Keller question regarding the clarification of the setback numbers (20 feet and 6 feet), if the applicant would be willing to accommodate the twenty (20) feet dimension as the requested setback from the new right-of-way dedication, and the six (6) feet would be from the rear property line, Mr. Burchard replied yes, the twenty (20) feet would be from the South DuPont Highway right- of-way dedication line and the six (6) feet would be from the rear property line to the edge of the canopy.

Mr. Keller commented that before the testimony was given he was not sure that the circumstances presented met the Exceptional Practical Difficulty standard, and that building configuration, pump locations and canopy, and other site elements could be reconfigured to meet the zoning requirements. Now it appears that even if the site were reconfigured, variances would be necessary. In keeping with the existing *Zoning* with the layout it is aesthetic pleasing in his mind with the presentation, building in the front, and pumps in the rear eliminates traffic congestion off of Route13 to access the pumps. If the plan is shown to be acceptable by DelDOT for the rights in and out at the north entry it would alleviate that problem in addition to the access way from East Loockerman Street. The presentation in meeting and staying in accordance with the existing *Zoning* and usage in the neighborhood, etc., provide for a very acceptable presentation.

Responding to Mr. Hufnal question regarding if the lot was legal non-conforming, Ms. Cornwell stated that it was currently and will be more so with the right- of-way dedication.

*Vice Chairman Colonel Ericson declared the public hearing open.*

Mr. Steve Richter, Representative of partners at Richter Associates & Land was sworn in by Mr. Rodriquez, to testify on behalf of the adjacent property owners.

Mr. Richter stated that they own the property to the north adjacent to the property line and hold cross access for the company. They are pleased to see that the site is being improved and going to look better with the new building. There were a few issues that the Board of Adjustment had already discussed they will elaborate on again. They felt that the canopy was located too close to the property line creating some unsafe conditions with the traffic flow on the access road. The access road serves all the businesses in the shopping center and a free flow between Loockerman Street and Division Street for numerous people who try to avoid using Route 13. The setback of one (1) foot was unsafe. As the applicant had mentioned in their presentation they wanted to have a fifty (50) foot separation between the pumps and building movability. There are some movability required on the access road of people wanting to turn into the pumps from the access road heading north or south. He stated that City Staff noted safety and traffic flow on the site. They suggested that the canopy be moved back and closer to the access road. The main entrance and exit to the 7-Eleven if you are not using the pumps is only twenty (20) feet from the access road that leads to East Loockerman Street. With the turning maneuver, backing up, and stacking; there could be a problem with other people waiting to get to the site. It has been noted several times that the access road is not a public right-of-way, but it is privately owned and used for parking next to the restaurant. The road is maintained, paved, cleared of snow, and trash. They do not have a cross access agreement with Lin Properties, but informally share some cross access. They had the same recommendations to move the pumps and canopy as far away from the access road as possible, make a potential reduction of the development on the site or reconfiguration of the site, possibly moving the pumps to the front of the building and move the building further to the rear. He stated that the channelize entrance is too close to Loockerman Street. The fuel tanks are very close to the corner property line which is typically located on the center of the property for safety reasons. They would like to maintain cross access between the two (2) locations. He stated that they are aware that the site is very tight and is a challenge, but better layout can be achieved. They are open to meeting with the owner. They have not had any input into the plans with the City or with the property owner, but they are open.

Responding to Mr. Keller question regarding clarification that the Richter Association is the underlined fee simple title holder to the cross easement alley way, Mr. Richter replied yes and they have a cross access agreement with the owners Dover Realty. The access road will be open for the next twenty (20) years.

Responding to Mr. Keller question regarding the property line between the two (2) ownerships that there is an informal easement or cross access, Mr. Richter replied yes, there is parking for the restaurant and hair salon.

Responding to Mr. Keller question regarding whether he had a cross access easement with the current owner, Mr. Richter replied no, but he thinks that it is something that needs to be done.

Responding to Mr. Keller question regarding whether the prior access easement runs with the land, Mr. Richter replied no.

Responding to Mr. Keller question regarding the modifications that have been discussed and

brought about regarding the setback side or front end rear, if this would ease his mind of the concern with the canopy in such close proximity as shown on the plans to the rear alley way, Mr. Richter stated it does, but they would like to maximize it. Five (5) feet is not a great deal when you are talking about service vehicles, Ford Escorts, or F150 pickups. There is still potential for issues for traffic waiting on the access road.

