CITY OF DOVER BOARD OF ADJUSTMENT
AGENDA
Wednesday, November 14, 2012 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

NEW BUSINESS

Applicant #V-12-12:
800 North State Street, S&R, LLC has requested variances from the requirements of Article 6 §3.4 and Article 6 §3.9 of the *Zoning Ordinance* pertaining to the size of parking spaces and a reduction in the overall number of parking spaces.

Subject property is zoned C-2A (Limited Central Commercial Zone). The Tax Parcel # is ED-05-067.12-01-08.00-000. The owner of record is S&R, LLC.

Applicant #V-12-13:
915 and 1025 South DuPont Hwy., Franchise Realty Interstate c/o McDonald's has requested a variance from the requirements of Article 5 §4.7 of the *Zoning Ordinance* pertaining to number of permitted signs.

Subject property is zoned C-4 (Highway Commercial Zone). The Tax Parcel #'s are ED-05-077.18-02-02.00-000 and ED-05-077.18-02-03.00-000. The owners of record are Franchise Realty Interstate c/o McDonald's and Siobain-VI, LLC.

Applicant #V-12-14:
1275 South State Street, Bayhealth Medical Center Inc. has requested a variance from the requirements of Article 5 §4.7 of the *Zoning Ordinance* pertaining to setback of a monument sign.

Subject property is zoned C-4 (Highway Commercial Zone). The Tax Parcel # is ED-05-086.05-02-13.00-000. The owner of record is Bayhealth Medical Center Inc.

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, reviewed the policies and procedures for the meeting today and the meeting will be conducted in accordance with the published agenda. She stated that there was one item on the agenda under new business, that the application file would be read, and the floor opened for questions of the applicant by the board and for public testimony. If the Board needs to consult the city solicitor they will adjourn to discuss legal matters. If the applicant must leave, they can contact the Planning Office at 736.7196 to learn of the Board's decision. A formal notice of the decision will be mailed to the applicants. Approved variances expire after one (1) year if the approved project has not commenced. All public notice for the application on this agenda was completed in accordance with code requirements. 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:

Project Description:

The applicant is requesting a variance from the *Zoning Ordinance* of Article 6 Section 3.11 limiting the number of parking spaces to no more than 25% over the minimum number of parking spaces required by code. The college is proposing an addition to be built onto the existing Office of the President/Administration Building. The building is located in the northern portion of the campus on the west side of North DuPont Highway and south of West Denneys Road and north of Scarborough Road. The proposed addition to be constructed is to the statewide administrative headquarters that provides administrative services for all DelTech campuses and requires travel daily from the Wilmington, Stanton, Georgetown and Dover campuses.

Adjacent Land Uses

The adjacent properties are a mixture of commercial, residential, and institutional uses.
The properties to the north, across West Denneys Road are located in Kent County and are zoned IL (Limited Industrial District, RMH (Residential Manufactured Home District), and BG (General Business District). The properties to the south across Scarborough Road are zoned IO (Institutional Office Zone). The properties to the west are zoned IG (General Industrial Zone within Kent County and IPM (Industrial Park Manufacturing Zone) within the City of Dover. The properties to the east across North DuPont Highway are all located within Kent County and are zoned BG (General Business District).

Code Citation

Article 6 Section 3. - Required off-street parking spaces.

> 3.11 *Maximum number of parking spaces.* The maximum number of parking spaces shall not exceed 25 percent over the number of parking spaces required by the code.

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:

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:
This parcel is zoned Industrial Office (IO) which is a very broad zone and allows uses that range from business, medical and governmental offices to hospitals, police stations, and athletic fields. This zone applies one parking regulation that does not properly account for all the various uses. For example, both Delaware State University (Del State) and Delaware Technical Community College (DelTech) are zoned IO, yet have drastically different parking needs. DelState provides room and board for its students and some staff, and a portion of those students are not allowed to park a vehicle on campus. In contrast, DelTech does not offer on-campus housing, which requires every student and every staff member to commute
to the campus on a daily basis resulting in a much higher demand for parking.

The IO Zoning requires one parking space per 300 square feet of the building area. If this 15,193 S. F. administrative building were located on a separate parcel, 51 total parking spaces would be required for this facility to adequately function. This plan proposes a total of 51 parking spaces, only enough to bring the administrative building up to code, which is enough for this facility to properly function.

Staff Response:
The use as a college is in keeping with the IO (Institutional/Office Zone) Zoning District. The Zoning Ordinance calculates parking for college or universities at a rate of one (1) parking space for every five (5) seats within the main auditorium/cafeteria or gymnasium; however, if none of those apply the parking is calculated at a rate of one (1) parking space for every 300 SF of floor space within the building. Based on the total square footage of the buildings 974 parking spaces are required for the campus. The site has 1,333 parking spaces, 37% more than the maximum number required. The Office of the President/Administration Building already has existing parking adjacent to the building. The building is located at the rear of the campus and services all four campuses on a daily basis.

