AGENDA
CITY OF DOVER BOARD OF ADJUSTMENT
WEDNESDAY – March 21, 2012 9:00 AM – CITY HALL

ROLL CALL

APPROVAL OF AGENDA

APPROVAL OF MINUTES OF January 18, 2012 MEETING

OLD BUSINESS

Applicant #V-11-08:
508 S. State St., Yozima, LLC was granted a variance from the requirements of Article 4 §4.13 of the *Zoning Ordinance* pertaining to the permitted lot coverage at the Board of Adjustment meeting of August 17, 2011.

Subject property is zoned RGO, SWPOZ Tier 3, and H. The Tax Parcel ID # is ED05-077.09-03-70.00-000. The owner of record is Yozima, LLC.

ADJOURN
29 Del.C. § 10004(e)(2)

THE AGENDA ITEMS MAY NOT BE CONSIDERED IN SEQUENCE. THIS AGENDA IS SUBJECT TO CHANGE TO INCLUDE THE ADDITION OR THE DELETION OF ITEMS, INCLUDING EXECUTIVE SESSIONS.

CITY OF DOVER
BOARD OF ADJUSTMENT
January 18, 2012

The Regular Meeting of the City of Dover Board of Adjustment was held on Wednesday, January 18, 2012 at 9:00 AM with Chairman Sheth presiding. Members present were Mr. Sheth, Mr. Senato, Colonel Ericson, and Mr. Hufnal. Mr. Keller was absent.

Staff members present were Ms. Cornwell, Mrs. Purnell, Ms. Metsch, and Mr. Rodriguez. Also present were Mr. Mark Lloyd and Mrs. Kim Diehl.

APPROVAL OF AGENDA

Mr. Hufnal moved to approve the agenda as submitted, seconded by Mr. Senato and the motion was unanimously carried with Mr. Keller absent.

APPROVAL OF THE REGULAR BOARD OF ADJUSTMENT MEETING MINUTES OF NOVEMBER 16, 2011

Mr. Hufnal moved to approve the regular Board of Adjustment meeting minutes of November 16, 2011, as submitted, seconded by Mr. Senato and the motion was unanimously carried with Mr. Keller absent.

OPENING REMARKS CONCERNING DEVELOPMENT APPLICATIONS

Ms. Cornwell presented to the audience the policies and procedures that would be followed during the hearing.

NEW BUSINESS

Applicant #V-12-01:

1159 South DuPont Highway: Mark Lloyd has applied to the City of Dover Board of Adjustment requesting a variance from the requirements of Article 5 §4.7 of the *Zoning Ordinance* pertaining to signage.

Subject property is zoned C-4 (Highway Commercial Zone). The Tax Parcel ID # is ED05-086.05-02-15.00-000. The owner of the record is Mark Lloyd.

Representatives: Mr. Mark Lloyd, Property Owner; Mrs. Kim Diehl,Kent Signs

Mr. Mark Lloyd and Mrs. Kim Diehl were sworn into the record.

Ms. Cornwell provided an overview of the application. Staff submitted for the record the Staff Report, application, Site Plan, drawings, architecture elevations, and photographs.

Ms .Cornwell stated that the legal notice was published in the Delaware State Newspaper on January 12, 2012 and the public was notified in accordance with the regulations.

Mrs.Diehl presented the case.

Mrs. Diehl stated that in the packets is a phot of the existing thirty-two (32) foot sign. They are requesting to increase the size of the pylon sign to forty-eight (48) feet. She stated that code allows for seventy-five (75) square feet with a setback of fifteen (15) feet from the property line. The existing sign is thirty-nine (39) feet back from the edge of the road. She stated that they are requesting to keep the sign at the existing setback and to increase the size of the sign. She stated that they feel that their request does meet the guidelines.

Mr. Sheth stated that the proposed sign definitely looks better than the old sign. He asked if they would be closer to the highway.

Responding to Mr. Sheth, Mrs. Diehl replied no, it would not be closer to the highway. They will be using the existing pole, removing existing 4'x8' sign and asking to increase it to 6'x8'. This would increase the sign by two (2) feet in height. She stated the reason for this request is that originally they were going to remove the 4'x8' sign and put up a LED message center. Upon speaking with the Planner at the City of Dover she was informed that the requirement for a LED message center could only be 70% of the overall sign, therefore; she had to add the additional two (2) feet to the top to make it 70%.