Mr. Senato stated that there were concerns that were brought up by Mr. Richter and upon looking at the plans he thought that there were areas that need to be ironed out regarding the safety of the egress from the alley of Loockerman Street and Burger King. What is best for the lot area, maybe a motion of postponement so that the other factors can be discussed and brought back to the Board of Adjustment.

*Vice Chairman Colonel Ericson questioned if there was any additional correspondence for the record.*

Mrs. Townshend stated that the Planning Office received a letter from Mrs. Mary Jane McGinnis, managing member of McGinnis Realty owner of the property across Route 13, entered for the record.

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

Mr. Senato stated that as the presentation was being made there were a lot of concerns, but those concerns may not affect the decision of the Board of Adjustment, as it may not be in their jurisdiction, but as the owners Mr. Richter brought up a lot of issues and he thought that there were a lot more answers that need to be discussed, complete plan, letters from owner prior to the meeting, and then come back to the Board of Adjustment.

*Vice Chairman Colonel Ericson questioned if there was any additional thoughts.*

*Mr. Hufnal moved to approve application V-13-01 with certain conditions that the front setback be located within 20 feet of the right-of-way on South DuPont Highway that allows the movement of the pumps and the canopy six (6) feet from the rear property line as the difference between the 20 feet and 24.85 feet including the information based on the testimony given, Staff recommendation, and comments made in the Staff Report pertaining to the variance recommendation, seconded by Mr. Keller and the motion carried 3-1. (Senato denied and Sheth absent).*

**Applicant #V-12-15:**
35 Loockerman Plaza, The City of Dover has requested variances from the requirements of Article 4 §4.15 of the *Zoning Ordinance* pertaining to the front yard setback.

Subject property is zoned IO (Institutional and Office Zone) and is subject to the SWPOZ (Source Water Protection Overlay Zone) Tier 3 Excellent Recharge Area and H (Historic District Zone). The Tax Parcel # is ED-05-077.05-04-55.00-000. The owner of record is City of Dover.

Mrs. Ann Marie Townshend, Director of Planning and Community Development & Recreation,

submitted the following items for the record: staff report, aerial photos, photos submitted by the applicant, as built plans submitted by the applicant and the final approved site plan that was submitted as a staff exhibit. The legal notice was published in the Delaware State News on January 6, 2013, and that the public was notified in accordance with regulations.

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

**Representatives:**

Mr. Patrick McGrory, Attorney, and Gregory Moore, Vice President of Becker Morgan Group Inc. were sworn in by Mr. Rodriguez, to testify on behalf of the applicant.

Mr. McGory testified that this application pertains to the new Dover Library that has been constructed. The project was a success, however; there was one issue that was discovered after construction was completed. The building footprint was shifted forward during construction so that it encroaches upon the required twenty (20) foot front yard setback 2.7 feet. The application is requesting a reduction in the front yard setback to accommodate the building current location. He stated Mr. Moore will also be presenting the application with a slide presentation. Copy of the slide presentation was handed out to the members. He stated that the Library and City Hall are located on the same parcel. He stated that the property is zoned Institutional and Office and is located within the Historic District. This application could have been approved by the Planning Commission as part of the Historic District Commission approval if they had received an application. However; this was not done and the building was not intended to be at its current location. The City was not aware that the mistake was made during construction. The City of Dover wanted to properly come before the Board of Adjustment to seek the required variance. Referencing the second slide he stated that it was a plan view of the existing condition showing the twenty (20) foot required setback. What is shown in red at the corner of the ellipse is the portion of the building that encroaches into the required setback. It is currently at 17.3 feet to the occupied usable space. There are architectural details that are not part of the variance. They are requesting to allow the building to be located 17.3 feet from the property line, rather than the twenty (20) feet as required.

Responding to Colonel Ericson question regarding who made the error, Mr. McGrory stated that they were trying to figure it out. The City was not aware as it happened during construction as there were many groups working at the same time. Not sure of what happened or who was at fault when this happened. The City was surprised when this came to light.