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

Applicant Responses:
This property is surrounded by major commercial facilities consisting of various commercial, business, and industrial zones and uses. The area is supported by four major roads: Scarborough road, West Dennys Road and US Rt. 13 and St. Rt. 1 which are all designed to transport members of the community to and from these various facilities. This major transit infrastructure allows large parking areas for the community to utilize. Therefore, the zoning, uses and transportation infrastructure of the surrounding area are consistent with our proposed request.

Staff Response:
The surrounding properties are a mixture of industrial, commercial, institutional and residential uses with access to available parking and transit needs. There is also a Park and Ride parking area located at the front entrance of the campus that provides transportation and parking needs for members of the community and the campus. The Park and Ride lot is included in the parking count, as the spaces serve both park and ride users and visitors to the campus.

The building currently has 29 parking spaces and 2 handicap spaces with an additional 539 parking spaces shared with the Terry Building and the Science and Engineering Technology building, with an additional 101 spaces shared with the Education and Technology building for parking needs that are in close proximity to the building.

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

Applicant Responses:
The existing administrative building and adjacent parking lot is separated from the Terry Campus by a major internal loop road. The proposed parking area will be located behind the existing building and is situated to providing screening from neighboring properties. It will be installed adjacent to the existing parking lot, creating continuity and reducing the impact to any adjacent properties.

Although this administrative headquarters does not function solely to serve the Terry Campus, the minor addition of 22 requested parking spaces will result in a 1.7% increase in total parking for the facility. This small increase in parking will not negatively affect the surrounding properties.

Staff Response:
The location of parking located behind the building would not negatively affect the neighboring properties as they have parking available for their uses. The parking would not be easily visible from the adjacent properties.

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 building is the statewide administrative headquarters for all four Del-Tech campuses (Wilmington, Stanton, Dover, and Georgetown). This unique facility provides services to all four campuses and administrative members from all four campuses travel to this facility. This building is separate from the educational functions of the Terry Campus and therefore should not be included in the parking calculations for this campus alone. It is not categorized as the same use as the campus buildings and therefore has parking needs that are not consistent with that of the educational campus.

The existing parking count for the Terry Campus includes 234 parking spaces that directly serve a park and ride which is independent of the DelTech Terry Campus. The park and ride serves the entire community and is well situated with direct access to Scarborough Road. The DelTech Terry Campus should not be hindered because a public facility designed to serve the community is located on their property. If these parking spaces are removed from the parking calculations, the Terry Campus will be in compliance with the code and would not need a variance in order to construct the 22 space parking expansion. We believe the community use of the Del-Tech parking facilities should be considered in our variance request.

DelTech is a commuter based educational facility. Limiting the amount of parking creates a hardship because the staff and students need to park their vehicles at the facility every day in order to access it.

The location of this facility supports additional parking because it has direct access to four major roadways (US. Rt. 13, St. Rt. 1, Scarborough Rd. and West Denneys Rd.), providing the transportation necessary to serve the facility and the proposed parking expansion. Due to the location of the Terry Campus in relation to surrounding community facilities we believe the parking spaces may be used for functions other than that of the Terry Campus. We believe the use of this parking area is good for the Dover community; however, the community use of parking should not hinder the Del-Tech educational or administrative facilities.

Currently, the DelTech administrative building staff utilizes 7 of the Terry Campus parking spaces. The campus parking utilized by the administrative building staff is separated by a major access road to the DelTech Terry Campus. If this restriction is not removed the administrative building will have to reserve additional 10-15 campus parking spaces for the additional staff associated with the building expansion. It is a hardship for the administrative staff to cross a major access road every day in order to utilize their administrative headquarters. If the restriction is not removed the staff will exacerbate the safety problem associates with crossing this access road.

Staff Response:
If the restrictions are not removed the applicant would not experience an unnecessary hardship or exceptional practical difficulty. The site is required to provide thirty one (31)

parking spaces based on the existing square footage of the building of 9,164 S. F. and in compliance with the *Zoning Ordinance*. With the proposed addition to the existing building, there is still additional parking available at the adjacent parking area. The adjacent parking area has a total of 539 parking spaces. The parking requirement for the Terry Building is 221 spaces and the requirement for the Science & Engineering Technology Building is 162 spaces based on the parking calculations of the *Zoning Ordinance.* There is still an additional 156 parking spaces available that will be available at the site. In order to alleviate the safety concern of crossing the access road, a pedestrian crosswalk could be installed to eliminate this safety concern.

