CITY OF DOVER
BOARD OF ADJUSTMENT
March 21, 2012

A Regular Meeting of the City of Dover Board of Adjustment was held on Wednesday, March 21, 2012 at 9:00 AM with Chairman Sheth presiding. Members present were, Mr. Sheth, Mr. Senato, Mr. Keller, Mr. Hufnal and Colonel Ericson.

Staff members present were Mrs. Townshend, Ms. Cornwell, Ms. Metsch and Mr. Rodriguez. Also present was Mr. Conny Malmberg and Mr. Doug Liberman.

APPROVAL OF AGENDA

Mr. Hufnal moved to approve the agenda as submitted, seconded by Mr. Senato and the motion was unanimously carried 5-0.

APPROVAL OF THE REGULAR BOARD OF ADJUSTMENT MEETING MINUTES OF JANUARY 18, 2012

Mr. Keller stated that he would first like to clarify that he was not in attendance at the January 18, 2012 Board of Adjustment meeting; however, in reviewing the minutes he would note on Page 1 under representatives fourth paragraph beginning with Ms. Cornwell; it stated "the legal notice was published in the Delaware State Newspaper on January 12, 2012." That date would not have provided for the minimum of ten (10) days' notice to the public; however, he had clipped a copy of the public legal notice from the newspaper on which it is noted that this publication was ran January 8, 2012 which would be in compliance with the ten (10) day notice.

Mr. Keller further stated on Page 2, while again he was not in attendance; however, is starts with "Mrs. Diehl stated that in the packet there is a "phot" he would presume that this would either be "plot" or "photograph" as opposed to "phot."

Mr. Keller further stated that at the top of that same page the minutes are dated January 18, 2011 he presumes this should be 2012.

Mr. Keller further stated that in paragraph 5 starting with "responding to Mr. Sheth, Mrs. Diehl replied that Mr. Lloyd wanted to spruce up the sign and add the LDG message center." All other language is the LED which he feels the latter should be.

Mr. Keller further stated at the top of Page 3 upper right hand corner the date is noted as January 18, 2011 which should be January 18, 2012.

Mr. Keller further stated at the bottom of this same page next to last paragraph beginning with "Colonel Ericson moved to approve variance applicant #V-12-01" it ends with saying "seconded by Mr. Hufnal and the motion was unanimously carried 5-0; however, he was not in attendance so this should be represented by 4-0.

APPROVAL OF THE REGULAR BOARD OF ADJUSTMENT MEETING MINUTES OF JANUARY 18, 2012

Mr. Senato moved to approve the regular Board of Adjustment meeting minutes of January 18,

2012, as amended, seconded by Mr. Hufnal and the motion was unanimously carried 5-0.

OPENING REMARKS CONCERNING DEVELOPMENT APPLICATIONS

Mrs. Townshend presented to the audience the policies and procedures that would be followed during these hearings.

Mrs. Townshend stated that because there is no public hearing required for this application, there is no mailing required; however, we placed an ad in the paper on March 4, 2012 to state that the Board would be meeting to review this old business matter.

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.

Representative: Mr. Conny Malmberg, Attorney Representing the Applicant; and Mr. Doug Liberman, Larson Engineering.

Mrs. Townshend stated that in your packet you have a memorandum from me as well as the August 17, 2011 Report issued to the Board of Adjustment and the minutes from the August 17, 2011 Board of Adjustment meeting. You also have a letter dated February 21, 2012 from the applicant.

Mrs. Townshend stated that she would provide a brief overview of the application.

Colonel Ericson stated that before you begin, he has some concerns. We should not be having a meeting. We vote on a variance, which we did in August 2011 and we said yes, now if we had said no, for one year they could not bring up this subject again. We said yes and the contractor has to do what is agreed upon within one (1) year or we have to do it again. He does not see where there is a legal basis for having this meeting. As far as trying to determine what we meant in our motion, it is very clear. During discussion and the meeting minutes of August 2011, we stated that "we wanted pavement area done with pavers." Then, at the end of the meeting, the Staff comments stated that "the motion should include that requirement." The motion is very clear and had a requirement in it. He does not understand where there is a misunderstanding.