Mr. Moore referencing exhibit two (2) from the slide presentation the comparison of the buildings next door. The City Hall building is roughly 17.3 feet from the property line, the side of the City Hall building is fully in the building restriction line and the Post Office canopy that covers the entrance door is about 12.7 feet from the property line. Along Loockerman Street this building is reasonable in character with its neighbors. If you go down Kings Highway in the back, all of the buildings that surround the building including PNC Bank, Merrill Lynch, Richardson Robbins, and the DNREC (Department of Natural Resources Environmental Control) building are much closer to the right-of-way than the Dover Library. He stated that the Richard Robinson building was two (2) feet, PNC Bank is five (5) feet, and Merrill Lynch is

fifteen (15) feet. The pattern is repeated across the road as you cross Loockerman Street. In this neighborhood and community it is very ordinary that the building be closer to the street in keeping with the area other buildings and character. We are focused on the 17.3 feet to the entrance of the City Hall building and notice the 12.7 feet in red at the Post Office. The width of the right-of-way in this area is probably the largest and varies from 120 feet because of the landscape divider. This makes it feel like there are more spaces on the property. They feel that this is a contributing factor as to why this was not discovered because of the space. It goes as wide as 218 feet that consist of two (2) landscape and parking areas. As you cross State Street the widen area closes and it feels much narrow and closer which is part of the Historic District feel. The Historic District wants the buildings to address the streets. The most recent building built Bayard Hotel where you can see energy in the building as well as people going in and out and invite people into the building. This makes up a good fabric of the downtown area. By having the glass ellipse on the street allows people walking to see in the building making it an inviting area to come to the library. He stated that it does not want parking in the setbacks in front of the buildings, so that the building is pushed back so it feels suburban. The IO (Institutional and Office) *Zoning* was changed by the City after master plan evaluation categorizing many Institutional Offices like DNREC, City Hall, and Post Office in a new IO Zone that was created much later than the Historic projects. At one time a suburban sprawl occurred and now the renaissance has come back that good development is where the buildings address the streets and the parking is hidden. The City and the Downtown Dover Partnership is reinforcing that it is good development and makes good walking path along the streets and it makes the downtown vibrant and strong. The Historic District Regulations and Master Plan also states the same information. Therefore, the existing building placement is more consistent with these plans and guidelines than the requirements of the Institutional and Office Zone Referring to the remaining photo slides, it reinforces the wall of buildings as you go down Loockerman Street with the buildings addressing the streets. In the next slide you will see the architectural features that are pilasters and they are not the structure supporting it. The building is steel structure held up with a green roof on top. He used the old ACME property located on Governor's Avenue as an example of a building that is located back seventy (70) or eighty (80) feet, with multiple rows of parking in front of the building, that respected the setbacks, but you feel as if you don't want to walk into the building because it is far away. You want to drive to the building and then go inside. He stated that all of the dimensions were surveyed. Mr. Moore concluded the presentation.

Responding to Mr. Keller question regarding the pilasters being an architectural element instead of a structural element, Mrs. Townshend stated that they would not hold them to the building setback. They would be permitted to have a slight encroachment. The 2.7 feet is specifically the building and not the architectural elements.

Responding to Mr. Keller question regarding if the canopy of the Post Office was hard structure and similar element, Mrs. Townshend replied yes it would be a similar element as well as the entry to City Hall.

Responding to Mr. Keller question regarding who was at fault, Mr. McGrory stated that he was not sure who was responsible, the site engineers and architect were all a part of the design process in the beginning. When you are into construction you will take the design and put into the field different individuals working at different times and doing different things. When the

issue was discovered we do not have through this form the vehicle or tools to figure it out in order to say on public record who was at fault.

Responding to Mr. Keller question that there was a recognized mistake, Mr. McGrory replied yes.

Responding to Mr. Keller question regarding if there was any oversight firm that the City can return to file claims for add-ons if the variance is granted, Colonel Ericson stated that it is between the City and the Contractor, and is not part of the Board of Adjustment hearing. Also responding, Mr. McGrory replied that he was not sure of the cost.