Variance Recommendations:

Staff recommends denial of the area variance for an additional parking lot for the reasons as follows:

- The applicant has not demonstrated that there is a shortage of parking on campus.
- The applicant has not demonstrated exceptional practical difficulty as the site already provides additional parking that is adjacent to the existing building. With the proposed addition to the site, there is still more than enough parking available at the site.
- The campus currently exceeds the maximum number of parking spaces permitted by 115 parking spaces.
- There is sufficient parking located across the loop road for this building and the two other buildings those five (5) parking lots serve.
- Safety concerns by the applicant can be addressed by installing traffic calming measures including the installation of a pedestrian crosswalk to alleviate the concern for staff crossing the access road.
- Although the variance would not negatively impact the neighboring properties, an increase in parking at the site is not required with the proposed addition.

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.

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 is 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, Mr. Moore replied 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) 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 code 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 relates to this building being connected to the rest of the Terry campus although it has a state wide 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 parking spaces. 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 supported the planned addition of the parking lot on the east side of the Administration Building which would give more access to the building and 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.

Responding to Vice Chairman Ericson, Mrs. Townshend stated that the comparison between DTCC and DSU is more involved because the campus parking requirements at DSU are based on the dormitories and one (1) space for every five (5) seats in the main auditorium, cafeteria, or gymnasium. She stated that the 1,333 available spaces at DTCC include the park and ride area.

Mr. Moore stated that there are twenty (20) different uses that fall under the IO Zone. However; the parking calculations of the *Zoning Ordinance* do not represent DTCC needs. There is a hardship in the way the code is written.

Responding to Mr. Keller, Mr. Moore 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 is all continuous property.

Also responding to Mr. Keller, 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, Mr. Moore stated that everyone working at DTCC is associated with an educational pursuit. Staff in this building is not there for the Terry Campus, but for the statewide administration of the four (4) campuses. He emphasized that this is not just a Terry Campus issue.

Responding to Mr. Keller, 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 to be associated with DelDOT. The money to build the parking lot came from the Scarborough Road project. He was not aware of the exact logistics.

Responding to Mr. Keller, Mr. Moore was not sure of the agreement between DTCC and DelDOT whereas the number of park and ride spaces could be relieved, eliminated, or reduced so that it does not provide that type of parking. The aerial would need to show if the park and ride area or neighborhood is being affected by adding the additional parking spaces. This is a heavy traveled area, main commuter road that is surrounded by commercial facilities.

Vice Chairman Ericson questioned if the park and ride spaces should be counted in the overall total for DTCC parking spaces.

Mr. Bill Ayers, Director of Administration and representing the owner was sworn in.

Responding to Mr. Keller, Mr. Ayers stated that the administration function related to the Office of the President is college wide. The components located at the Terry Campus serve the specific needs of the Terry Campus and the other 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 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 in his opinion 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, 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, 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).

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

Responding to Mr. Senato, Mr. Moore stated that the distance between the parking lot and the proposed addition is at least 2,000 feet.

Responding to Mr. Senato, Mr. Ayers stated that on a daily average there are 184 spaces not being used that is within roughly a ¼ mile. 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 stated 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, 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, 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 control 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, 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.

Responding to Vice Chairman Ericson, 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.

Responding to Mr. Keller, 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, 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, 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.

Responding to Mr. Keller, Mr. Moore referred to the presentation and explained that the cross section would be open office space with cubicles for staff.

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

November 14, 2012

V-12-12

Location:	800 North State Street
Applicant:	S & R, LLC
Owner:	S & R, LLC
Tax Parcel:	ED05-067.12-01-08.00-000
Application Date:	October 12, 2012
Present Zoning:	C-2A (Limited Central Commercial Zone)
Present Use:	Mixed Use Building
Reviewed By:	Janelle M. Cornwell, AICP
Variance Type:	Area Variance
Variance Requested:	Allow a reduction of the number of required off-street parking spaces and to allow for a reduction in the size of required off-street parking spaces.

Project Description:
The applicant is requesting variances from the *Zoning Ordinance* of Article 4 Section 4.15 Zoning Bulk and Parking Regulations and from Article 6 Section 3.4 Required Off Street Parking Spaces. Specifically, they are requesting a variance to allow for a reduction in the number of off-street parking spaces to 117 from 114 and to allow four parking spaces to be 8'x16' and two parking spaces to be 9'x17'.

Adjacent Land Uses
The adjacent properties are a mixture of commercial and residential uses. The property to the north is zoned C-2A (Limited Central Commercial Zone). The property to the east across North State Street is zoned RG-3 (Group Housing Zone). The properties to the west and south across Silver Lake are zoned R-10 (One Family Residence Zone), R-20 (One Family Residence Zone) and ROS (Recreational and Open Space Zone) .

The applicant is now looking to utilize the entire fourth floor as office space increasing the required of parking spaces to 117.