Mr. Sheth stated that since we published the meeting and gave the dates to the applicant, we will proceed with the meeting. We will also ask Mr. Rodriguez, City Solicitor, for his comments.

Colonel Ericson stated that we can't go back and change something that we have already approved and part of that motion was that there would be pavers.

Mr. Rodriguez questioned if the variance expired after one (1) year? Responding to Mr. Rodriguez, Mrs. Townshend stated that it did not expire. The issue, and she consulted with the Deputy City Solicitor on this was about what the proper protocol would be. In the testimony given in the application submission and the testimony at the meeting, they talked about having an area of pervious pavers which ultimately was not included in the construction. At this point, we need to get that issue resolved. She talked with Mr. Pepper, Deputy City Solicitor, and he stated that the only way that this could be considered would be to bring it back to the Board.

Colonel Ercison stated that it already has been back to the board. If you read Mr. Hufnal's motion when he moved, it reduced the amount of impervious cover and it was discussed in the minutes. That is what the Staff recommended and what we agreed to in our motion. It has already been decided, so why are we meeting again on the same topic? How can we go back and amend something that we have already approved, especially within that one (1) year timeframe?

Mr. Rodriguez stated that the change from the applicant and the Staff recommendation is what is being considered today.

Colonel Ericson stated that the Staff recommended it; however, we passed a motion that stated you had to put it in based on Staff recommendations.

Mr. Hufnal stated that he feels that his motion was very clear; however, he would like to hear what they have to say as to why it was changed versus what we had approved. Responding to Mr. Hufnal, Colonel Ericson questioned how could we go back and change something that we are supposed to leave alone for a year.

Mr. Hufnal stated that it does not state that we have to change it we can stick to our ruling. However, he would like to hear why they did not provide the things that we had approved.

Colonel Ericson questioned if it would be legal to go back and change something during this year period when we are not supposed to? Responding to Colonel Ericson, Mr. Rodriguez stated that Staff's recommendation and your order previously has not been completely complied with, they made changes and that is the reason for this hearing today because of that change.

Colonel Ericson questioned if this should then be a different variance? Responding to Colonel Ericson, Mrs. Townshend stated that the one (1) year timeframe indicates that if you have denied a variance they cannot apply for that same variance.

Colonel Ericson stated that if we approve it, they have one (1) year to do it. That does not mean that we go back and change everything. Responding to Colonel Ericson, Mrs. Townshend stated that at this point, they constructed the site differently than what was presented during the variance application and they want to keep it that way rather than changing it to what you saw.

Mr. Sheth stated that the purpose of this hearing is to hear from the City Solicitor on what it is that we can legally do and if we deny the variance, they cannot come before this Board again for one (1) year; however, they can always come back within a year for any other reasons, this is the question.

Mr. Senato stated that on August 17, 2011 everything was approved, a motion was made based on what the applicant presented on August 17, 2011 and his understanding is that they have one (1) year. He feels that we would be setting a precedence if we approve something for an applicant and then prior to the year being up whether it is denied or approved, then this is going to set a precedence where anyone else can come in wanting to make a change.

Mrs. Townshend stated that she would like to make a clarification of why it is coming back this way. In the motion made by the Board, it gives general reference to the removal of the ramp, the revised landscaping, reducing the amount of impervious cover, and needing to submit the revised Final Plan. It does not explicitly state that the pavers are part of that. If you recall, the pavers, even though they are pervious, because there is not an agreed upon calculation, still count toward the lot coverage. They did not exceed the lot coverage what she feels happened is that it is not explicitly stated in the motion that the variance is predicated on having the pavers even though it is clear from the discussion of the Board. The issue becomes was that implicitly part of the motion. It is really a clarification of the motion because in discussion with the applicant of why is there asphalt and not pavers, what was relayed to her was that this was a part of the requirements and it still counted as impervious cover so it was a change they made. She wanted clarification from the Board that either it was or it wasn't a change that would have been permitted under the variance. She did not feel that it was.

Colonel Ericson stated that he looked at the testimony and the minutes and it would seem to him that this is what we talked about the whole meeting and is why we put that in there. There was no discussion from the applicant that this would be a problem.

Mr. Keller stated he feels that an important point that Mrs. Townshend stated is that the motion to approve, the first statement is based upon the testimony received today. There were exhibits during the course of that variance application hearing which represented paver's not hot mix for that question. The testimony itself by Mr. Liberman and I quote "The existing asphalt is being removed and pavers are being put in in that area. This product is a porous concrete product that allows grass to grow up through; however, more importantly; it allows water to run through the area." His reaction to the testimony that day was that this was a positive selling point. That was the testimony and the motion based on that testimony was to approve the request with the exhibits presented to this Board showing the pavers as well as the testimony. Even if you go back one or two years ago, there were exhibits showing the type of pavers and this represented to him just a disregard for what was approved and what was planned.

Mr. Sheth asked Mr. Rodriguez if it was legal to conduct business and his impression was that it is, so you can ask the applicant these questions. Responding to Mr. Sheth, Mr. Rodriguez stated that he feels that it is legal. If you look at the variance recommendations that the Staff made in Paragraph 2 that was not complied with. This is pointed out in the memorandum from Mrs. Townshend and is what you need to hear today. It has been paved over even though it is considered impervious anyway and not left as recommended by Staff previously.

Mr. Rodriguez stated that he feels that if you do not clarify it then later on someone could come back and say well you paved it over and it was in the directive that you couldn't pave it over you had to leave it like it was and you have not followed what Staff and what the Board decided and this is what needs to be clarified today.

Mr. Sheth questioned if any member had a conflict of interest and there was none.

Mr. Malmberg stated that he will confess he did not get a chance the review the old minutes. The variance request that was heard last year was one where we were trying to achieve as much pervious coverage as possible to get the percentage of request down as low as possible. One of the things that we proposed at that variance hearing was to come in with pervious pavers which in most cases, are considered pervious surfaces. Mrs. Townshend, if he recalls at that hearing stated, "she was unsure if it counted as impervious surface or not and that she would have to get an opinion from Jared Adkins." One of our proposals as far as saw cutting this and changing that was to reduce our number by putting in these pavers. It was something that we affirmatively suggested and basically the response at the hearing and response after the hearing by the Staff was we are not going to let you count that as pervious surface. We have not paved over where the pavers were or paved anything. What we did not do is cut-out blacktop and put in pavers which really did not work very well anyway to try and achieve a higher number because we did not have to do that to achieve the approved number. We were here asking this Board for a number, a variance from the eight-five (85) percent lot cover area ratio. We meet the approved variance that this Board granted last time around. We are not asking for anything greater. We also agree that a hearing is not required today because we are within the ratios that were requested last time around.

Mr. Malmberg further stated that Mrs. Townshend suggested that we have this hearing because it was unclear whether or not pavers were a condition of approval regardless of whether or not we met the impervious surface coverage ratio that we requested. The variance we requested is very straightforward and very simple. We wanted a variance from the 85% to 89.1% that was approved. In your report, it says that we are requesting 89.1% and 88.2% was approved. Those numbers are reversed. We are actually requesting less impervious surface today then you granted. We are requesting a lower variance then you already approved. The pavers were a side issue and something that we came up with that really aesthetically does not work well at all. We came up with this to try and drive the number down a little bit. We do not need them to meet the variance that you granted and do not feel that we need to be here today for this variance hearing.

Mr. Sheth questioned what would have happened if you did not come to this Board? Responding to Mr. Sheth, Mr. Malmberg stated that they were requested by the City to come to this Board because of language in the discussion that we initiated by offering to put pavers in to get more pervious surface. At the hearing, it was raised by Mrs. Townshend whether this counted as pervious surface or not and wanted an opinion from Mr. Adkins. It has always been our opinion that it is pervious surface; however, it was determined that it was not. We complied with the variance that you approved without saw cutting blacktop and putting in these pavers which aesthetically does not improve things it actually makes it look worse and does not functionally help the project at all.

Colonel Ericson questioned is it the way it looks why you primarily did not want the pavers? Responding to Colonel Ericson, Mr. Malmberg stated that we came up with pavers as a way of maintaining drive aisles and parking areas that are required; however, creating more pervious surface. It was raised at the hearing, as he recalls, we may not allow you to count that as pervious surface so you granted us a percentage that we did not have to do these pavers to achieve the variance that we were granted. As we did the saw cuts and the planters everywhere

else on site, we ended up with less variance, below the lot coverage ratio that was granted.

Mrs. Townshend stated that she thinks that you are accurate as it relates to the December 2009 hearing. She will look at the report that was provided for the August 17, 2011 meeting. On the top of the last page it states "in December 2009 the Board of Adjustment approved a Variance V-09-04 to allow the site to exceed 85% lot coverage. That variance allowed for 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 variance would exceed what was initially approved." At that point in time, we knew from the Kent Conservation District that we would still, from a stormwater management standpoint, count the pavers as impervious. What she thinks the discussion was is that it still needed the variance because it was still going to count as impervious; however, because of the pervious characteristics that it helped to justify exceeding the lot coverage because you are counting it as impervious but it is not entirely impervious.

Mr. Malmberg stated that he is reading the decision and it states "The Board granted an 89.1% impervious surface." Responding to Mr. Malmberg, Mrs. Townshend stated correct, this was using the pavers which counted towards the impervious surface; however, helped to justify the variance by virtue of it having semi pervious characteristics. This is why we are here today because it is not explicitly stated in the decision that the variance being granted was tied to the pervious pavers.

Mr. Keller stated that one of the exhibits presented from the August 17, 2011 meeting was an engineering drawing submitted by Larson Engineering showing a pervious paver area of 1,135 square feet. What he was alluding to earlier in this discussion is that he relied upon exhibits shown during the course of that presentation and replied upon testimony as to the advantage and importance of pervious pavers. He does not note Mr. Malmberg's attendant at the August 2011 hearing. In his estimation, that application was not totally an application for a variance from the lot coverage allowing the 89.1%; however, there were several considerations taken under discussion of additional Staff recommendations and those are highlighted in Mr. Hufnal's motion. The motion starts with the mention of based upon testimony presented with the conditions.

Mr. Hufnal stated that the plan that we have been given today shows the pavers and this was part of our decision even though it was not specifically identified in the motion, this was the understanding.

Mr. Sheth stated that he would like a summary from Mrs. Townshend. If we deny this application they would not be able to come back for one (1) year?

Mr. Malmberg stated that there is not a denial here and so the prohibition that states you cannot come back for one year is not applicable. He may be recalling his attendance at the 2009 hearing; however, the issue is the same.

Colonel Ericson questioned that at one point you stated that you had more pervious area now then what was presented to the Board in August 2011? Responding to Colonel Ericson, Mr. Malmberg stated that we do not feel that we need to be here. The only reason that we are here is because Staff requested we be here because of the discussion regarding pavers; however, the

request is for a number for impervious surface coverage and we are below that number because of a different saw cut that we did that created more pervious surface. Originally, it was a Staff recommendation and we avoided it, going on memory here, because we thought that it would be a higher maintenance issue and it ended up being more attractive than the pavers and gave us more pervious surface so we are actually below the approved pervious surface requested.

Mr. Sheth questioned if they had not come here, they would not have received their Certificate of Occupancy? Responding to Mr. Sheth, Mr. Malmberg stated that this is only because Staff suggests that. Our position is that this Board either does or does not grant us a variance of the 85% impervious surface coverage where now were at 88.5%.

Mr. Hufnal stated that he agreed. If we approved it at 89.1% and the coverage is less than we approved, what are we here for?

Mr. Sheth stated that we need to resolve this issue so that it does not come up in the future with something else.

Colonel Ericson stated that maybe this should not be here. The reason that we wanted the pavers in there as discussed and put in the motion, is because we wanted water to be able to go through the ground and drain off and not become a problem area. If in fact there new designer saw cuts and gives us more pervious area, than what we originally agreed to, couldn't your office approve that in lieu of? Responding to Colonel Ericson, Mrs. Townshend stated that she does not believe that. She discussed this with Mr. Pepper. She does not believe that she has the administrative authority to change the variance in terms of what was contributing as they are still over the 85% and truthfully until we received this letter for the Board, we did not have anything.

Colonel Ericson questioned if there was any way to approve or substantiate the fact that there is more pervious area than what was presented to the Board in August? Responding to Colonel Ericson, Mrs. Townshend stated to submit as-built Plans that would be certified by the Engineer.

Mr. Liberman was sworn in.

Mr. Liberman stated that he would like to go back through Mr. Keller and Colonel Ericson's concerns with what we have done from the start and then to where we are at this point. This is the original Board of Adjustment Plan that was presented where we were seeking a variance for 88.2% impervious surface area. What we proposed was that there would be an area on the deck that would be saw cut for a landscape aisle and a concrete ramp that would also get saw cut, replaced, and landscaped. Along the southern property line, the contractor paved all the way up to the wall that separates this property and the Hospital property. We would take that area out that would get us to 88.2%. The variance request was granted and then later expired. We came back with the plan that Mr. Keller discussed. That is the plan that we are coming back to address where they have constructed the landscape island. The area that we were proposing to do the pervious pavers did not count and was not counted as pervious in our calculations. We argued that it was pervious; however, Staff denied that and stated that it was considered to be impervious. The southern property line was to remain as paved because they did not want to just saw cut this area and leave it as it would be a maintenance issue. Subsequent to the hearing since we were not getting credit for an area that was already paved, it did not make sense to saw cut

out and spend the $10,000 to $12,000 to put these pavers in this area so it was left as paved. What they did was the ramp as discussed, the curb island, and the southern property line. The contractor did a really nice job by constructing a curb along the edge of the parking lot making it a landscaped area that is now a mulched landscaped area along the southern property line. The impervious area as it is with this area being paved is 88.5%. If you go back and look at the plan that we presented previously when we started talking about the paver area, it would get us down to the 89.1%; however, if we included the paver area it would have gotten us down to 85.9%. The variance was granted because this paver area was not considered pervious. The variance was granted at 89% so we added in the landscape bed along the southern property line versus what was originally approved at 88.2% and we are at 88.5% and the only difference with the .3% more than what was originally approved is the angle that the trash dumpster had to be put in to make it so that the trash truck could get in and pick-up the dumpster and we also did not account for the concrete pad that the bike rack sits on.

Mr. Liberman further stated that as to what Colonel Ericson discussed earlier, was that we wanted to have the water flow through the paver area which he feels is a valid point. What we have associated with this site is that there is an underground stormwater infiltration system that serves the entire site where all the runoff from this whole area goes through this infiltration system and already goes into the ground. Regardless of whether it goes through here we have a trench drain. Anything that falls on the upper deck or falls on the back of the lot in this area goes into the trench drain through a water quality structure and then into an infiltration system so it does go into the ground. We essentially have no run-off from this site for anything below a ten (10) year storm which would be a 5.24 inch rainfall storm. Everything else that comes in is stored in the underground system and then infiltrates.

Mr. Sheth stated that on August 17, 2011 you had the same knowledge about everything and you were agreeable. The only thing that has changed is that it cost you $12,000. Responding to Mr. Sheth, Mr. Liberman stated yes this is correct.

Mr. Malmberg stated that at the hearing it was decided that we were not going to include the pavers as pervious surface; however, as he argued two (2) years later, it should be because it is a pervious area and it does ultimately end up in a subterranean stormwater area that goes through in 2009. In 2011 Mr. Liberman did this as a proposal from us and he calculated it both ways. He did not think until the actual hearing that Staff said that they weren't going to permit this.

Mrs. Townshend stated that we stated that in giving direction for the Board of Adjustment application, she talked to Jared Adkins at the Kent Conservation District and what he indicated is they counted toward impervious cover from a stormwater standpoint. If this is how they are going to count it, then from a lot coverage standpoint, we counted the same. We knew that going into the hearing and it is reflected in the report. While it did not refer to Jared Adkins it referred to the fact that it is counted as impervious cover.

Mr. Liberman stated that their plans were already submitted prior to getting the report calling it that. This is why it remained on the plan. The bigger issue and the point with asking for the 89.1% was that initially, they did not want to do the work on the southern property line because they thought this would be a maintenance issue. What they have done is a better situation and a better finished product than the pavers and then a saw cut edge along that property line by

constructing the curb and putting the landscaped island in along that southern property line.

Colonel Ericson stated that it would seem to him that it would be Mrs. Townshend's administrative power to say we want to reduce the amount of impervious coverage. The fact is they are processing the water through an infiltration system and it will not run off through the streets and that she would make the decision since this is information that we did not have at that time. Based on your recommendations and the Staff Report, you should have the authority to make that determination as the problem regarding runoff has been resolved in a different way.

Mr. Rodriguez stated that he thinks what Staff wants is a clarification to the changes that you heard today and if it effects granting of the variance.

Colonel Ericson stated that the trouble he has with this is that the clarification is not necessary; in our remarks and the reason that we voted is that we wanted the pavers there. There is no doubt in his mind when he reads everything he does not see how he could vote against this. It seems like they have a valid point in that they have a way to process the water so that it is not running out into the street causing problems. If in fact there is now different ways to look at it as things have changed after our meeting, does Mrs. Townshend have the administrative power to make that decision? Responding to Colonel Ericson, Mr. Rodriguez stated that she does not feel that she does. He would suggest that a motion would be appropriate by the Board stating that the changes that you have heard do not affect the granting of the variance of V-11-08.

Mr. Sheth stated that the Board has a problem in that they make their decision and motion on the basis of what was presented and that presentation changes and then another case comes along, of course we would work on the current case; however, this sets a precedence.

Colonel Ericson questioned if they had a motion that states that we stick by our original decision? This decision is based upon having the pavers; however, we have given administrative authority to the City to re-evaluate how they are processing water and Mrs. Townshend would then have the final say so.

Mr. Hufnal stated that it is under our approval; however, under the 89.1% that we had already granted.

Mr. Sheth stated because Kent Conservation District is comfortable with the water flow and he is comfortable with the 89.1% that we would approve this request.

Mr. Senato stated that the problem he has with this is that on August 17, 2011 we were presented all the facts and information that Mr. Liberman from Larson Engineering presented and based on that information there was a motion made and seconded and then passed. The problem that he has with that is that since that time, there has been a definite change whether it is for the plus or minus in the decision that we rendered giving them approval for the variance. He agrees with everything that has been stated today. The problem he has with this is it is telling him whether it is for the better or for the worse in a variance that we approve that we could have other situations come up. With this, his point is that there have been changes within less than a year from the original motion which bothers him.

Mr. Sheth stated that he is glad that this happened because the applicant feels that this is the best for them and the City is looking at whether we are violating any rules or is this worse than the previous approval. This gives the City the benefit to look at it and ensure that the best decision is being made.

Mrs. Townshend stated that based on what you are saying, she wants to agree with Mr. Senato and provide some background. Staff is stating that they would like clarification from the Board. We are not saying that what they are presenting is not acceptable and she feels that they have made a reasonable case that what they are presenting is probably better than what was approved in the first place. The challenge in terms of whether or not we have administrative authority to do these things is that maybe if it had come about a bit differently, there might have been the sense that we could have dealt with these things administratively. We found out when we went to do the Certificate of Occupancy inspection that this issue was not resolved. Typically, if we deal with things ahead of the curve, we can try and work through an administrative process or say let's get clarification on this. The issue is, we did not know to be able to try to resolve it administratively so we were at a decision point where we issued a temporary Certificate of Occupancy pending this; however, especially since this is a property that has a very long history of litigation she did not want to put the City or the Board or the applicant in a position of her administratively going against what the Board's decision was to get it occupied.

Mr. Sheth stated that he appreciated the applicant's patience while this issue was worked out and that the City did not ignore our decision made in the past. Responding to Mr. Sheth, Mr. Malmberg stated that he agreed.

Mr. Senato stated that he is not disagreeing with what you are saying; however, his point is that this could come up again and if a decision is made by the Board based on information received by the applicant whether it is less six (6) months later than what we approved or more, there should be a period of time where that should happen and not just arbitrarily which is what bothers him.

Colonel Ericson recommending having a motion to say that the interpretation of what we said in the August 17, 2011 meeting was in fact that we expected pavers to be put in there to help water control; however, we have seen a new plan and if the City Planner agrees with her information, she has the authority to overcome that restriction and allow that in lieu of pavers.

Colonel Ericson further stated that they were here today to clarify this; however, there is a new plan and we would like to give the City Planner the authority to look at the new plan and if the water flow control problem is solved with the new plan, you are authorized to not require pavers and use the new plan. Would this be satisfactory? Responding to Colonel Ericson, Mr. Rodriguez stated that it sounded perfect to him.

Mr. Keller stated that he still had some reservations for what appears to be evolving into a process whereby the Board of Adjustment is taking on construction field change matters. He is not convinced yet that it seems proper. We had evidence and exhibits presented in the August 17, 2011 meeting where these all parlayed into the overall application process of the applicant. Had there not been mention of whether it was pavers or hot mix asphalt is a matter of their side of what was presented. It was touted by their engineering firm as to the benefits of such

construction and this is not the first time that this project has seen one kind of plan approval of some sort only to be executed in a matter contrary to that and it ends up at the Board of Adjustment. This should have been more suitably brought to the attention of the City at the time they were about to pave with asphalt this portion of the project contrary to what was exhibited to this Board, considered by the Board, and approved by the Board namely the pavers. He does not know why there is not a field change process within the City. If this does not change the impervious ground coverage area, he does not see why it is not unlike a field change that would be represented to the City Engineering Staff for subsequent approval. His pause is what was represented by the applicant to the extent of some matters of positive discussion about the pavers to be utilized and the benefits therefrom only to now request after the fact we forego, and the fact that it has already been paved, to cast in the wind what was the decision of the Board.

Mr. Malmberg stated a couple of points that may or may not help. First, procedure is obviously important; however, from the applicant's perspective, we are trying to get you to focus on substance and you are getting bogged down on City procedures, which is not unimportant. If you look at the substance of what we are requesting, of this Board in 2009 when he was here is to approve what has been done. It was a better solution than the one that was suggest late last year. Late last year when the application was submitted, it was with this concept of pavers to try and get the numbers down. Mrs. Townshend indicated that she knew it was not going to be counted as impervious surface; however, that is not the case. We got the Staff report a couple of days before the hearing so that design was submitted to this Board with the idea of trying to create more impervious surface. That is the only reason to do it, because these things are ugly in a parking lot. They do not add anything to this project. It is needlessly wasted money without any significant contribution because it does not increase the water flow that runs into the ground and recharges the ground because that is all being captured anyway. It is aesthetically much less attractive and was a bad solution. It was submitted to this Board with the previous design as an argument that we are really not asking for 89.1% we are asking for 85.9%. That got rejected in that hearing.

Mr. Malmberg further stated that when it came to the actual construction, by the way during this period of time, Mr. Zimmerman's interest in this project went away and new people took over, they saw 89.1% lot coverage ratio that they had to hit and decided that this was a more attractive and more reasonable way to do it. The new folks understanding of what they needed to do was create impervious surface at 89.1% or less.

Colonel Ericson moved that the question put before the Board is whether our decision regarding V-11-08 on August 2011 the Board considered the pavers as a necessary part of the plan and we agreed that in fact it was our votes that depended upon that; however, at today's meeting we have been advised there is a new plan that will be more attractive to the facility and the surrounding area. It will be a better plan for capturing and filtering the water than what was presented to us originally; therefore, we ask that administrative authority be given to the City Planner to determine if this new Plan meets City requirements and if so the City Planner has the authority to approve the new Plan, seconded by Mr. Hufnal.

Mrs. Townshend would add that it recognize that it is not going to meet the requirement on lot coverage; however, it is below what the variance was given so it is within the context of the variance.

Mr. Keller stated that ultimately, we are talking about lot coverage and the previous application approved regardless of construction features approved for lot coverage not to exceed 89.1% is that correct? Responding to Mr. Keller, Mrs. Townshend stated that yes that is correct.

A roll call was taken regarding the vote as follows:

Yea	***Nay***
Mr. Hufnal	*Mr. Senato*
Colonel Ericson	*Mr. Keller*
Mr. Sheth	

The motion was carried and passed with a 3-2 vote.

Mr. Senato moved to adjourn the meeting, seconded by Colonel Ericson and the motion was unanimously carried 5-0.

Meeting adjourned at 10:00 AM

Sincerely,

Diane Metsch
Secretary