Responding to Colonel Ericson question regarding an estimated cost to change the building now since it is in place to reconstruct to indicate what hardship it would cost if the application was denied, Mr. McGrory stated that it is a very sophisticated building and complex portion of the building with the curb glass, steel structure, pilasters, and green roof and he has no idea of what the cost would be, but would assume it would be quite significant and for what benefit because we are 2.7 feet into the encroachment. He did not think that you could remove 2.7 feet without significant redesign or reconstruction and shutting down part of the building including Loockerman Street to undertake the process. Also responding, Mr. Moore stated that there could be two (2) ways, first move the building back to where it was originally design to be. In his opinion this would be reconstructing the building at an estimated cost of $22 million. Second, you could sever the ellipse where the actual projection is problematic which would also be in the access of millions of dollars because the green roof is supported by steel structure, the second story space could be affected, the improvements that have been erected on Loockerman Street would all be included in that number just to cut off the seventy-six (76) square feet. You would then have a smaller building where the ellipse would be different. It is a very unique building with sunshades around the pilasters and very expensive and difficult to cut back to make it look like good.

Mr. Hufnal commented that modifying the structure is basically economically unfeasible to do such a request and eliminating that encroachment amount is very insufficient with the other buildings that you do not notice the space in between of the 120-218 feet across the area. The presentation clearly explains what happened.

*Vice Chairman Colonel Ericson declared the public hearing open.*

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

*Vice Chairman Colonel Ericson questioned if there was any additional correspondence for the record and there was none.*

*Mr. Keller moved to approve application V-12-15 City of Dover based upon testimony given by Council and Engineering Principal, additionally as it is provided in the staff report and staff recommendations for approval. The building as constructed will continue to be consistent with the surrounding area (downtown environment and the historic zone). The encroachment will be minimum in nature and visually almost non-existing, seconded by Mr. Hufnal and the motion*

*was carried unanimously 4-0. (Sheth absent).*

*Mr. Keller moved to go into Executive Session due to legal matters and format of minutes and agenda, seconded by Mr. Senato and unanimously carried 4-0 (Sheth absent).*

**First meeting adjourned at 10:47 A.M.**

Vice Chairman Colonel Ericson reconvenes the Board of Adjustment meeting. He stated that two (2) items are being considered, the meeting minutes of September 19, 2012 and November 14, 2012.

*Vice Chairman Colonel Ericson questioned if there were any discussions or motions.*

*Mr. Keller moved to approve the meeting minutes of November 14, 2012 as submitted by Staff, seconded by Mr. Senato and unanimously carried 3-0 (Sheth absent and Hufnal was absent at the November 14, 2012 meeting).*

*Mr. Keller moved that the approval action be tabled for the meeting minutes of September 19, 2012 until they are prepared in a summary minute format and redistributed to the Board of Adjustment members thereafter for consideration and approval at the next Board of Adjustment meeting, seconded by Mr. Senato and unanimously carried 4-0 (Sheth absent).*

*Mr. Senato moved to adjourn the meeting, seconded by Mr. Hufnal and unanimously carried 4-0(Sheth absent).*

Meeting adjourned at 11:22 A.M.

Sincerely,

Maretta Savage-Purnell
Secretary

City of Dover

Board of Adjustment

March 20, 2013

V-13-02

| | |
|---|---|
| Location: | 1008 South State Street |
| Applicant/Owner: | ADP Properties |
| Tax Parcel: | ED-05-077.17-07-21.00-000 |
| Application Date: | February 15, 2013 |
| Present Zoning: | C-2A (Limited Central Commercial Zone) |
| Present Use: | Office Building (under construction) |
| Reviewed By: | Janelle M. Cornwell, AICP |
| Variance Type: | Area Variance |
| Variance Requested: | Allow for the building to encroach into the rear yard setback which adjoins a residential zone and into the side yard setback. |

**Project Description:**
The applicant is requesting a variance from the *Zoning Ordinance* of Article 4 §4.14 of the *Zoning Ordinance* pertaining to the side and rear yard side yard setback adjoining residential zone. Specifically the applicant is requesting to allow the building to be located 24.3 feet (7 inches) from the rear property line, rather than 25 feet as required and to allow the building to be located six (6) inches from the side property line, rather than on the property line or ten (10) feet from the property line.