- 1st Floor (Restaurant use with patio and bar areas) 7,912 S.F. = 38 parking spaces as based on seat count calculation of 2007
- 2nd Floor (Office) 8,372 S.F. = 28 parking spaces
- 3rd Floor (Office) 8,372 S.F. = 28 parking spaces
- 4th Floor Revised (Office) 6,750 S.F. = 23 parking spaces
- TOTAL Required Parking Spaces = 117 parking spaces
- TOTAL shown on Site Plan = 114 parking spaces

The site proposes 108 surface parking spaces and six (6) parking spaces within the small building (garage) for a total of 114 on-site parking spaces. The garage spaces were proposed as stacked spaces (three spaces at entry with three spaces above). The site proposes six (6) compact parking spaces. Two of the compact parking spaces will be 9'x17' and four of the compact parking spaces will be 8'x16'.

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

Applicant Responses:
The removal of the restriction will help the surrounding area by providing additional parking spots onsite so users of the Compass Pointe property will not look elsewhere for parking opportunities. Many cars on the road these days are smaller or compact in size so providing these spaces will not adversely affect the surrounding properties. The variance will not increase impervious area on the site as the proposed parking spaces are located on existing paved surfaces so there is no impact to the surrounding area. The restaurant use and office use will have differing peak times of use of the parking area which will negate the shortage of one parking spot.

Staff Response:
The reduction in the size of the parking spaces would not negatively affect the neighboring properties. There are a number of smaller automobiles being constructed and used. The proposed sizes of the compact parking spaces are only slightly smaller than what is required by the code and would accommodate smaller vehicles.

The reduction of three (3) parking spaces could negatively affect the neighboring properties as patrons could park on other sites. The reduction in the overall number of parking spaces by three (3) spaces could negatively impact the neighborhood as the applicant has indicated that the uses would not have the same peak times; however, there are times when the uses will overlap. This will occur during lunch time and early evening.

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 requested variance is being sought due to the elimination of the residential portions of the project on the fourth floor by converting the space to office use. The residential use, although permitted in the C-2A zone, is non-compliant with the *Zoning Ordinance* due to the residential use needing to comply with the RM-2 zoning district. The RM-2 district has a height restriction of 35' making the residential use non-compliant. Converting the space to office matches the remaining uses in the building and eliminates the non-conformity. If the variance is not granted the space on the fourth floor would go unused. There are not additional areas on the site to create additional parking areas due to the Silver Lake buffer restriction on impervious area leading to the exceptional practical difficulty of the site.

   Staff Response:
   The building and uses within the building are in compliance with the *Zoning Ordinance*. The building was reviewed as a mixed use building and was constructed in accordance with the *Zoning Ordinance*. The parking calculation for restaurants has changed since the restaurant was originally approved; however, the calculation used for this building is the old calculation for restaurants.

   There is limited ability to provide any additional parking on the site. The site is adding parking spaces in a reduced size to attempt to come into compliance with the required number of off-street parking spaces. The property is located within the floodplain and a buffer area for Silver Lake. The location within these areas creates an impediment to providing additional on-site parking.

Variances Recommendations:
Staff recommends approval of the area variance for a reduction in the size of the required number of off-street parking spaces (compact cars) for the reasons as follows:

- The applicant has demonstrated exceptional practical difficulty as the site is not able to provide additional off street parking spaces meeting the size requirements due to the design of the site.
- The reduction in the size of the parking spaces would not negatively impact the neighborhood.
- There are a number of smaller cars that are utilized by the general public that do not need the area of a standard parking space.
- Compact car stalls are consistent with sizing specified by parking standards of other locations that allow compact car parking. Dover's code does not provide for the different sizing.
- Staff recommends if the variance is granted that the compact parking spaces be signed as such.

Staff recommends approval of the area variance for the reduction in the total number of off-street parking spaces for the reasons as follows:

- The applicant has demonstrated exceptional practical difficulty as the site is not able to provide additional off street parking spaces meeting due to the design of the site.
- The site has expanded the parking with additional parking spaces that would accommodate smaller vehicles.
- The variance could impact neighboring properties as patrons may attempt to park elsewhere in the area if no parking is available on site.
- The location of the site within the floodplain and within the buffer of Silver Lake create an impediment of increase on-site parking on the site.
- The issue of parking is self-imposed by the previous building owner and developer as they proposed different uses within the mixed use building.

LARSON
ENGINEERING GROUP INC.
CIVIL ENGINEERING & LAND PLANNING

October 12, 2012

Ms. Ann Marie Townshend
City of Dover Planning
P.O. Box 475
Dover, DE 19901

RE: COMPASS POINTE BOARD OF ADJUSTMENT

Dear Ann Marie,

This letter is to serve as our response to how our project meets the four criteria on which it will be evaluated.