Mr. Sheth asked what the reason for the variance?

Responding to Mr. Sheth, Mrs. Diehl replied that Mr. Lloyd wanted to spruce up the sign and add the LDG message center. The only way to add the LED message center is by increasing the size of the sign. Placing the sign fifty-four (54) feet back from the edge of the road (fifteen (15) feet from the right-of-way) would make the message center difficult to read.

Mr. Sheth asked what the hardship was?

Responding to Mr. Sheth, Mrs. Diehl replied that you would not be able to read the sign properly if it was put fifteen (15) foot back, and due to the tree line you would not be able to see the sign. Also, traffic traveling southbound on Rt. 13 would not be able to see the sign. She stated that in the winter it might not be a problem because there are no leaves on the trees, but there would be a problem during the spring, summer, and fall.

Mr. Hufnal asked if there was also a hardship with the parking lot lights as well as the tree line? He stated that you are allowed up to seventy-five (75) feet of signage and you are only increasing it to forty-eight (48) feet.

Responding to Mr. Hufnal, Mrs. Diehl replied that was correct.

Mr. Sheth asked if the old sign could be revised?

Responding to Mr. Sheth, Mrs Diehl stated that if they were to leave the sign at the existing thirty-two (32) square feet you would not be able to get a message center that could be read properly with 70%.

Mr. Senato asked for clarity, that the reason the request for the extra footage would be that they

would be able to read the message center clearly?

Responding to Mr. Senato, Mrs. Diehl replied that was correct, because of the sign code the message center could only be 70% of the 32 sq. ft. which would be too small.

Mr. Sheth stated that it was a non-conforming sign.

Responding to them, Ms. Cornwell replied yes, it is with regards to the setback from the right-of-way.

Mr. Sheth asked if there were any questions and there were none.

Mr. Sheth questioned if there were any members who had a conflict of interest and there were none.

Mr. Sheth opened a public hearing and after seeing no one wishing to speak closed the public hearing.

Mr. Sheth questioned if there was any correspondence related to this case and there was none.

Colonel Ericson moved to approve variance Applicant # V-12-01 located at 1159 South DuPont Highway owned by Mr. Mark Lloyd based upon testimony and staff recommendations, seconded by Mr. Hufnal and the motion was unanimously carried 5-0.

Mr. Senato moved to adjourn the meeting, seconded by Mr. Hufnal and the motion was unanimously carried with Mr. Keller absent.

Meeting adjourned at 9:15 AM

Sincerely,

Maretta Purnell
Secretary

MEMORANDUM

Department of Planning and Community Development
P.O. Box 475
Dover, Delaware 19903
Phone: 302.736.7196 Fax: 302.736.4217

Date: March 14, 2012

To: Board of Adjustment

From: Ann Marie Townshend, AICP

RE: Request for Clarification on Decision for V-11-08 (State Street Commons)

The above case was heard and decided by the Board of Adjustment on August 17, 2011. The Board of Adjustment granted a variance to allow 89.1% impervious cover on the site. As stated in the applicant's attached letter, the plan submitted to and reviewed by the Board included an area of pervious pavers on the south portion of the building's parking deck. While this area was required to be counted toward the lot coverage of the site, the semi-pervious characteristics of these pavers was considered in the deliberation of the Board. The applicant proceeded to pave the area with asphalt. Because this is contrary to what was shown to the Board, Staff is requesting clarification from the Board as to whether the asphalt paving is acceptable based on the deliberation and prior decision of the Board and whether the pervious characteristics of the pavers presented influenced the Board's decision.

cc: Letter from Douglas J. Liberman, February 21, 2012
Excerpt from Board of Adjustment Minutes, August 17, 2011
Board of Adjustment Staff Report, August 17, 2011 (V-11-08)
Site Diagram

LARSON
ENGINEERING GROUP INC.
CIVIL ENGINEERING & LAND PLANNING

February 21, 2012

RECEIVED
FEB 21 2012
CITY OF DOVER
INSPECTIONS & PLANNING

Ms Ann Marie Townshend
City of Dover Planning
PO Box 475
Dover, DE 19901

RE: STATE STREET COMMONS
BOARD OF ADJUSTMENT

Dear Ann Marie·

This letter is to document our application for a variance from Zoning Ordinance Article 4, Section 4.13, lot coverage of 85 percent. We are requesting a variance to allow 88.5 percent impervious area on the site. A similar variance was initially granted in December 2009 (Case V-09-14) for 88.2 percent and then again in August 2011 (Case V-11-08) for 89.1 percent