**Adjacent Land Uses**
The adjacent properties are commercial and residential uses. The properties to the north across Wyoming Avenue are zoned RG-O (General Residence and Office Zone) and R-8 (One Family Residence Zone). The properties to the east across South State Street are zoned R-8 (One Family Residence Zone) and C-4 (Highway Commercial Zone). The property to the south located in Kent County are zoned BG (General Business District). The properties to the west are zoned

C-2A (Limited Central Commercial Zone) and RM (Multifamily Residential District) in Kent County.

**Previous Related Planning Applications**
S-11-09 – Site Development Plan application.

**Code Citation**
Article 4 Section 4.14

| | C-2A |
|---|---|
| Minimum required: | |
| Lot area | |
| Lot width (ft.) | 50 |
| Lot depth (ft.) | 100 |
| Front yard (ft.) | 15 |
| Side yard (ft.) | None required, but 10 ft. minimum if provided |
| Rear yard (ft.) | 20 above ground floor. At ground floor, 5 ft. required |
| Side or rear yards which adjoin a residence zone (ft.) | 25 |
| Off-street parking | |
| Per 300 sq. ft. floor area or | 1 |
| Per employee (whichever is greater) | 1 |
| Maximum permitted: | |
| Building height | |
| Stories | 6 |
| Feet | 60 |
| Floor area ratio | 4.0 |

**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 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:**
   C-2A commercial use only.

   **Staff Response:**
   The property is located within the C-2A (Limited Central Commercial) zone and the use as and office is a permitted use.

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

   **Applicant Responses:**
   The area has a blend of commercial and residential properties. Based on visual inspection of the area that surrounds the property there seems to be more commercial properties than residential properties.

   **Staff Response:**
   The character of the immediate vicinity is that of offices, commercial uses and some residential uses to the north and west. The use as an office building is consistent with the other offices and commercial uses that are in the area.

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

   **Applicant Responses:**
   Based on the minor request there will be no neighboring properties affected or impacted as the building sets at least 24' from any/all connecting property lines. This request will have no affect on any of the properties and there uses in any shape or form.

   **Staff Response:**
   The reduction of the front setback from 25 feet to 24.3 feet on the west side and from zero (0) to six (6) inches on the south side would not seriously affect neighboring properties or uses. The encroachment of the building, in its current location, is not

noticeable. The residential property to the west will not notice the encroachment as there is a retaining wall in this area. A six (6) foot tall opaque fence and trees will be planted in this area to further obstruct the office building from the residential use. The six (6) inches on the south side of the building will not adversely impact the adjacent property owner.

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:**
   The building is currently 75% completed on the exterior. There are 3 suits incorporated in this building and they are currently 50% complete in the fit out construction. Because of the current stage of this project it would cause extreme financial hardship and an excessive time delay in occupying the premises. To say the least there would be an emotional hardship as well planning this project for years to be a part of the City of Dover's commercial community as a health care provider for years to come.

   **Staff Response:**
   Staff concurs with the applicant that it would be impractical to move the building or modify the building to eliminate the encroachment. Requiring that the building be reconstructed or modified would create an exceptional practical difficulty, in that the benefit gained by correcting the encroachment would not justify cost, inconvenience, and constriction difficulties required to correct the encroachment.

**Variance Recommendation:**
Staff recommends approval of the variances to allow for the building to encroach into the rear yard by 7 inches and 6 inches (for a setback of 24'3" on the west side and into the side yard 6 inches on the south side) for reasons as follows:

- The applicant has demonstrated exceptional practical difficulty as the building is for the most part constructed and moving or modifying the building would be a hardship.
- The difficulties associated with removing the encroachment are disproportionate to the benefit gained by the removal of the encroachment.
- The building constructed with the requested setback is nominal and is indistinguishable to other properties.
- The encroachment on the west side will not be noticeable from the residential property owner as there is a retaining wall and there will be a six (6) foot tall opaque fence and trees in this area.
- The encroachment on the south side will not impact the adjacent property owner.