1. **The nature of the zone in which the property lies**; The property is located within the C-2A Limited Central Commercial Zone. The variance is for additional parking within the existing parking lot which is an expected use in a commercially zoned property.
2. **The character of the immediate vicinity and the contained uses therein**; The property is bounded by State Street on the east, Silver Lake on the south and west and a commercial property on the north. The northern commercial property has a parking lot that directly abuts the northern boundary of the subject parcel. The requested variances are in character with the proposed area as the area is commercial in nature and the parking lot use follows the use of the property.
3. **Whether, if the restriction upon the applicant's property were removed, such removal would seriously affect neighboring properties and uses**; The removal of the restriction will help the surrounding area by providing additional parking spots onsite so users of the Compass Pointe property will not look elsewhere for parking opportunities. Many cars on the road these days are smaller or compact in size so providing these spaces will not adversely affect the surrounding properties. The variance will not increase impervious area on the site as the proposed parking spaces are located on existing paved surfaces so there is no impact to the surrounding area. The restaurant use and office use will have differing peak times of use of the parking area which will negate the shortage of one parking spot.
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 permitted uses under the provisions of the zoning ordinance**; The requested variance is being sought due to the elimination of the residential portion of the project on the fourth floor by converting the space to office use. The residential use, although permitted in the C-2A zone, is non-compliant with the Zoning Ordinance due to the residential use needing to comply with the RM-2 zoning district. The RM-2 district has a height restriction of 35' making the residential use non-compliant. Converting the space to office use matches the remaining uses in the building and eliminates the non-conformity. If the variance is not granted the space on the fourth floor would go unused. There are no additional areas on the site to create additional parking areas due to the Silver Lake buffer restriction on impervious area leading to the exceptional practical difficulty of the site.

Please review this information along with the attached plan and call me if you have any questions.

Sincerely,
LARSON ENGINEERING GROUP, INC.

Douglas J Liberman
Vice President

City of Dover

Board of Adjustment

November 14, 2012

V-12-13

Location:	915 and 1025 South DuPont Highway
Applicant:	McDonald's
Owners:	Franchise Realty Interstate C/O McDonald's SIOBAIN–IV, LLC
Tax Parcels:	ED-05-077.18-02-02.00-000 ED-05-077.18-02-03.00-000
Application Date:	October 12, 2012
Present Zoning:	C-4 (Highway Commercial Zone)
Present Use:	Commercial
Reviewed By:	Janelle M. Cornwell, AICP
Variance Type:	Area Variance
Variance Requested:	Allow for additional wall sign.

Project Description:
The applicant is requesting a variance from the *Zoning Ordinance* of Article 5, Section 4.7 Supplementary Regulations to allow for one (1) additional wall sign on the north side of the building. Staff has determined that the signage on the south side of the building may be calculated as one wall sign and does not require a variance.

Adjacent Land Uses
The adjacent properties are a mixture of commercial and residential uses. The properties to the north and south are zoned C-4 (Highway Commercial Zone). The properties to the west across South DuPont Highway are zoned C-4 (Highway Commercial Zone) and R-10

Staff Response:
The property is zoned commercial and is surrounded by commercial and residential uses. Signage is determined based on road classification. The property is located on an Urban Principal Arterial. An Urban Principal Arterial allows for two wall signs per road frontage. There is no maximum sign area for the wall signs; however, the total sign area shall not exceed 15% of the wall area of the building. While the property abuts a residential zone and use it is not considered to be adjacent to a residential use for signage as the residences are located behind the commercial building.

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

Applicant Responses:
The character of the uses adjacent to and across the highway from the site are primarily commercial and retail. The area consists of a busy highway corridor with developed commercial/retail uses with multiple driveways and associated parking areas. The properties to the East consist of residential homes which are typically buffered from the commercial sites.

Staff Response:
The character of the vicinity is primarily commercial. Most of the commercial uses within the area have one (1) wall sign; however, they are permitted two (2) wall signs.

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

Applicant Responses:
The subject restriction is for the number of signs on the property. The intent is not to create a clutter of signage for aesthetics and also confusion to the public. The proposal for a variance of 2 more signs would not seriously impact the neighboring properties in that the size of the signs is modest and the total area is well within the ordinance criteria. The total allowable building signage on 3 sides is equal to 507.6 sf whereas the total proposed area of the 4 signs is 110.8 sf. The signs would not be visible to the residential properties to the rear. Additionally, the signs complete the architectural branding of the building.

Staff Response:
The addition of one (1) additional wall sign would not seriously affect neighboring properties as the proposed sign are small in sign area easily visible from the road. It would not be in keeping with the character of some of the other properties within the area as they only have one or two wall signs.