The previous variance plan (Case V-11-08) shows pervious pavers in the parking area. This area was constructed as standard pavement, as there was no credit for the area being pervious by using the pavers. Since the Kent Conservation District and the City of Dover Planning Office considered proposed grass pavers as impervious, it did not make sense to remove the paving and place the pavers. The pave area along the southern property line was removed with curbing added to address maintenance concerns. This reduced the onsite impervious coverage to 88.5 percent. This is a 3.5 percent increase over the permitted lot coverage.

All runoff from the parking lot in question still enters the underground stormwater management system. This system infiltrates the runoff; therefore, acting as if there is less impervious area onsite.

The site is located within Dover's downtown area, where much of the area has sites with similar or larger impervious coverages. The percent increase is only 1,048 square feet and would seem to be minimal compared to surrounding sites.

Please review this information and call me if you have any questions.

Sincerely,

LARSON ENGINEERING GROUP, INC.

Douglas J. Liberman
Vice President

Excerpt from Board of Adjustment Minutes of August 17, 2011

Applicant #V-11-08:
508 S. State St., Yozima, LLC has requested a variance from the requirements of Article 4 §4.13 of the *Zoning Ordinance* pertaining to the permitted lot coverage.

Subject property is zoned RGO (General Residence and Office Zone), SWPOZ (Source Water Protection Overlay Zone) Tier 3, and H (Historic District). The Tax Parcel ID # is ED05-077.09-03-70.00-000. The owner of record is Yozima, LLC.

Representative: Mr. Doug Liberman, Larson Engineering.

Mrs. Townshend stated that exhibits for the record include the Staff Report, the Application and Site Diagram.

Mrs. Townshend stated that the legal notice was published in the Delaware State Newspaper on August 7, 2011 and the public was notified in accordance with the regulations.

Mr. Sheth questioned if any of the Board members had a conflict of interest and there was none

Mr. Sheth questioned if anything has changed since the last time this was presented? Responding to Mr. Sheth, Mrs. Townshend stated that there has been a slight change in terms of the variance requested. The primary difference between the previous variance granted and what is currently being requested would be keeping the asphalt along the south property line. Under the previous variance this was to be saw-cut and planted as a landscaped area.

Mr. Liberman stated that there is a wall along the property line and a long strip of asphalt that comes over from Kent General Hospital over to the base of the wall. The new owners are looking at that as a maintenance problem to have a one foot wide strip of grass down along that area. They would like to maintain this area as pavement at this time.

Mr. Liberman further stated that as depicted on the display map in bright green are the areas in which they would be eliminating. There will be saw cutting the existing concrete ramp and saw cut asphalt in another area and creating a planter in that area. The dull green areas on the map are the grass areas remaining throughout the site.

Mr. Liberman further stated that one thing that is different with this application that was not a part of the previous application and does not count as impervious area, is the asphalt parking area along the southern property line. The existing asphalt is being removed and pavers are being put in in that area. What this product is is a porous concrete product that allows grass to grow up through; however, more importantly it allows water to run through that area. This project is predominately pervious; however, considering the location and use, Staff would not let us consider it as total pervious area so it would not count towards that area. It does allow for water to infiltrate through and does act as pervious area. This is a significant portion of that area which is about 3.3% of the site that would be pervious.

Mr. Liberman further stated that when you think of this area it is up on the deck and the pervious area is located directly underneath the stormwater management infiltration area for the site. Any water that falls on this area is going to infiltrate down through the eco-pavers and through into the stromwater management system so there will be no runoff from these pavers. We have used these pavers on the Compass Point site and at the Shops of Fieldstone on the north side of Dover that was a County project.

Colonel Ericson questioned if they would need a variance if this was included in this area? Responding to Colonel Ericson, Mr. Liberman stated that yes because with that we would be at 85.9%. If we took away the southern strip, we would be at 84.9% so we are really close. If you look at what we did before this is a big improvement as we got to 88.1% last submission. Mr. Hufnal questioned if this counted the concrete patio pad that they are taking out? Responding to Mr. Hufnal, Mr. Liberman stated that this would be included in the area that they would be taking out.

Mrs. Townshend stated that reference was made to the previous variance that was granted in December 2009. The report that you have includes attachments for both the Staff Report for that time and the decision made by the Board. Were there any questions or details that you would want to go through in terms of refreshing your memory on what the variance was for? There is a lot coverage of 85% that is permitted in this zone. This building is largely constructed and we have not issued a Certificate of Occupancy. Some field changes resulted in the excess lot coverage which is the reason for the variance. The variance granted in 2009 expired.

Mr. Liberman stated that another thing to consider with this is the surrounding area. There is an aerial photo of the project area and you can see how small this site is to the other sites around there especially when you consider the parking lot for Kent General Hospital just south of the site. The other thing to look at with regards to lot coverage for stormwater run-off for this site is it is served entirely by an infiltration system so all the rooftops and the upper parking deck all end up in this infiltration area and it ends up infiltrating as opposed to running off. The increase in impervious area is not going to generate problems for the adjoining property owners. It will match what is already out there in terms of how the other sites look.

Mr. Keller stated that back in 2009 when the initial variance was requested and then subsequently approved, the City took the position that there was no record of the City of Dover or DelDOT approving action that had been taken prior to the request for the variance. He would note again that the City of Dover reiterates that this was not in fact the case and that there was no record that either the City of Dover or DelDOT approved the field correction referenced by the applicant. In Mr. Liberman's letter of July 15, 2011 to the City of Dover, you once again, as had been done in 2009, state "this field change was approved by the City of Dover and DelDOT" are you privy to any documentation or evidence that this was in fact the case in 2009?

Responding to Mr. Keller, Mr. Liberman stated that he knows that they received approval from DelDOT to make the change from their Central District. He would have to go back and find some kind of documentation to prove that. As far as the City of Dover goes he is unsure.

Mrs. Townshend stated that there were discussions. The issue that is referenced is that initially it

was designed for the area where they have an easement from the neighboring property owner to be one-way and the initial traffic circulation planned by the applicant would have taken that traffic around the adjacent building and it would be a one-way scenario. What happened was the neighboring property owner brought forth information that indicated that the easement was only for that side of the building and not to allow traffic to go around their building and exit on the other side. At that point, they did need to adjust to make that two-way. What Staff had looked at was a change in circulation we never reviewed any change in the pavement associated with that because the width that was on the initial Plan met the Code requirements. The fact that it was widened was not approved by the City.

Mr. Keller further questioned that you are speaking now as to how it was presented to you by the owner or were you privy during the course of this change as you speak? Responding to Mr. Keller, Mrs. Townshend stated that she was in the loop during the course of the change and we were specifically talking about one-way versus two-way. There was never any change of the Plan or any submission indicating that there was a related widening of the paved area.

Mr. Keller stated that he is always concerned with self-imposed hardships. If this was a matter of some discussion that was an inadvertent error a self-imposed hardship may have arisen and that may in and of itself not necessarily prohibit the granting of a variance. Self-imposed hardships are not to be rewarded by a simple granting of a variance otherwise but taking into account with all the aspects of that particular request.

Mr. Hufnal questioned who the original contractors were who built the building? Responding to Mr. Hufnal, Mrs. Townshend stated that Yozima, LLC was the original building owner and at this point, Yozima, LLC is still the owner of record; however, Onix Z has purchased the mortgages and holds the deed in lieu of foreclosure. Different people are in control while the owner of record remains the same.

Colonel Ericson stated that he too does not like approving self-imposed hardships just because the hardship developed because something was not coordinated properly. The problem he has is that in 2009 the Board of Adjustment approved the variance. The only reason that we are meeting now is because they did not finish the building in time and that variance is expired. When he looks at this they had a variance up to 88.2% and they are asking for 89.1%; however, if you included the pavers it would actually be less than a 1% variance. This seems to be a reasonable request.

Mr. Hufnal questioned if Mr. Liberman could repeat what he stated earlier with the concrete removed and the pavers installed what did you calculate the reduction to be? Responding to Mr. Hufnal, Mr. Liberman stated it would be down to 85.9%. This would be less than the original request now because of the changes that are going to be made.

Mr. Hufnal further questioned that when these changes are made, he would assume that you have to submit a revised Final Plan reflecting these changes that were previously approved, is this correct? Responding to Mr. Hufnal, Mrs. Townshend stated that this is correct.

Mr. Hufnal questioned if this application would have to go back before the Historic District

Commission for Architectural Review Certification? Responding to Mr. Hufnal, Mrs. Townshend stated that no, as there was already an Architectural Review Certificate approved. These changes are not changes that will be plainly visible from the public way so they would not need to go back through that process.

Mr. Sheth opened a public hearing and after seeing no one wishing to speak closed the public hearing.

Mr. Keller questioned that the BOA Report included some advisory comments and if the variance is approved, the applicant will need to re-submit revised Final Plans reflecting the changes from the previous approvals? Responding to Mr. Keller, Mrs. Townshend stated yes.

Mr. Keller further questioned that all of the conditions of the Site Plan approval, are these matters that should be incorporated into a motion for approval or are they a matter of course regardless of the outcome if the variance is approved? Responding to Mr. Keller, Mrs. Townshend stated that they are a matter of course and it would not hurt to include them in the motion just to underscore that they need to take place.

Mr. Hufnal moved to approve Applicant #V-11-08 located at 508 S. State St., Yozima, LLC based upon the testimony received today and the revisions that will be made to the property with the removal of the ramp, revised landscaping, reducing the amount of impervious cover, and the need for submitting a revised Final Plan reflecting the changes from previous approvals prior to the issuance of a Certificate of Occupancy, seconded by Colonel Ericson and the motion was unanimously carried 5-0.

MEMORANDUM
Department of Planning and Community Development P.O. Box 475
Dover, Delaware 19903
Phone: 302.736.7196 Fax: 302.736.4217
Date: To: From: RE:
March 14, 2012
Board of Adjustment
aSci'mn Marie Townshend, AICP
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cc: Letter from Douglas J. Liberman, February 21, 2012
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ENGINEERING GROUP INC.
CIVIL ENGINEERING & LAND PLANNING
Ms Ann Marie Townshend City of Dover Planning PO Box 475
Dover, DE 19901
February 21, 2012
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Please review this information and call me if you have any questions. Sincerely,
LARSON ENGI-
ING GROUP, INC.
Of
ar.v 77,
Vice 'Ant Dougl
www.larsonengineering.net
910 South Chapel Street • Suite 200 • Newark, DE 19713 • Phone 302-731-7434 • Fax 302-731-8211
berman
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Mr. Hufnal questioned if this application would have to go back before the Historic District
Commission for Architectural Review Certification? Responding to Mr. Hufnal, Mrs. Townshend stated that no, as there was already an Architectural Review Certificate approved. These changes are not changes that will be plainly visible from the public way so they would not need to go back through that process.

Mr. Sheth opened a public hearing and after seeing no one wishing to speak closed the public hearing.

Mr. Keller questioned that the BOA Report included some advisory comments and if the variance is approved, the applicant will need to re-submit revised Final Plans reflecting the changes from the previous approvals? Responding to Mr. Keller, Mrs. Townshend stated yes.

Mr. Keller further questioned that all of the conditions of the Site Plan approval, are these matters that should be incorporated into a motion for approval or are they a matter of course regardless of the outcome if the variance is approved? Responding to Mr. Keller, Mrs. Townshend stated that they are a matter of course and it would not hurt to include them in the motion just to underscore that they need to take place.

Mr. Hufnal moved to approve Applicant #V-11-08 located at 508 S. State St, Yozima, LLC based upon the testimony received today and the revisions that will be made to the property with the removal of the ramp, revised landscaping, reducing the amount of impervious cover, and the need for submitting a revised Final Plan reflecting the changes from previous approvals prior to the issuance of a Certificate of Occupancy, seconded by Colonel Ericson and the motion was unanimously carried s-a

City of Dover

Board of Adjustment

August 17, 2011

V-11-08

Location:	508 S. State Street Southwest corner of S. State Street and Water Streets
Applicant/Owner:	Yozima, LLC
Application Date:	July 15, 2011
Present Zoning:	RGO (General Residence and Office Zone) H (Historic District Zone)
Present Use:	Office Building (not yet occupied)
Reviewed By:	Ann Marie Townshend, AICP

Project Description:
The applicant is requesting a variance from the *Zoning Ordinance*, Article 4, Section 4.13, lot coverage of 85 percent. The applicant is requesting that a variance allowing 89.1 percent lot coverage be granted. A number of changes were made in the field during the development of the site that resulted in exceeding the lot coverage for the site.

Adjacent Land Uses
The surrounding properties are primarily institutional and office uses. The property to the south of the subject site on South State Street is an office owned by Bayhealth Medical Center. It is zoned IO (Institutional and Office) and H (Historic District). The property immediately to the west on Water Street is used as offices, housing the Delaware Department of Justice and DuPont Pediatrics, and is zoned RGO (General Residence and Office). The property to the north, across Water Street is a law office, zoned RGO (General Residence and Office) and H (Historic District). The properties to the east across State Street are zone RGO (General Residence and Office) and H (Historic District) and include properties that are part of Christ Episcopal Church.

Code Citations
Section 4.13. [RG-O zone.]

Bulk and parking regulations for general residence and office zones (RGO) [are as follows] (see also article 12, definitions; article 5, supplementary regulations; and article 6, off-street parking, driveways and loading facilities):
TABLE INSET:

			Office Buildings	One-Family Detached, Duplex, Apts.	Lot Line, Multiplex, Townhouses
	Lot coverage		85%		

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.

The applicant's answers to the above four questions are included in the application below. The applicant provided a survey map of the site and location of the building to document the circumstances.

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

Applicant Responses:
The nature of the surrounding area is office use which corresponds with the proposed use. Similar compatible zoning districts surround the RGO parcel.

Staff Response:

The office building is consistent with the nature of the RGO (Residential and General Office) zone.

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

Applicant Responses:
The character of the immediate vicinity is office use with supporting parking. Several properties adjoining the site have significant paving/parking areas. The requested variance is diminus (approximately 4% from the lot coverage otherwise permitted).

Staff Response:
The property is located within the core of Dover's downtown, and much of the immediately surrounding area is covered with buildings and pavement.

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

Applicant Responses:
The restriction of 85% lot coverage would not affect the adjoining properties as they have similar paved areas for parking and lot coverages.

Staff Response:
Removal of the 85% lot coverage would not seriously affect neighboring properties and uses.

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 variance was previously granted under Application V-09-14. If the restriction is not removed it would create a significant hardship as the applicant would need to remove parking to create impervious area, which would require a different variance application, or come up with another means of creating impervious area.

The need for the additional impervious area was created by a dispute with the adjoining property owner over whether the existing easement agreement allowed for the use of the drive aisles on the adjoining property. To resolve the dispute, the western drive aisle was widened to permit two-way traffic. This field change was approved by the City of Dover and DelDOT. There was no other way to create impervious area due to the building already being under construction and the need to meet the parking requirements.

Staff Response:

In December 2009, the Board of Adjustment approved a variance (V-09-14) to allow the site to exceed the 85% lot coverage. That variance allowed for the 88.2% lot coverage. The current variance request is that the lot coverage be permitted at 89.1%. The variance approved in 2009 expired, and the current request would exceed what was initially approved.

The prior approval was conditioned upon removing asphalt between the building and the south property line. The current request would remove pavement in other areas, but leave the pavement between the building and the south property line.

A copy of the staff report and Board decision from 2009 are attached to this report. The information contained in this report is applicable to this variance request as well. Staff notes that the City has no record that either the City of Dover or DelDOT approved the field correction referenced by the applicant.

In evaluating the past application along with the current application, staff believes that the applicant has demonstrated exceptional practical difficulty, as reducing the lot coverage to 85% would require alterations that would much of the current site construction unusable.

Variance Recommendations:
Staff recommends approval of the variance for the following reasons and with the following conditions.

- The requested variance is for an increase of 4.1 percent over the permitted lot coverage, which is diminimus in comparison to the cost associated with reducing impervious cover to comply with the lot coverage.
- The applicant has agreed to remove (saw-cut) the concrete ramp on the north side of the building and an area on the deck, to replace these areas with landscaping, thereby reducing the current amount of impervious cover on the site from what is currently there. These changes should be conditions of the variance.
- The current condition of the site prohibits the City from issuing a certificate of occupancy on the building. Granting the variance would allow for the building amenities to be completed (including the landscaping) and for the building to be occupied.

Advisory Comments:

- If the variance is approved, the applicant will need to submit revised final plans reflecting the changes from the previous approvals.
- All other conditions of the site plan approval, including landscaping and compliance with the Architectural Review Certification, must be satisfied prior to issuance of a Certificate of Occupancy.