# Request for Variance Letter

2/12/13



Tax Parcel I.D. # ED 05- 077 .17.210. 000.000

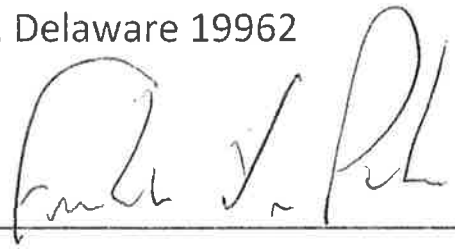
Property Owner:
ADP Properties LLC
69 Gaelic Court
Magnoila, De 19962

Property Address:
1004 South State Street
Dover ,DE 19901

Dear Planning Committee

We are requesting a variance for the State Street Plaza as we have exceeded the building setback property line by 7" on the west side of the property decreasing as the setback line travels north. We did not realize this until the As-Build & Boundary Survey was completed well after the building was constructed. The building is currently in the interior construction stage at about 50% complete. It would be a very costly process to attempt to modify the structure at this point. The building sets well over 24' from the 26 Wyoming ave Tax Parcel # ED - 05-077.17-07-20.20.00-000 connecting property that we own under DITKO Properties. There is also a small adjacent property that connects to the State Street Plaza owned by Mr Norton Tax Parcel # 2-00-077.17-01-12.00-000. We feel that this request will have no impact on any and all properties connected or not connected to the State Street Plaza. This situation was simply an oversight during the construction process. Thank You for your consideration in this most important matter. We appreciate your time and effort.

ADP Properties LLC
69 Gaelic Court
Magnolia , Delaware 19962

Owner:  Date: 2/12/13

# Area Variance Criteria Statement

Date: 2/13/13

## Request for Variance based on meeting the Four Criteria

Response to Question #1: C-2A Commercial use only

Response to Question #2: The area has a blend of commercial and residential properties. Based on a visual inspection of the area that surrounds the property there seems to be more commercial properties than residential properties.

Question # 3: Based on the minor request there will be no neighboring properties affected or impacted as the building sets at least 24' from any/all connecting property lines. This request will have no affect on any of the properties and there uses in any shape or form.

Question # 4: The building is currently 75% completed on the exterior. There are 3 suites incorporated in this building and are they are currently 50% complete in the fit out construction. Because of the current stage of this project it would cause extreme financial hardship and a excessive time delay in occupying the premises. To say the least there would be an emotional hardship as well planning this project for years to be a part of The City of Dover's commercial community as a health care provider for years to come.

Initials DD

City of Dover

Board of Adjustment

April 3, 2013

V-13-04

| | |
|---|---|
| Location: | 105 North West Street |
| Applicant/Owner: | Solid Rock Baptist Church |
| Tax Parcel: | ED-05-076.08-03-02.00-000 |
| Application Date: | March 15, 2013 |
| Present Zoning: | RG-1 (General Residence Zone) |
| Present Use: | Church |
| Proposed Use: | Church with Fellowship Hall |
| Reviewed By: | Janelle M. Cornwell, AICP |
| Variance Type: | Area Variance |
| Variance Requested: | Allow for the building to encroach into the front yard setback. |

**Project Description:**
The applicant is requesting a variance from the *Zoning Ordinance* of Article 3 §1.14(a)iv of the *Zoning Ordinance* pertaining to the front yard setback for churches. Specifically the applicant is requesting to allow the building to be located 20 feet from the front property line, rather than 50 feet as required.

**Adjacent Land Uses**
The adjacent properties are manufacturing and residential uses. The properties to the north, south and east are zoned RG-1 (General Residence Zone). The properties to the west across North West Street are zoned M (Manufacturing Zone).

**Code Citation**
Article 3 Section 1.14

1.14 The following uses are permitted, conditional upon the approval of the planning commission in accordance with the procedures and subject to the general conditions set forth in section 10.1 and to any specified requirements set forth below:

(a) Places of worship, including parish houses; [and] schools, including nursery schools, kindergartens and day care centers in accordance with article 5, Supplementary Regulations, section 14. Day care facilities; philanthropic and eleemosynary institutions; hospitals and sanitariums for general medical care; and funeral homes subject to the following requirements:

i. Any school permitted under this paragraph [subsection 1.14(a)] shall be a nonprofit organization within the meaning of the Internal Revenue Act and shall be registered effectively as such thereunder.

ii. Any school permitted under this paragraph [subsection 1.14(a)], other than a kindergarten, nursery school, or day care center, shall occupy a lot with an area of not less than two acres, plus one acre for each 100 pupils for which the building is designed.

iii. Any kindergarten or nursery school permitted under this paragraph [subsection 1.14(a)] shall be limited to a maximum of 50 children in zones R-8 thru R-20 and a maximum of 100 children in all other zones. At least 100 square feet of outdoor play space per child shall be provided. Outdoor play space shall be fenced or otherwise enclosed on all sides and shall not include driveways, parking areas, or land unsuited by other usage or natural features for children's active play space. Fencing or other enclosures shall be a minimum height of four feet. The minimum lot area for each ten, or remainder over the multiple of ten, children shall be the same as the minimum lot area requirement for each dwelling unit in the districts in which such uses are to be located.

iv. No such building or part thereof shall be erected with less than a 50-foot front yard or nearer than 25 feet from any other street or property line.

v. The sum of all areas covered by all principal and accessory buildings shall not exceed 20 percent of the area of the lot.

vi. Courts shall conform to the requirements of article 5, section 3 hereof.

**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 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:**
Solid Rock Baptist Church (SRBC) is located in the general residential zone RG-1 in Fulton's Addition which dates back to the early 1900's. The establishment of this community predates zoning regulations. There are numerous lots that are legal non-conforming given current regulations for the RG-1 zone.

**Staff Response:**
The property is located within the RG-1 (General Residence Zone) zone and the use as a church is a Conditional Use to Planning Commission. The use as the church existed prior to the establishment of zoning within the City of Dover.

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

**Applicant Responses:**
The block is formed by North West Street, Cecil Street, Fulton Street and an improved 12-foot alley. The block contains just three parcels: two churches and a residential lot. SRBC is bounded by Mt. Carmel Church of the Living God to the north; a vacant residential lot to the south; an improved 12-foot alley to the east; and North West Street on the west. Commercial establishments in manufacturing zone M are on the other side of North West Street. The majority of the buildings in the vicinity are close to the street. The average setback distance from the street right of way of the buildings (excluding porches) on the block is 16.34 feet.

**Staff Response:**
The character of the buildings located within the area (as shown in the photos) are located within the front yard setback and very close to the street. The other residential or manufacturing uses are permitted or in the case of the churches conditional uses.

The use as a church and its placement near the street is consistent with the other residential and manufacturing uses that are in the area.

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

**Applicant Responses:**
Under current regulations for the RG-1 zone, a place of worship is a conditional use. The sanctuary for SRBC was building in 1933 and does not meet current conditional use front setback requirement of 50 feet. The existing sanctuary is 20.57feet; which meets the residential front setback requirement of 20 feet. SRBC is planning for the construction of a detached fellowship hall. Constructing the fellowship hall 50 feet back from the street right of way would be out of character of the street and the neighborhood. The desire is to improve the neighborhood, blend the new building into the character of the street, and for it to not look like an "afterthought" to the best extend possible.

**Staff Response:**
The reduction of the front setback from 50 feet to 20 feet would not seriously affect neighboring properties or uses. The encroachment of the building would be consistent with the other buildings located within the area. The new building would encroach into the front yard setback then the existing vacant single family residences located on the property. The existing single family residences on the property are located within ten (10) and fifteen (15) feet of the right-of-way. A building with the fifty (5) foot setback would look out of character of the neighborhood.

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:**
Over the years, SRBC acquired a total of four adjoining parcels. Vacant dwellings slated for demolition are on two of the parcels. These parcels were consolidated in 2012 for a total of 24,298 square feet. As previously stated, a place of worship is a conditional use in the RG-1 zone and this limits the building coverage to 20%. The existing combined building coverage is 20.2% (4,924.6 sf) and this is the maximum coverage being used for the project.

In order to maximize parking and make best use of the property, a 30-foot variance for the required 50-foot setback is being sought. It the variance is granted, SRBC is proposing to construct a 2,100 sf building and provide 30 parking spaces on site. If the variance is not granted, only a 1,694sf building can be built and 26 spaces can be provided on site. The larger building will better serve SRBC and the community, seeing this is the first and only opportunity for them to expand. SRBC has been at this location

since the early 1900s and they plan to stay. The variance will permit the parking requirements to be better satisfied.

At the completion of this project, the block will consist of two adjacent places of worship. The vacant lot to the south will appear as an extension of SRBC's property. Article 10, Section1 of the municipal code encourages conditional use plans to be in coordination with the community. The variance will blend the new fellowship hall with the character of the RG-1 zone and be in harmony with the block.