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 proposal includes 2 additional signs beyond the allowed 2 signs per frontage. The total area of all 4 signs is within the 15% per wall allowable area (allowable signage = 507.6 sf; proposed signage = 110.8 sf). The signs form and integral part of the McDonalds branding and are designed to be aesthetically pleasing to the customer. The ordinance also allows 2 monument signs at 100 sf each for this site. The applicant has elected not to construct the monument signs but requests 2 additional wall signs totaling 28 sf. The 2 additional signs are "M" logo signs which are 14 sf each. These signs are primarily for internal branding and are not designed to be seen from the highway. The logos reinforce the branding of the building and are an integral part of the McDonald's business.

Staff Response:
Wall signs are permitted on Urban Principal Arterials. The only restriction on the size of the wall sign on an Urban Principal Arterial is that the wall sign shall not exceed fifteen percent (15%) of the wall area of the side of the building on which they are placed. The four (4) proposed wall signs do not exceed fifteen Percent (15%) of the wall areas of the building.

The property is permitted five (5) signs. They are permitted two (2) wall signs restricted by the percent of the wall area the signs will occupy. They are permitted two (2) 100 SF monument signs, and one (1) pylon sign with a maximum sign area of 150 SF. The maximum sign area for the site is 772 SF (including wall, monument and pylon signs). The applicant is proposing 247 SF which is 32% of the total signage permitted.

Variance Recommendation:
Staff recommends denial of the one additional wall sign for reasons as follows:

- The applicant has not demonstrated exceptional practical difficulty as they are already permitted two wall signs.
- The proposed variance would not be in keeping with the character of the neighborhood. The other buildings in the neighborhood have one or at the most two wall signs on their buildings.
- The application is not in keeping with the nature of the zone in which it is located. While the Urban Principal Arterial has no maximum square footage for a wall sign, it only permits two wall signs.

***Staff notes the other signs shown are not part of this variance request.**

Board of Adjustment – Area Variance
Proposed McDonalds Restaurant
915 South Dupont Highway (Route 13) Dover, DE

Requested Signage Variance: Number of signs permitted = 2; Signs Proposed = 4
Variance criteria:

1. **Nature of zone:** The subject property is located within the C-4 Highway Commercial Zone and has frontage along Route 13 (South Dupont Highway). A residential R-8 zone exists to the East (rear) of the site.

2. **Character of immediate vicinity:** The character of the uses adjacent to and across the highway from the site are primarily commercial and retail. The area consists of a busy highway corridor with developed commercial/retail uses with multiple driveways and associated parking areas. The properties to the East consist of residential homes which are typically buffered from the commercial sites.

3. **If restriction is removed:** The subject restriction is for the number of signs on the property. The intent is not to create a clutter of signage for aesthetics and also confusion to the public. The proposal for a variance of 2 more signs would not seriously impact the neighboring properties in that the size of the signs is modest and the total area is well within the ordinance criteria. The total allowable building signage on 3 sides is equal to 507.6 sf whereas the total proposed area of the 4 signs is 110.8 sf. The signs would not be visible to the residential properties to the rear. Additionally, the signs complete the architectural branding of the building.

4. **If restriction is not removed:** The proposal includes 2 additional signs beyond the allowed 2 signs per frontage. The total area of all 4 signs is within the 15% per wall allowable area (allowable signage = 507.6 sf; proposed signage = 110.8 sf). The signs form and integral part of the McDonalds branding and are designed to be aesthetically pleasing to the customer. The ordinance also allows 2 monument signs at 100 sf each for this site. The applicant has elected not to construct the monument signs but requests 2 additional wall signs totaling 28 sf. The 2 additional signs are "M" logo signs which are 14 sf each. These signs are primarily for internal branding and are not designed to be seen from the highway. The logos reinforce the branding of the building and are an integral part of the McDonald's business.

City of Dover

Board of Adjustment

November 14, 2012

V-12-14

Location:	1275 South State Street
Applicant:	Bayhealth Medical Center
Owner:	Bayhealth Medical Center
Tax Parcel:	ED-05-086.05-02-13.00-000
Application Date:	October 11, 2012
Present Zoning:	C-4 (Highway Commercial Zone)
Present Use:	Commercial
Reviewed By:	Tracey Harvey
Variance Type:	Area Variance
Variance Requested:	Allow a monument sign to encroach into the required setback.

Project Description:
The applicant is requesting a variance from the *Zoning Ordinance* of Article 5, Section 4.7 Supplementary Regulations to allow a monument sign to be located on the property line. This application is before the Board of Adjustment as the applicant would like to remove the existing legal non-conforming sign and install a new monument sign.

Adjacent Land Uses
The adjacent properties are commercial uses. The properties to the south are zoned C-4 (Highway Commercial Zone). The properties to the north are zoned SC-2 (Community Shopping Center Zone). The properties to the west across South State Street are zoned C-

2A (Limited Central Commercial Zone), and the properties to the east across South DuPont Highway are zoned BG (General Business District).