**Staff Response:**
Requiring that the building be constructed with a fifty (50) front yard setback would create an exceptional practical difficulty, in that other aspects of the site would not meet the requirements of the *Zoning Ordinance*. Specifically, the site would not comply with the parking requirement. As proposed with the fifty (50) foot setback the site would have 26 parking spaces. As proposed with the twenty (20) foot setback the site would have 30 parking spaces. Based on the number of seats within the existing sanctuary 29 parking spaces are required. The Planning Commission has the ability to grant up to a 50% waiver for parking. The new building would be smaller in size and theoretically permit less seats then the existing sanctuary therefore requiring less parking.

**Variance Recommendation:**
Staff recommends approval of the variance to allow for the building to encroach into the front yard setback thirty (30) feet for reasons as follows:

- The applicant has demonstrated exceptional practical difficulty as the site would be less in conformance with other sections of the *Zoning Ordinance,* specifically with regards to the overall number of required parking spaces.
- The building constructed with the requested setback is would be in keeping with the character of the existing buildings within the area.
- The reduction of the front yard setback would not have a negative impact on the neighborhood as the building would be set in a similar location as the other buildings.
- The setback of thirty (30) feet would also provide for better maneuverability around the site. Specifically the drive aside would be wider.

City of Dover

Board of Adjustment

April 3, 2013

V-13-04

| | |
|---|---|
| Location: | 105 North West Street |
| Applicant/Owner: | Solid Rock Baptist Church |
| Tax Parcel: | ED-05-076.08-03-02.00-000 |
| Application Date: | March 15, 2013 |
| Present Zoning: | RG-1 (General Residence Zone) |
| Present Use: | Church |
| Proposed Use: | Church with Fellowship Hall |
| Reviewed By: | Janelle M. Cornwell, AICP |
| Variance Type: | Area Variance |
| Variance Requested: | Allow for the building to encroach into the front yard setback. |

**Project Description:**
The applicant is requesting a variance from the *Zoning Ordinance* of Article 3 §1.14(a)iv of the *Zoning Ordinance* pertaining to the front yard setback for churches. Specifically the applicant is requesting to allow the building to be located 20 feet from the front property line, rather than 50 feet as required.

**Adjacent Land Uses**
The adjacent properties are manufacturing and residential uses. The properties to the north, south and east are zoned RG-1 (General Residence Zone). The properties to the west across North West Street are zoned M (Manufacturing Zone).

**Code Citation**
Article 3 Section 1.14

1.14 The following uses are permitted, conditional upon the approval of the planning commission in accordance with the procedures and subject to the general conditions set forth in section 10.1 and to any specified requirements set forth below:

(a) Places of worship, including parish houses; [and] schools, including nursery schools, kindergartens and day care centers in accordance with article 5, Supplementary Regulations, section 14. Day care facilities; philanthropic and eleemosynary institutions; hospitals and sanitariums for general medical care; and funeral homes subject to the following requirements:

i. Any school permitted under this paragraph [subsection 1.14(a)] shall be a nonprofit organization within the meaning of the Internal Revenue Act and shall be registered effectively as such thereunder.

ii. Any school permitted under this paragraph [subsection 1.14(a)], other than a kindergarten, nursery school, or day care center, shall occupy a lot with an area of not less than two acres, plus one acre for each 100 pupils for which the building is designed.

iii. Any kindergarten or nursery school permitted under this paragraph [subsection 1.14(a)] shall be limited to a maximum of 50 children in zones R-8 thru R-20 and a maximum of 100 children in all other zones. At least 100 square feet of outdoor play space per child shall be provided. Outdoor play space shall be fenced or otherwise enclosed on all sides and shall not include driveways, parking areas, or land unsuited by other usage or natural features for children's active play space. Fencing or other enclosures shall be a minimum height of four feet. The minimum lot area for each ten, or remainder over the multiple of ten, children shall be the same as the minimum lot area requirement for each dwelling unit in the districts in which such uses are to be located.

iv. No such building or part thereof shall be erected with less than a 50-foot front yard or nearer than 25 feet from any other street or property line.

v. The sum of all areas covered by all principal and accessory buildings shall not exceed 20 percent of the area of the lot.

vi. Courts shall conform to the requirements of article 5, section 3 hereof.

**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 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.

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