Code Citation

4.7 *Permitted signs.* Signs are permitted in all zones in accordance with the following table, which is a list of permitted sign types by use, proximity to residential uses and road classification.

Use	Road Type	Sign Type	Number Permitted	Max Size	Max Height	% of Wall	Setback (R.O.W.)	Exclusion Zone
Non-Residential Uses in Non-Residential Districts	Urban Principal Arterial	Monument	1/entrance	100 S.F.	10'.	N/A	10 ft.	20'.
Non-Residential Uses in Non-Residential Districts	Urban Minor Arterial	Monument	1/entrance	64 S.F.	7'	N/A	5'	20'

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:
   We are requesting a variance to place a sign on the property line. There is an existing legal non-conforming sign that sits on the property line at this time. We are requesting to remove the existing 100 square foot sign that is 12' tall and replace it with a 60 square foot sigh that is 7'tall. It is our desire to standardize all the Bayhealth Campuses with like signage.

   Staff Response:
   The property is zoned commercial and is surrounded by commercial uses. Signage is determined based on road classification. The property is located on an Urban Principal Arterial and the Urban Minor Arterial. Both road types allow for a monument sign.

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

   Applicant Responses:
   This location is surrounded by a Shopping Center and other commercial properties. Since there is an existing larger sign at the proposed location with the same setback we are confident that the new proposed smaller sign will in no way alter the character of the neighborhood.

   Staff Response:
   The character of the vicinity is commercial. The proposed location seems the most feasible for the smaller sign since the layout of the building does not allow for other options for the placement of the sign that would meet the requirements of the *Zoning Ordinance.* The sign would impede in the parking lot if another location were to be chosen.

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

   Applicant Responses:
   Since the existing sign is on the property line and has had no negative effects on the neighboring properties, we feel replacing it with a smaller sign will not have any effects on the neighboring properties. There will be 38' from the edge of the sign to Route13 and 68' from the sign to State Street.

   Staff Response:
   The proposed location of the monument sign would not seriously affect neighboring properties as the proposed sign would be on the property line just as the existing sign is. It would be in keeping with the character of signage in the commercial area. In addition, the new proposed sign is smaller than the existing one.

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:
   Due to the unique layout of this property, there is no other placement option for the sign. The parking lot runs along the entire property line except for the small patch of grassy area that we are proposing to place the sign.

   Staff Response:
   Monument signs are permitted within on Urban Principal Arterials and Urban Minor Arterials. If the monument sign could be setback ten (10) feet from the right-of-way on Route 13 and five 5 feet from the right of way on State Street meeting the requirements of the *Zoning Ordinance*, the setback requirements for the sign would encroach in the parking lot of the building. The existing sign is a legal non-conforming sign which sits on the property line.

   There is an exceptional practical difficulty in that placement in accordance with the setback requirement would cause the placement of the sign to impede in the parking area as well as decrease the number of parking spaces in the lot.

Variance Recommendation:
Staff recommends approval of the sign variance on the property line for reasons as follows:

- The applicant has demonstrated exceptional practical difficulty as the placement of the sign in any other location other than the property line would encroach in the parking lot of the building.
- The placement of the sign on the property line would not be out of character with the surrounding neighbors as there are other signs within the area that are in keeping with the commercial signage in the area.
- The new proposed sign is smaller in size than the existing sign which sits on the property line and would not be out of character for the neighborhood.

Board of Adjustment
Area Variance Responses for
1275 South State Street

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

We are requesting a variance to place a sign on the property line. There is an existing legal non-conforming sign that sits on the property line at this time. We are requesting to remove the existing 100 square foot sign that is 12' tall and replace it with a 60 square foot sign that is 7' tall. It is our desire to standardize all the Bayhealth Campuses with like signage.

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

This location is surrounded by a Shopping Center and other commercial properties. Since there is an existing larger sign at the proposed location with the same setback we are confident that the new proposed smaller sign will in no way alter the character of the neighborhood.

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

Since the existing sign is on the property line and has had no negative affects on the neighboring properties we feel replacing it with a smaller sign will not have any affects on the neighboring properties. There will be 38' from the edge of the sign to Route 13 and 68' from the sign to State Street.

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 the use of the property that is permitted uses under the provisions of the zoning ordinance.

Due to the unique layout of this property there is no other placement option for the sign. The parking lot runs along the entire property line except for the small patch of grassy area that we are proposing to place the sign.

View from State St.



View From Rt. 13 Headed South



DESCRIPTION:Bayhealth –Occupational Health

DATE:10/12/12

DESIGN BY: JY

APPROVED BY:

ALL DESIGNS PROPERTY OF:
Kent Signs

Existing



Proposed



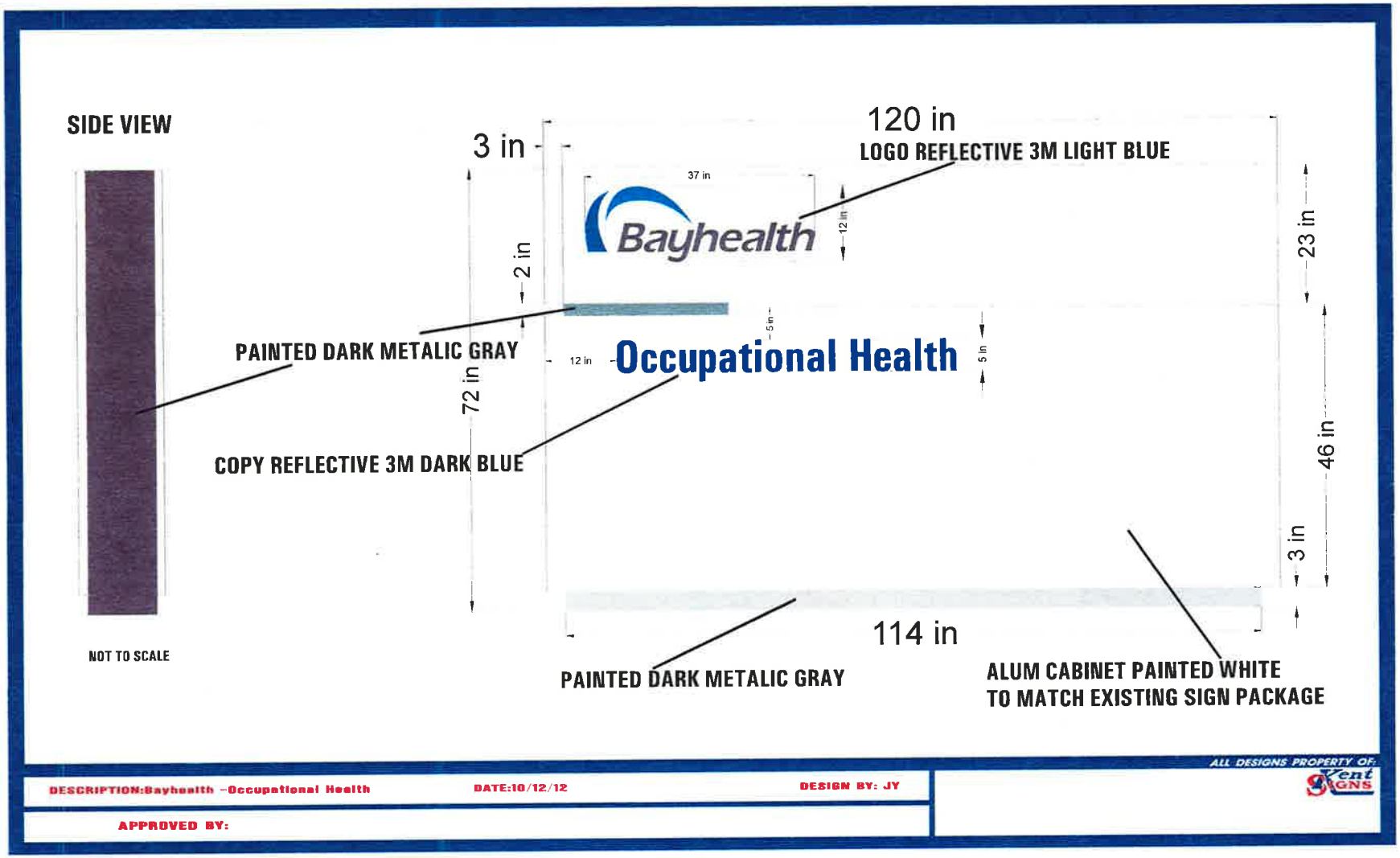
APPROVED BY:

DESCRIPTION:Bayhealth – Occupational Health

DATE:10/12/12

DESIGN BY: JY

ALL DESIGNS PROPERTY OF:
Kent Signs


SIDE VIEW
NOT TO SCALE
3 in
120 in
LOGO REFLECTIVE 3M LIGHT BLUE
37 in
Bayhealth
12 in
2 in
23 in
PAINTED DARK METALIC GRAY
5 in
12 in
Occupational Health
5 in
72 in
COPY REFLECTIVE 3M DARK BLUE
46 in
3 in
114 in
PAINTED DARK METALIC GRAY
ALUM CABINET PAINTED WHITE
TO MATCH EXISTING SIGN PACKAGE
ALL DESIGNS PROPERTY OF:
Vent Signs
DESCRIPTION:Bayhealth -Occupational Health
DATE:10/12/12
DESIGN BY: JY
APPROVED BY: