AGENDA
CITY OF DOVER BOARD OF ADJUSTMENT
WEDNESDAY – September 21, 2011 9:00 AM – CITY HALL

ROLL CALL

APPROVAL OF AGENDA

APPROVAL OF MINUTES OF August 17, 2011 MEETING

OLD BUSINESS

Applicant #V-11-07:
155 N. DuPont Hwy, W. Scot Parsons has requested a variance from the requirements of Article 5 §4 of the *Zoning Ordinance* pertaining to the placement of signage and the placement of a pylon sign in the exclusion zone.

Subject property is zoned C-4 (Highway Commercial Zone) and the Tax Parcel IDs # are ED05-068.18-01-31.00-000 and ED05-068.18-01-37.00-000. The owner of record is W. Scot Parsons.

NEW BUSINESS

Applicant #V-11-02:
725 Horsepond Road, UHS of Dover, LLC has applied to the City of Dover Board of Adjustment requesting a variance from the requirements of Article 3 §22.4 of the *Zoning Ordinance* pertaining to the expansion of a structure within the Airport Environs Overlay Zone.

Subject property is zoned IO (Institutional/Office Zone) and AEOZ (Airport Environs Overlay Zone) APZII, Noise Zones B & C. The Tax Parcel ID # is ED05-078.00-01-08.00-000. The owner of record is UHS of Dover, LLC.

Applicant #V-11-09:
545 S. State Street: Adam Perza has applied to the City of Dover Board of Adjustment requesting a variance from the requirements of Article 4 §4.1 of the *Zoning Ordinance* pertaining to the rear-yard setback and lot coverage.

Subject property is zoned R-8 (One Family Residence Zone) and subject to the H (Historic District) Zone. The Tax Parcel ID # is ED05-077.09-05-71.01-000. The owner of record is Adam and Kasey Perza.

Applicant #V-11-10:
852 S. Little Creek Road: The Dover Special School District has applied to the City of Dover Board of Adjustment requesting a variance from the requirements of Article 5 §4 of the *Zoning Ordinance* pertaining to the type and size of signage.

Subject property is zoned IO (Institutional/Office Zone). The Tax Parcel ID # is ED05-077.00-01-02.00-000. The owner of record is The Dover Special School District.

Applicant #V-11-11:
591 S. DuPont Highway: Deanna Hynansky has applied to the City of Dover Board of Adjustment requesting a variance from the requirements of Article 4 §4.15 of the *Zoning Ordinance* pertaining to the side-yard setback.

Subject property is zoned C-4 (Highway Commercial Zone). The Tax Parcel ID #s are ED05-077.00-01-12.01 and ED05-077.00-01-12.05-000. The owner of record is Deanna Hynansky.

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
August 17, 2011

A Regular Meeting of the City of Dover Board of Adjustment was held on Wednesday, August 17, 2011 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. Doug Liberman, Mr. Scot Parsons, and Mrs. Kim Diehl.

Mr. Sheth stated that he would like to add to the agenda the approval of the Monthly Minutes for May 18, 2011. He would also move Application V-11-07 155 N. DuPont Highway, W. Scot Parsons to the second case heard and hear Application V-11-08 first.

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

APPROVAL OF THE REGULAR BOARD OF ADJUSTMENT MEETING MINUTES OF MAY 18, 2011
Mr. Keller moved to approve the regular Board of Adjustment meeting minutes of May 18, 2011, seconded by Colonel Ericson and the motion was unanimously carried.

APPROVAL OF THE REGULAR BOARD OF ADJUSTMENT MEETING MINUTES OF JULY 20, 2011
Mr. Keller stated he would like to add a change on Page 6 of the minutes of July 20, 2011. The first Paragraph starting with "Mr. Senato further stated that he asked this "questioned*"* eliminate the past tense to state "asked this "question."

Mr. Keller moved to approve the regular Board of Adjustment meeting minutes of July 20, 2011, seconded by Mr. Senato and the motion was unanimously carried.

OPENING REMARKS CONCERNING DEVELOPMENT APPLICATIONS
Mrs. Townshend presented to the audience the policies and procedures that would be followed during these hearings.

NEW BUSINESS

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.

Applicant #V-11-07:
155 N. DuPont Hwy, W. Scot Parsons has requested a variance from the requirements of Article 5 §4 of the *Zoning Ordinance* pertaining to the placement of signage and the placement of a pylon sign in the exclusion zone.

Subject property is zoned C-4 (Highway Commercial Zone) and the Tax Parcel ID #'s are ED05-068.18-01-31.00-000 and ED05-068.18-01-37.00-000. The owner of record is W. Scot Parsons.

Ms. Cornwell stated that Staff is submitting for the record the Staff Report, photographs, applicant's response and the applicants diagrams and drawings.

Ms. Cornwell stated that the public notice was published in the Delaware State Newspaper on August 7, 2011 and the public was notified in accordance with the requirements.

Mr. Sheth stated regarding this application he has received notification as a property owner located within 200 feet of the subject property as he is a partner of one of the properties owned by the Kings Highway property across from this site. He will recuse himself from this application and Colonel Ericson will preside as Chairman for this application.

Mr. Sheth stated that the issue with this case is that he and Mr. Rodriguez are the only ones who were here when this sign was approved. We had a two property thing happen here, one was Delaware Trust that then went to Wachovia Bank and is now Wells Fargo. They had a pylon sign done and moved to the monument sign. We had the same problem with the Fairfield Inn sign and at that time, Mike Petit de Mange was the Planning Director. It was determined that Mr. Sheth had a conflict of interest at that time. They granted a wall sign at a height of 45 feet on the side of the building and we followed that sign for the Holiday Inn and Residence Inn.

Responding to Mr. Sheth, Mrs. Townshend stated that the Code was then changed to allow the Planning Commission to grant the height for wall signage.

Colonel Ericson questioned that that these three (3) signs requested pylon signs and they went to monument and wall signs? Responding to Colonel Ericson, Mr. Sheth stated that they requested at that time monument signs. The applicant did not apply for pylon signs because of discussions with the Planning Staff. He discussed with Mr. Petit de Mange the Fairfield Inn sign that he had a conflict of interest and he was not involved with the discussion regarding the granting of the

forty-five (45) feet for the wall sign.

Colonel Ericson further questioned is there any pylon signs that are located in this area that were not there before the signage code changed? Responding to Colonel Ericson, Mrs. Townshend stated that the issue regarding pylon signs is that pylon signs are permitted on Route 13; however, the issue is the Exclusion Zone. They cannot be placed within 150 feet of another pylon sign.

Ms. Cornwell stated that the only known application in the last six (6) years dealing with the Exclusion Zone for a pylon sign was the McDonalds and they had an existing pylon sign that was considered legal non-conforming. They were doing so much to the site that the sign needed to come into conformance with the sign Code and they did request a variance and was granted to keep their existing pylon sign. There have been no known requests for variances for a pylon sign due to the Exclusion Zone in the last six (6) years. The Code recognizes that there are potential issues with the Exclusion Zone. Sites on Route 13 are permitted a pylon sign and also a sixty-three (63) foot monument sign. If the Exclusion Zone does prohibit them from putting in a pylon sign, they are permitted additional wall signage to make up for the loss of a pylon sign.

Mrs. Diehl stated she had a question regarding the Dover Mart. She realizes that this probably did not come before the Board of Adjustment; however, within the past few months the Dover Mart sign was erected and then the Wawa sign with sixty-five (65) feet between those two (2) signs. Responding to Mrs. Diehl, Ms. Cornwell stated that this went through a Comprehensive Sign Plan and were showing the correct Exclusion Zone. If it did not get built properly, that is something we will need to go take a look at. The Dover Mart sign was part of the Comprehensive Sign Plan and then the Wawa sign was to be placed 150 feet from the other sign.

Mrs. Diehl stated that she would address the Exclusion Zone and the fact that a monument sign is allowed on that property; however, after surveying the property, she does not feel that a monument sign would have safe placement on the property. The area where we are proposing to place the sign is the south end. If we were to place a monument sign there, the monument height is restricted to five (5) or seven (7) feet on Route 13.

Mr. Senato stated that what you are saying is that the proposed sign is on the south side which is next to the Hollywood Diner? In the new photographs it would be located where the "Red Light Photo" sign is located? Responding to Mr. Senato, Mrs. Diehl stated that it would pass that sign. You will see a small sign that shows the entrance to "South of the Canal" building and then there is a "space available" sign in the grass area. It would be located right next to the "Space Available" sign. Her problem with placing a monument sign here is visibility for vehicles pulling out of the front property and visibility for vehicles pulling out of the Hollywood Diner property and then people pulling into 'South of the Canal" and people backing out of parking spaces there. She feels a monument low to the ground would block visibility.

Mr. Keller questioned with regards to the trucks and visibility while trying to pull out at the Hollywood Diner you would only be pulling out looking to the left not to your right? Responding to Mr. Keller, Mrs. Diehl stated correct; however, you would need to also pay attention to the light and backed-up traffic from the light so you would want to see when you pull out how backed-up the traffic is.

Mr. Parsons stated that people backing out would not be able to see traffic at all and people coming in off of the highway at 40 MPH slow down; however, they still come in pretty quickly. If you have a car backing out and someone slowing down from going 40 MPH to get into this parking lot, you are going to have a wreck with a wall blocking their visibility to see the traffic.

Mr. Senato stated that he is familiar with the location and has pulled in this driveway, he is trying to figure out when you're talking monument sign, the sign that you have there now runs parallel to Route 13. When you are talking about blockage and people coming out of that area, what actually are you referring to for blockage? Are you talking about a new sign in this area on the lower level? Responding to Mr. Senato, Mr. Parsons stated yes he is. We did not want to put a monument sign there as we wanted people to see cars passing the Hollywood Diner as they are backing up they need to be able to see that so that if a car is pulling in to the "South of the Canal" area when they are backing up they will not back into the car pulling in.

Mrs. Diehl stated that the existing monument sign would be removed as it does not serve any purpose or do any good.

Colonel Ericson questioned what this was based on as far as the sign not doing any good because it looks like you have a clear shot going either north or south on DuPont Highway to see it? Responding to Colonel Ericson, Mr. Parsons stated that when you are heading northbound you are kind of going around a slight turn on the highway and at the traffic speed and the amount of traffic the sign does not do anything. You really cannot read "South of the Canal" until you look past it.

Colonel Ericson further stated that when he looks at the proposed pylon sign it looks like, and this is the reason we are trying to get rid of pylon signs, is that yours would be for those coming south and your sign would block off the Hollywood Diner. For those going north the Hollywood Diner would block your sign and be difficult to see until you are right up on it.

Responding to Colonel Ericson, Mr. Parsons stated that if you look at the pictures, the trees already block the Pretzel Factory sign if you are heading north and heading south at the angle you are at he does not think that this sign could block the Hollywood Diner sign as it would be pretty far away from the Hollywood Diner sign.

Colonel Ericson stated that all of these pylon signs are distracting and this is the reason that we want to get rid of them. It is hard to pick out one pylon sign as opposed to another and you are just going to add another one in there making it worse. Responding to Colonel Ericson, Mr. Parsons stated that he does not feel that it would make it worse; however, that is a personal feeling. The safety issue is a fact that he feels that when he can see a sign and knows where the property is that this helps him get to the location that he is going to. If we have advertisement for where our place is people will not be slamming on their breaks after they pass it.

Mr. Senato stated in looking at the pictures, when you're driving by either north or south if you do not look at the "The South of the Canal" sign you do not pick it up right away and you're looking for something in particular. A tree is blocking the building sign that is over the sign and blocking the second store from the right in the northbound lane. With that in mind, if the trees were not there, driving north and south the quickest would be signs over each door. This would

catch your eye before the "South of the Canal" sign. Responding to Mr. Senato, Mr. Parsons stated that this is true.

Mr. Senato further stated that if these trees were removed, it would draw attention to the building as a whole and would draw attention to any large sign that you have over the stores including the "South of the Canal" sign. It would be very readily viewable from the southbound lane of the highway. Would this be a consideration if perhaps the new sign was approved? Responding to Mr. Senato, Mr. Parsons stated that it definitely would be and then the only issue would be the upstairs tenants that have no representation for signage currently.

Mr. Senato further questioned what kind of businesses would be located upstairs? Responding to Mr. Senato, Mr. Parsons stated that these would be offices; however, they had a tenant that stayed for a couple of years then moved because they wanted some kind of highway signage. The whole package deal when you try to rent the units is to say that we do have signage for them. We had a gentleman who wanted to do a boutique type of place and he wanted to have available signage. We did get some retail on the second floor.

Mr. Senato stated that the offices on the second floor are located behind the dormers. There is space above these windows would signage be permitted on these dormers? Responding to Mr. Senato, Mrs. Townshend stated that roof signs are not permitted.

Colonel Ericson questioned that there was an original application put in that pointed out to you that the design of your building would not allow for wall signs and it would detract from the facility? When he has been by there he has never noticed the sign for "South of the Canal" because it means nothing to him; however, he did notice the signs on the wall when Quiznos Subs was located there. It seems that you have built a self-imposed hardship here. On your pylon sign are you going to put all the names of the businesses in the building, is that your intent or will you be placing "South of the Canal" on the sign? Responding to Colonel Ericson, Mr. Parsons stated that with the pylon sign it did have all of the seven names of the tenants in the building. It had one name across and then the next three (3) lines were split for two (2) names on each line.

Mr. Hufnal stated that he would have to agree as long as he has lived in Dover and has been by there and until he saw this he really did not know that this was called "South of the Canal" because he has never really noticed this sign. With the pylon sign, he would agree that it is more visible and you do have greater exposure for you and your tenants. Responding to Mr. Hufnal, Mr. Parsons stated that there is too much traffic and it goes by too fast and he feels that the only safe thing would be a pylon sign.

Colonel Ericson stated that the trees also present a problem because as they get bigger you are not going to be able to see the wall signs that are up there. Responding to Colonel Ericson, Mrs. Diehl stated that these trees are required by the City of Dover when they built the property so they cannot be removed and this is one of the hardships that they have. We could have actually placed the sign where the existing "South of the Canal" sign is, raised it up and turned it but then it is over the sidewalk which is not allowed. It is very hard to sign this property and they are losing all of their tenants because there is no signage on this property.

Mr. Parsons stated that he has three (3) out of seven (7) tenants and he is subsidizing about 95% of all of the bills.

Mr. Senato questioned that the trees cannot be cut down? Responding to Mr. Senato, Ms. Cornwell stated no, if they cut down the trees they would have to replant the trees as there is a tree planting requirement for the site.

Mr. Senato further questioned if they cut these trees down and placed one on each end of the building would that be a requirement? Responding to Mr. Senato, Ms. Cornwell stated that she is not sure that they would have the room at the ends of the buildings to put that size of a tree.

Mr. Senato further stated that it would seem to him that the City has put a hardship on this building by requiring the trees for that particular area because most of the businesses along that route do not have trees, not in front. Responding to Mr. Senato, Ms. Cornwell stated that as businesses redevelop over time they would be required to do some type of Arterial Street Buffer which would require either trees and/or shrubs of some type along the road.

Mr. Senato further stated that he would agree with regards to pylon signs; however, there are exceptions. You could take the "South of Canal" sign and put that sign over the stores and use that sign as the office signs for each individual business that is there. Even though traffic flows quickly at 35 MPH there is still a lot of slower traffic during the course of the day because of the way the traffic lights flow. There are solutions other than a pylon sign.

Colonel Ericson questioned what the "South of the Canal" sign represents? Responding to Colonel Ericson, Mrs. Diehl stated that they have seventy-five (75) square feet that we are allowed to use so we utilized the seventy-five (75) feet just so that people could identify the building as "South of the Canal."

Colonel Ericson further questioned that he was looking at the monument sign could you replace "South of the Canal" and put the businesses that are there instead and keep the current monument sign? Responding to Colonel Ericson, Mrs. Diehl stated that unfortunately, the monument sign is not visible until you are right next to the property, past the entrance. You turn and you look because of the way that it is positioned. Mr. Parsons was talked into this sign years ago by a previous sign company that did his work and in her opinion, he wasted his money because the only people who see this sign are the people who are sitting in their car at the light and turn and look then they can read what is on that sign.

Mr. Parsons stated that a pylon sign would give people the opportunity to pull into the entrance because it is a tight entrance and you do need to slow down more so than other angled entrances.

Mr. Keller questioned if there is any prohibition against pruning or trimming those trees? Responding to Mr. Keller, Ms. Cornwell stated that no there is not.

Mr. Keller stated that what the pictures indicated is that there is not a slight bend near this site in the road it is a pretty clear shot. It is 35 MPH in this area and with the signalization upcoming at Kings Highway he feels that the travel along here is relatively slow. He feels that travelers are generally destination oriented. It is rare that he has ever driven down Route 13 to look at every

sign to find out what is at each storefront. The building itself he is familiar with and it is an attractive building and he has seen the "South of Canal" sign a number of times; however, he never knew what it represented. When he looks at the building, he looks for whatever the highlight is over the respective dormers and doorways. He has never sought out a pylon or any elevated signage to get him to the place he is headed.

Mr. Keller further stated with regards to traffic flow, the ins and outs on the depiction of the entryway you have a circular flow from south to north and are prohibited from backing up and exiting from the southerly entrances is this correct? Responding to Mr. Keller, Mr. Parsons stated that this is correct you can only pull into the southern entrance. Cars do have to backup to get out of their parking space and they wind up backing into someone entering the site.

Mr. Keller further stated that that was a matter of requirement for the original layout of the building footprint? Responding to Mr. Keller, Mr. Parsons stated that the property was deeded that nothing could be built on the back of these two properties and is the reason that it was setup that the parking would be in the front.

Colonel Ericson stated that the location of the proposed pylon sign to him it looks like the Philadelphia Pretzel Factory and the Hollywood Diner sign would conflict with each other and he could see getting complaints from them and them wanting to move their signs which would compound the problems out there rather than solving them. If your variances are disapproved what is your plan what would you do? Responding to Colonel Ericson, Mr. Parsons stated that he feels that a monument sign there not only would it block the people backing up; however, routinely oversized vehicles from the Hollywood Diner park in front in those spaces so he thinks that any monument sign would be blocked half of the day.

Colonel Ericson stated that the Staff recommends denying the Exclusion Zone for the variance; however, approving the setback area variance, what would this do to you? Responding to Colonel Ericson, Mrs. Diehl stated that they would not be able to place the sign if we are not granted the Exclusion Zone. We need to be 150 feet from any other sign and we are about 140 feet from the Pretzel Factory and roughly 90 feet from the Hollywood Diner. As far as blocking the signs she rode the highway this morning and headed south on the far lanes you will not block it because the angle that you are coming from you would be able to see both sides. Coming north you would see the Hollywood Diner first then the Pretzel Factory that is already blocked by the trees so their sign would not interfere with that.

Mr. Hufnal questioned if they were to deny the Exclusion Zone because of the factor of distance and approve the setback it seems to be conflicting statements. Why would one override the other? Responding to Mr. Hufnal, Ms. Cornwell stated that they would not. If you deny the Exclusion Zone they would not be permitted a pylon sign; however, if they wanted to place a new monument sign on the site they would need a variance for the setback because the setback requirement is ten (10) feet. If you grant the variance for the setback, that would allow them from having to come back to the Board of Adjustment asking for a different variance for the monument sign. Currently, they are both for the pylon sign.

Colonel Ericson questioned if they would be permitted to have two (2) monument signs? Responding to Colonel Ericson, Ms. Cornwell stated that since they have two (2) entrances they

are permitted to have two (2) monuments signs; however, based on their testimony and what was presented in the report, they cannot meet the ten (10) foot setback for the monument sign. It was Staff's determination that they should be granted a variance for at least the setback issue. Even the existing monument sign is now legal non-conforming as it is only five (5) feet away from the right-of-way.

Colonel Ericson further questioned if this would solve their problem if they could put a monument sign there as it would be lower than the pylon sign and you could probably see it better and would not be blocking anyone else's sign? Responding to Colonel Ericson, Mr. Parsons stated that the only issue with the monument sign is the fact that it would be a wall for traffic trying to backup with the oncoming traffic pulling into their site. Then you have all the cars and oversized vehicles that park in the Hollywood Diner area that would block the sign for half the day.

Mrs. Diehl stated that there is really nowhere else to place a sign on the property and this is where the hardship comes into play and you see that his place is not rented and people are moving out fast because if he cannot provide them signage, they do not want to stay there.

Mr. Keller stated that currently, there would be the allowance for two (2) monument signs one at each end of the entrance and exit of the property is this correct? Responding to Mr. Keller, Ms. Cornwell stated that yes this is correct.

Mr. Keller further stated that under the Ordinance if a pylon sign is not permitted by this request for a pylon sign, they are allowed an additional wall sign. Responding to Mr. Keller, Ms. Cornwell stated yes; however, she is not exactly sure where on the building they would be able to place it because of the architecture.

Ms. Cornwell stated that if they do put a monument sign there, they will still need a variance for the setback because they cannot make the ten (10) foot setback because they do not have the room to place a proper sized sign on the site.

Mr. Keller further stated to address comments made regarding the wall signs, he has seen several signs which are within compliance and they are built on a bit of a "V" so to speak where you get north and southbound exposure not so much as to gain perpendicular to the travel way. He is not sure if this is an option; however, we are not here to guide your sign company or your construction or design of the sign. Responding to Mr. Keller, Mr. Parsons stated that heading southbound the Deluxe Paint building is going to block the view. You could probably put a couple of signs in that area and that would be all if you are doing eight foot signs for each store. You will only see about two.

Colonel Ericson stated that he does not feel that this has been conveyed or looked at long enough. If we were to table this until the next meeting and you worked with these people, do you think that you could find a solution for them or are they between a rock and a hard place? Responding to Colonel Ericson, Mrs. Townshend stated that Staff could meet with the applicant and layout the scenarios. One thing that she will say in terms of responses on the application versus the testimony heard here today is the application talked about safety and visibility; however, it did not bring up the two things that they have emphasized today which is the issue of

the monument sign potentially blocking visibility for people turning in and backing up to get out of their parking spaces as well as the parking essentially against the monument sign. It is possible that these factors may have influenced the Staff recommendation had they been in the application.

Colonel Ericson stated that the problem is that we have businesses in this fine looking building and signage is definitely at their disadvantage; however, he really does not like pylon signs and we shouldn't do anymore and he can see more complaints down the road if we got a pylon sign that would block the other ones. He would like to see it reviewed one more time to see if you could come up with a plan.

Mr. Keller stated that he is inclined to agree with your position of dislike for pylon signs. There is a reason for the Exclusion Zones as established. He thinks that this is a distinctive building and as soon as it went up it drew his attention whenever he travels up and down this roadway. It is of a distinctive nature it is not the old concrete block grey/white structure. That in and of itself is an attraction and again with the speed limitations and the course of travel and looking at the photographs makes looking in his mind a better illustration of the ease of entry and exiting given the speed limitations. With the sidewalk providing somewhat of a setback and then the stone buffer before the parking area, he cannot contemplate this being a great deal of detriment to ingress and egress. Signage is more of a distinct nature when placed over the store front which it advertises. He is not entirely convinced that the flight of tenants is due to signage as so stated; however, he will take your word for this. There are a number of vacancies within the City.

Responding to Mr. Keller, Mr. Parsons stated that we are in a recession; however, they have had issues with tenants specifically because of this.

Mr. Keller stated the "South of the Canal" and what it represents with the square footage of sign space could be more beneficially devoted to the name of your current tenants.

Mr. Senato stated that if the trees were not there, this would not be a problem because no matter how fast or slow you are going on the north and southbound lanes, those letters are big enough on the First State Academy if you're looking for something or just looking to see it. Over the "South of the Canal" sign you have a little bridge which is blocking the First State Academy. The main issue that he sees here is visibility of the tenant's names of who is in the building.

Responding to Mr. Senato, Mr. Parsons stated with regards to the bridge, if you are looking straight at the building and you pass the entrance, it would block the First State Academy.

Mr. Senato further stated that we are talking about visibility here and anything that you can do would help as we are trying to come to a conclusion. In your situation it is all about visibility.

Mrs. Townshend stated that what she would suggest is that the Board postpone a decision on this until the next meeting and have Staff meet with the applicant. We could look at various scenarios. Maybe you could do a graphic of what a monument sign would look like and have those things in front of us at the next meeting. Prior to the public notice for the next meeting, what we might want to do is leave the public hearing open in case we need to change what the variance is for.

Colonel Ericson stated that the reason that we want to table this is if we vote and deny this application, you cannot reapply for one year and that is going to make your situation worse. If we table it and keep the meeting open, than you would have a month to see if you can come up with a plan that would work for everyone.

Mr. Senato moved to postpone the public hearing and decision for Application #V-11-07 located at 155 N. DuPont Hwy, W. Scot Parsons and instruct Staff to re-advertise once they have a better sense of what the variance request would be, seconded by Mr. Hufnal and the motion carried 3-1 with Mr. Keller opposed and Mr. Sheth recused from the application.

Mr. Senato moved to adjourn the meeting, seconded by Mr. Hufnal and the motion was unanimously carried 4-0 with Mr. Sheth absent.

Meeting adjourned at 10:22 AM

Sincerely,

Diane Metsch
Secretary

City of Dover

Board of Adjustment

September 21, 2011

V-11-07

ADDENDUM to the August 17, 2011 Staff Report

Location:	155 North DuPont Highway
Applicant/Owner:	Scot Parsons
Application Date:	July 15, 2011
Present Zoning:	C-4 (Highway Commercial Zone)
Present Use:	Retail
Reviewed By:	Janelle M. Cornwell, AICP

The Planning Office received additional information submitted by the applicant in support of the variance request for 155 North DuPont Highway.

After fully reviewing the information submitted for the record on this matter, the Planning Office has revised its initial recommendation. While the initial application submission failed to fully articulate how the variance request met the legal standard for a variance, the subsequent information and testimony from the public hearing more clearly articulated the unique qualities of the subject properties and the justifications for approval of the variance. With this additional information on the record, the Planning Office recommends approval for the requested variances for the following reasons:

Exclusion Zone:

- The existing monument sign is parallel to the road is not visible as traffic is traveling north and is difficult to view traveling south. (as shown in the photo)
- A monument sign perpendicular to the road would block visibility of the entrance drive. It would also have visibility significantly reduced by vehicles parked on the adjacent property. (as shown in the photo dated 9-1-11)
- Additional wall signage in lieu of a pylon sign would not benefit this site as the wall sign area is limited and the site is already permitted additional wall signs as the site has two road frontages.

- The sign would be consistent with the existing exclusion zone of other pylon signs in the area.
- There is no documentation of negative impact on the neighboring properties as the other properties are zoned commercial and have existing pylon signs.
- The exclusion zone would be approximately 145 feet from the pylon sign to the north (Philly Pretzel) and 90 feet from the pylon to the south (Hollywood Diner).

Sign setback:

- The applicant has demonstrated exceptional practical difficulty as there is very little area on the site to place a sign that would meet the setback.
- Placement of a sign meeting the setback would place the sign within the parking lot drive aisle or within the stormwater management area.
- The setback would not be out of character with the surrounding signs in the area. The existing monument sign on the site is considered legal non-conforming as it is located five (5) feet back from the right-of-way, and the Hollywood Diner sign is also legal non-conforming with regards to the setback from the right-of-way. This sign became legal non-conforming upon the adoption of amendments to the Sign Regulations in 2009.
- The character of the area is commercial as is the proposed use.
- Staff would recommend the pylon sign be setback as much as possible without interfering with the stormwater management area. The applicant is requesting a two (2) foot setback.

Staff notes that the City of Dover *Zoning Ordinance* does not prohibit nor is trying to prohibit the installation of pylon signs. Pylon signs are a permitted sign on Urban Principal Arterials (DuPont Highway). The City of Dover has an exclusion zone not to prohibit freestanding signs (pylon, monument, and post and panel signs) but to ensure these signs have adequate visibility. It was determined that an acceptable exclusion zone was 150 feet for pylon signs. Staff notes that there are a number of existing pylon signs that are considered legal non-conforming to the exclusion zone.

DESCRIPTION: South of the Canal

DATE:9/1/11

DESIGN BY: JT

APPROVED BY:

ALL DESIGNS PROPERTY OF:
Orient Signs

City of Dover

Board of Adjustment

September 21, 2011

V-11-02 Dover Behavioral Health

Location:	591 S.DuPont Highway
Applicant/Owner:	UHS of Dover, LLC
Application Date:	February 10, 2011
Present Zoning:	IO (Institutional and Office)/AEOZ-APZ II (Airport Environs Overlay Zone – Accident Potential Zone II and Noise Zones B&C)
Present Use:	Psychiatric Hospital
Reviewed By:	Ann Marie Townshend, AICP

Variances Requested

- **Variance from Article 3- District Regulations, Section 22 – Airport Environs Overlay Zone (AEOZ), Subsection 22.4 Exceptions, (a) Additions to Existing Commercial Buildings**

Project Description:

The applicant is seeking a variance from Article 3- District Regulations, Section 22 – Airport Environs Overlay Zone (AEOZ), Subsection 22.4 Exceptions, (a) Additions to Existing Commercial Buildings, specifically requesting an expansion to the facility greater than 3,000 SF. The applicant wishes to construct an addition of approximately 12,000 SF to the existing hospital facility.

The applicant approached the Planning Office in early 2011 regarding the proposed expansion. After review of the *Zoning Ordinance*, the City Planner informed the applicant that the expansion would not be permitted as proposed due to the restrictions of the AEOZ/APZ II. At that time, the Planning Staff researched the history of the property, from annexation through the adoption of the AEOZ into the *Zoning Ordinance* to better understand the history of the

psychiatric hospital at this location, specifically within the APZ II. Exhibits B, C and D are attached and have been utilized in the staff review of the application.

Adjacent Land Uses

The subject property is located in a largely industrial area, surrounded by properties that are zoned C-3 (Service Commercial), M (Manufacturing) and IPM (Industrial Park Manufacturing). The parcel to the northeast of the property is also zoned IO (Institutional and Office) and is currently undeveloped. The surrounding properties are also within the AEOZ (Airport Environs Overlays Zone)

Code Citations

22.4 Exemptions. The following uses and structures are exempt from compliance with the provisions of this article:

(a) *Additions to existing one-family dwellings*. Additions to existing one-family dwellings may be permitted when all other applicable zoning district bulk requirements are met.

(b) *Additions to existing commercial buildings*. Additions to existing commercial buildings limited to a maximum additional floor area of 3,000 square feet for buildings designed and intended for human occupancy, and unlimited floor area for additions to buildings primarily used for storage, warehousing and other uses not designed or intended for human occupancy as a primary use.

(c) *Temporary uses*. Temporary uses [which] include but are not limited to public gatherings, celebrations and outdoor entertainment events, so long as the period of operation does not exceed five days.

(d) *Temporary structures*. Temporary buildings and structures such as tents, pavilions, bleachers, etc., that are not used for residential purposes, and which meet said applicable requirements as contained within this zoning ordinance [appendix], so long as such uses and associated structures are constructed incidental to a permitted use.

(e) *Agricultural uses*, operations and structures. Agricultural uses, operations, and buildings and associated nonresidential structures, and lands in agricultural production.

(f) *Accessory uses and structures*. Accessory uses and structures incidental to a permitted principal structure or use.

The entirety of Section 22 – Airport Environs Overlay Zone (AEOZ) is attached to the report for your reference.

Exceptional Practical Difficulties Tests

Article 9, §2 dictates the specific powers and duties of the Board of Adjustment with regard to granting variances. In order to grant a variance the Board must determine in that exceptional practical difficulties exists.

Specifically the Board must determine:

2.1 Variance **–** The board shall have the authority to authorize variances from provisions of the zoning ordinance that are not contrary to public interest where the board determines that a literal interpretation of the zoning ordinance would result in undue hardship or exceptional practical difficulties to the applicant. In granting variances, the board shall determine that the spirit of the zoning ordinance is observed and substantial justice done.

2.11 Area Variance. A variance shall be considered an area variance if it relates to bulk standards, signage regulations, and other provisions of the zoning ordinance that address lot layout, buffers, and dimensions. In considering a request for an area variance, the board shall evaluate the following criteria and document them in their findings of fact:

(a) the nature of the zone in which the property lies;
(b) the character of the immediate vicinity and the contained uses therein;
(c) whether, if the restriction upon the applicant*'*s property were removed, such removal would seriously affect neighboring properties and uses; and
(d) whether, if the restriction is not removed, the restriction would create unnecessary hardship or exceptional practical difficulty for the owner in his efforts to make normal improvements in the character of that use of the property that is a permitted use under the provisions of the zoning ordinance.

In order to allow for the proposed addition to the principal structure, the applicant is requesting two variances. Applicant responses to the area variance criteria and the Staff position on those responses is as follows:

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

Applicant Response:
The underlying zoning for the Property is "Institutional and Office", and the Facility is a permitted use within the zoning district. As was outlined above, the City of Dover specifically annexed the Property into the City and rezoned it to the IO zoning classification because it was determined that there was a need within the community for the proposed use and that the location provided an area with significant buffering from other uses. Unfortunately, however, subsequent limitations imposed by the AEOZ did not take into account the need for the Facility to expand to meet the growing needs of the community. This has created a particularly unique issue for the Applicant.

Staff Response:
The variance request is consistent with the nature of the underlying zone of the property, which is the IO (Institutional and Office) zone; however, the variance is not necessarily compatible with the nature of the AEOZ – APZ II. Hospitals are specifically listed as incompatible uses within the Noise Zone C and within the APZ II. The existence of the

hospital pre-dates the adoption of the AEOZ by the City. The property was annexed and zoned for the purpose of the psychiatric hospital in 1993, and the City adopted the AEOZ in 2001, after the hospital was in operation. The *Zoning Ordinance* (Article 3, Section 22.4 (b)) permits the expansion of the building by up to 3,000 square feet.

The purpose of the AEOZ is to protect the Dover Air Force Base from encroachment of incompatible uses. The hospital existed at this location prior to the adoption of the AEOZ by the City of Dover in 2001.

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

Applicant Response:
The Property is surrounded by a mixture of uses being largely warehousing and light industrial in nature, being a concrete recycling facility, a beer distributor and a microbrewer, to name a few. The MCD Business Park is located across Horsepond Road to the west, and the Dover East Industrial Park is located to the south. The use of the property is compatible with the surrounding uses.

Staff Response:
The compatibility of the hospital with the surrounding uses was evaluated in 1993 when the property was annexed and developed. Minutes from these meetings indicate that any incompatibilities would be addressed through appropriate buffering between uses. The hospital has existed in this location without any issues relating to conflicts with adjacent properties. Therefore, the use is considered to be compatible with the character of the immediate vicinity.

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

Applicant Response:
The removal of the restrictions on the Property, which prohibit the extent of the proposed expansion, will have little if any impact upon neighboring properties and uses. The use of the Property is a very low intensity use which generates little traffic and does not cause noise, odor or have other negative impacts upon the surrounding properties. In addition, due to the unique nature of the use with the need to have it located away from more populated areas, especially residential uses, the present site is ideally suited for it.

Staff Response:
The removal of the restriction would not affect neighboring properties, as the use is currently in existence, and the variance would simply allow expansion of that use.

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:
If the restriction is not removed through the approval of the area variance, the Applicant will not be permitted to make improvements to the Facility to accommodate the needs of patients who are referred to it. The Facility is currently at maximum capacity and, due to legal mandates, cannot refuse to treat those who are referred to it. The Facility is currently operating with fewer beds than it has patients, an untenable situation. It is the only facility in the area which offers these types of services and to not permit its expansion would have a negative impact upon the community it serves.

Staff Response:
If the restriction were not to be removed, the restriction would create an exceptional practical difficulty as it would not allow the necessary expansion of the facility. When this facility was initially sited, it was a difficult facility to site. The property was purchased by Bayhealth with the purpose of developing the psychiatric hospital in an area where it would not present potential conflicts with other uses. The minutes of the City Council meeting of July 26, 1993 reflect the difficulty in siting the facility and that discussions with the Dover Air Force Base took place during the annexation process. There is no comment on the record of either support or objection by the Dover Air Force Base to the location of the facility. References in the minutes refer to buffering and soundproofing as the mechanisms for avoiding any conflicts with the Dover Air Force Base. There are no references to the Accident Potential Zone.

In 2001, when the City adopted the AEOZ, there was discussion of its application to existing uses, as reflected in the Legislative, Finance and Administration Committee minutes of June 25, 2001 and July 9, 2001. The minutes of June 25, 2011, state that Mr. DePrima indicated that the amendments would not affect existing buildings and uses. Further, according to the minutes of July 9, 2001, Mr. Petit de Mange stated that the ordinance would exempt proposed additions to existing residential and commercial buildings and impact only new construction. There is no record that Bayhealth, who owned the hospital at that time, either objected to or supported the ordinance.

As stated by the applicant, the hospital has outgrown its current facility. The facility cannot currently accommodate its patient load in the beds available. Inability to expand would render the hospital obsolete. This presents an exceptional practical difficulty to the applicant.

Recommendation:

Staff recommends approval of the variance based on the following reasons:

- The applicant has demonstrated exceptional practical difficulty, as denial of the variance would render the facility inadequate.

- The record indicates that discussion of compatibility of the hospital was fully discussed when the property was annexed and zoned, and that these discussions related primarily to buffering and noise attenuation.
- The record also indicates that when adopted, the AEOZ was not intended to prohibit expansion of existing buildings and uses.
- Based on the public record, exceptional practical difficulty is not a situation that was created due to actions of the applicant.
- The nature of the facility makes it difficult to relocate, which would be the most viable option of the variance is not granted.
- The facility provides a critical service to the community.
- There are circumstances peculiar to this case that would ensure that approval of the variance would not set precedence for other similar variances, such as:
    - The critical importance of the facility to the region, as it is the only psychiatric hospital in Kent County;
    - The legal requirement that the hospital not turn patients away;
    - The limited amount of developed properties that are zoned IO and in the APZ I or APZ II.
    - The documented history of the facility as it relates to proximity to the Air Force Base.

While staff recommends approval of the variance, staff also would advise that because the purpose of the AEOZ is to protect the Dover Air Force Base from encroachment of incompatible uses and to protect public safety within the flight path, any comments offered by the United States Air Force should be given careful consideration in review of the variance application.

Attachments: Exhibit A – Article 3, Section 22
Exhibit B – E-mail of February 14, 2011 from Ann Marie Townshend re: Dover Behavioral Health System
Exhibit C – Excerpt of minutes from City Council meeting of July 26, 1993
Exhibit D – Excerpt of minutes from Legislative, Finance and Administration Committee meeting of June 25, 2001 and July 9, 2001.

Sec[tion] 22. - Airport environs overlay zone (AEOZ).

22.1 *Purpose and intent* The airport environs overlay zone (AEOZ) is expressly intended to protect the public health, safety, and welfare by identifying areas impacted by high levels of aircraft noise, and the potential for aircraft accidents associated with airport operations, by regulating land use and the construction of buildings within such areas. The AEOZ is further intended to preserve and promote the integrity of the mission of Dover Air Force Base (DAFB) as a matter of local, regional and national importance, by regulating development and land use within the specific areas surrounding DAFB, and to protect DAFB from encroachment of incompatible land uses The AEOZ shall serve as an overlay zone that applies additional standards and requirements to properties located therein. In case of conflicting standards and requirements, the more stringent standards and requirements shall apply.

22 2 *Definitions*

(1) *Air installations compatible use zones (AICUZ)* is a department of defense program to achieve compatibility between air installations and neighboring communities

(2) *Airport environs* is the geographic area that is affected by airport air traffic operations and defined on the basis of those areas immediately impacted by aircraft noise of the 65 decibels (dBs) and greater noise exposure areas as delineated by the current and approved DAFB air compatibility use zone study This area is represented as the airport environs overlay zone (AEOZ).

(3) *Day-night average sound level (DNL)* is a cumulative aircraft noise index which estimates the exposure to aircraft noise and relates the estimated exposure to an expected community response, a 24-hour energy average sound level expressed in decibels (dBs), with a ten-decibel penalty applied to noise occurring between 10:00 p m and 7.00 a m.

(4) *DNL contour* is an isoline linking together a series of points of equal cumulative noise exposure based on Ldn metric. Such contours are developed based on aircraft flight patterns, number of daily aircraft operations by type of aircraft and time of day, noise characteristics of each aircraft, and typical runway usage patterns

(5) *Decibel (dB)* is a unit of measure of sound pressure or intensity

(6) *Ldn metric* is the average equivalent A-weighted sound level during a 24-hour day, obtained by adding ten decibels to the hourly noise levels measured during the night (10:00 p m. to 7 00 a m).

22.3 *Accident potential zones and noise zones* The AEOZ is comprised of two basic regulatory components: accident potential zones, and noise zones This section establishes three accident potential zones and four noise zones. The boundaries of each of these zones are delineated on the City of Dover zoning map and are further described as follows:

(a) *Accident potential zones*

(1) *Clear zone (CZ)* is that area immediately adjoining the end of a runway and which extends outward from the edge of the runway a distance of 3,000 feet and which is 3,000 feet in width)1,500 feet to either side of the centerline of the airport runway),

(2) *Accident potential zone I (APZ I)* is that area immediately adjoining the outer edge of the CZ and which extends outward from the boundary of the CZ a distance of 5,000 feet, and which is 3,000 feet in width (1,500 feet to either side of the centerline of the airport runway), and

(3) *Accident potential zone II (APZ II)* is that area immediately adjoining the outer edge of the APZ I and which extends outward from the boundary of the APZ I a distance of 7,000 feet, and which is 3,000 feet in width

(b) *Noise zones*

(1) *Noise zone A (DNL A)* is that area within and bounded by DNL contour lines of between 65 decibels and 69 decibels of noise pressure

(2) *Noise zone B (DNL B)* is that area within and bounded by DNL contour lines of between 70 decibels and 74 decibels of noise pressure

(3) *Noise zone C (DNL C)* is that area within and bounded by DNL contour lines of between 75 decibels and 79 decibels of noise pressure

(4) *Noise zone D (DNL D)* is that area within and bounded by DNL contour lines of 80 decibels and subject to noise pressure of 80 decibels and greater

22.4 *Exemptions.* The following uses and structures are exempt from compliance with the provisions of this article

(a) *Additions to existing one-family dwellings.* Additions to existing one-family dwellings may be permitted when all other applicable zoning district bulk requirements are met

(b) *Additions to existing commercial buildings.* Additions to existing commercial buildings limited to a maximum additional floor area of 3,000 square feet for buildings designed and intended for human occupancy, and unlimited floor area for additions to buildings primarily used for storage, warehousing and other uses not designed or intended for human occupancy as a primary use

(c) *Temporary uses* Temporary uses [which] include but are not limited to public gatherings, celebrations and outdoor entertainment events, so long as the period of operation does not exceed five days.

(d) *Temporary structures* Temporary buildings and structures such as tents, pavilions, bleachers, etc., that are not used for residential purposes, and which meet said applicable requirements as contained within this zoning ordinance [appendix], so long as such uses and associated structures are constructed incidental to a permitted use

(e) *Agricultural uses, operations and structures.* Agricultural uses, operations, and buildings and associated nonresidential structures, and lands in agricultural production

(f) *Accessory uses and structures* Accessory uses and structures incidental to a permitted principal structure or use

22.5 *Land use and development standards.* Any building or portion thereof constructed or placed within the AEOZ after the effective date of this section, and comply[ing] with the following standards

(a) Unless specifically exempted under [sub]section 22.4 above, land uses shall be permitted or prohibited in accordance with [sub]section 22.6, land use compatibility table

(b) Proposed structures situated within noise zones A through D shall be constructed with noise attenuation features to achieve the minimum interior noise level reductions specified by building type in [sub]section 22.6, land use compatibility table

(c) In APZ I and APZ II, no structure may be erected over 60 feet in height, regardless of zoning district bulk regulations of the individual zoning district

(d) All building permit applications for construction within AEOZ shall be accompanied by a written statement from a licensed architect or engineer, which lists all construction materials to be used and the resultant interior noise level reductions to be achieved. The written analysis provided by the engineer or architect shall demonstrate that the proposed construction will achieve compliance with the minimum required interior noise level reductions specified in [sub]section 22 6, land use compatibility table

22 6 *Land use compatibility table.*

LAND USE COMPATIBILITY TABLE
Airport Environs Overlay Zone (AEOZ)

Land Use	AEOZ Zones							
	Noise Zones				Accident Potential Zones			
	A	B	C	D	CZ	APZ 1	APZ II	
	65-69 dB	70-74 dB	75-79 dB	80 + dB				
RESIDENTIAL	Single, Two, and Multifamily	Y[1]	Y[1]	Y[1]	Y[1]	N	N	Y[5]
	Manufactured Housing	Y[1]	Y[1]	Y[1]	Y[1]	N	N	N
	Hotels, Motels, and Lodges	Y[2]	Y[3]	N	N	N	N	N
	All Other Residential	Y[1]	Y[1]	N	N	N	N	N
NONRESIDENTIAL	Retail	Y	Y[2]	Y[3]	Y[3]	N	Y[3,4]	Y[3,4]
	Business Services	Y	Y[2]	Y[3]	Y[3]	N	Y[3,4]	Y[3,4]
	Personal Services	Y	Y[2]	N	N	N	N	N
	Professional Services	Y	Y[2]	Y[3]	Y[3]	N	Y[3,4]	Y[3,4]
	Professional Offices	Y	Y[2]	N	N	N	N	N
	All Other Commercial	Y	Y[2]	Y[3]	Y[3]	N	Y[3,4]	Y[3,4]
	Manufacturing, Warehousing, Distribution	Y	Y[2]	Y[3]	Y[3]	N	Y[3,4]	Y[3,4]
	Parking Facilities	Y	Y[2]	Y[3]	Y[3]	N	Y[3,4]	Y[3,4]

All Other Industrial	Y	Y[2]	Y[3]	Y[3]	N	Y[3,4]	Y[3,4]
Hospitals, Nursing Homes	Y[2]	Y[3]	N	N	N	N	N
Other Medical Facilities	Y	Y[3]	Y[3]	N	N	N	Y[3,4]
Educational Facilities	Y[2]	Y[3]	N	N	N	N	N
Houses of Worship, Public Assembly	Y[2]	Y[3]	N	N	N	N	N
Government Facilities	Y	Y[3]	Y[3]	Y[3]	N	Y[3,4]	Y[3,4]
Parks & Recreation	Y	Y[2]	Y[3]	Y[3]	N	Y[3,4]	Y[3,4]
ALL OTHER USES	Y	Y[2]	Y[3]	Y[3]	N 6	Y[3,4]	Y[3,4]

Y Land use permitted

N Land use prohibited

[1] Interior noise level reduction of 25 db is required in subdistrict A, 30 db in subdistrict B, 35 db in subdistrict C, and 40 db in subdistrict D.

[2] Interior noise level reduction of 25 db is required for all areas where the public is received, office areas, noise-sensitive areas, or where the normal noise level is low.

[3] Interior noise level reduction of 30 db is required for all areas where the public is received, office areas, noise-sensitive areas, or when the normal level is low

[4] Structures not exceeding 60 feet in height within APZ I and II

[5] Single-family dwellings with a gross density of no more than one unit to the acre

[6] Agricultural uses not prohibited by [subsection] 22 8

22 7 *Design standards*

(a) All buildings and structures to be constructed or placed within the AEOZ shall be situated on the portion of the lot that affords the least noise impact to the proposed building or structure, wherever and whenever practicable Buildings and structures shall be designed and oriented to minimize exposure to the noise source and should take maximum advantage of existing physical features to minimize noise impact Windows, doors and other building openings shall be located the greatest possible distance away from the noise source

(b) The establishment of active recreation areas such as game fields and playgrounds shall be avoided within noise zones B through D Landscape buffer plantings and related screening material shall be used whenever practicable to deflect noise away from areas intended for human habitation

22.8 *Prohibited uses.* In addition to uses prohibited by [sub]section 22 6, land use compatibility table, the following activities are prohibited within the CZ, APZ I and APZ II zones, including, but not limited to, storage of explosives, hazardous or toxic materials/waste, aboveground transmission lines, uses that release into the air any substance which would impair visibility or otherwise interfere with the operation of military aircraft (dust, smoke, etc), uses that produce light emissions, direct or indirect, which would interfere with pilot vision, and uses that attract birds or water fowl, such as, but not limited to, landfills, wastewater treatment facilities, and associated settling ponds, artificial marshes, dredge spoil materials, sand and gravel dredging operations and open fish farming

(Ord of 2-12-2001)

EXHIBIT B
E-Mail of February 14, 2011 from Ann Marie Townshend Re: Dover Behavioral Health System

Townshend, Ann Marie

From: Townshend, Ann Marie
Sent: Monday, February 14, 2011 6:13 PM
To: 'Carol Ohm'; 'william.weaver@uhsinc.com', 'jdoherty@arrayhfs.com'; 'FAUST, PATRICIA M GS-11 USAF AMC 436 CES/CEAO'
Cc: Melson-Williams, Dawn
Subject: Dover Behavioral Health System

I have done some research to follow up on our meeting last week about the proposed expansion of Dover Behavioral Health System on Horsepond Road. I know that a Board of Adjustment Application came in, but I have not had an opportunity to review it yet.

I have pulled information related to the variance application and site plan application for the hospital from 1993. I also pulled the file from the implementation of the Airport Environs Overlay Zone from 2001. Probably the most helpful thing I have found are the minutes from July 26, 1993, when the land for the hospital was annexed into the City. There was discussion about the appropriateness of the IO (Institutional and Office) zone as opposed to industrial or manufacturing. Here is a link to those minutes:

http://www.dover.de.us/?c=/government/citycouncil/councilminutes/571/

I haven't found anything in the site plan file to indicate that we received any comments from the DAFB on the site plan application for the hospital. I need to have the minutes pulled on those meetings. I am not sure when the Base started participating in our Development Advisory Committee.

I also haven't found anything from the adoption of the AEOZ (Airport Environs Overlay Zone) that indicates that there was anything on the record from Bayhealth on this issue. There is a letter that was sent from the City in March 2001 informing property owners of the proposed ordinance and inviting them to a workshop in May 2001. There were some changes made based on feedback received at that public workshop, and then some additional changes made after discussion at the Legislative, Finance and Administration Committee meeting on June 25, 2001, to accommodate concerns raised. One of these relates to additions to existing buildings. Between June 25 and July 9, staff amended the ordinance to exempt additions to residential structures and to exempt additions of up to 3,000 SF to commercial structures. Since "residential" and "commercial" are the only terms used, we take "commercial" to refer to all non-residential uses and therefore include institutional uses such as the hospital.

Minutes from 6/25/01 LF&A Committee -
http://www.dover.de.us/?c=/government/citycouncil/committeeminutes/1160/
Minutes from 7/9/01 LF&A Committee -
http://www.dover.de.us/?c=/government/citycouncil/committeeminutes/1161/

What is clear from what I have been able to review is that the potential conflict between the use and the DAFB that was anticipated when the property was annexed and rezoned was a noise conflict, which was to be addressed through buffering and noise proofing, not a conflict with the Accident Potential Zone.

I'm going to keep looking into this, but I thought I would share what I have found to date.

Sincerely,

Ann Marie Townshend, AICP
Director, Planning & Community Development
City of Dover
PO Box 475
Dover, DE 19901
(302) 736-7196 phone
(302) 736-4217 fax
atownshend@dover.de.us

EXHIBIT C
Excerpt of Minutes from City Council meeting of July 26, 1993

REGULAR COUNCIL ME

The Regular Council Meeting was held on July 26, 1993 at 7:30 p.m. with Council President Christiansen presiding. Council members present were Mr. Lambert, Mr. Tudor, Mr. Leary, Mr. Pitts, Mrs. Malone, Mr. Hutchison, Mr. Salters and Mr. Hare.

Council staff members present were Chief Smith, Mr. Lucas, Mr. O'Connor, Mr. DePrima, Fire Chief Baker, Mrs. Boaman and Mr. Rodriguez.

The invocation was given by Reverend Miles, followed by the Pledge of Allegiance.

AGENDA ADDITIONS/DELETIONS

Mr. Hare moved for approval of the agenda, seconded by Mr. Hutchison and unanimously carried.

ADOPTION OF MINUTES - REGULAR COUNCIL MEETING OF JULY 12, 1993

The Minutes of the Regular Council Meeting of July 12, 1993 were unanimously approved by motion of Mr. Salters, seconded by Mr. Hutchison and bore the written approval of Mayor Knopf.

RESOLUTION - HARRY MARVEL

By motion of Mr. Hare, seconded by Mr. Lambert, Council unanimously adopted the following Resolution:

WHEREAS, Harry E. Marvel began his employment with the City of Dover on November 29, 1962 when he was hired as an Equipment Operator assigned to operate the City's street sweeper; and

WHEREAS, because of Mr. Marvel's good nature and desire to get the job done right, his supervisors continued to upgrade him to his current position of Sanitation Foreman; and

WHEREAS, Mr. Marvel always displayed a positive attitude towards the changes experienced in a rapid growing City and was an integral part of the success of changes in the method of sanitation collection, including the reduction from twice per week to once per week collection, changes in the bulky collection system, and a change to the current mechanized collection system; and

WHEREAS, after more than 30 years of dedicated employment with the City of Dover Public Works Department, Mr. Marvel has chosen to retire.

NOW, THEREFORE, BE IT RESOLVED that the Mayor and Council of the City

of Dover wish Harry Marvel a happy and healthy retirement and extend their sincere appreciation for the exemplary work he performed on behalf of the City of Dover and its citizens.

BE IT FURTHER RESOLVED that the City Clerk is hereby directed to make this Resolution a part of the permanent records of the City of Dover as a lasting symbol of appreciation for the service of Harry E. Marvel.

ADOPTED: July 26,1993

The Resolution, City Plaque and Dover Cup will be presented to Mr. Marvel at a later date, since he was unable to attend the Council Meeting.

ANNEXATION/REZONING - SOUTH LITTLE CREEK AND HORSEPOND ROADS - S & R FARMS, INC.

An annexation referendum was held on July 15, 1993 for property located on South Little Creek Road and Horsepond Road, containing approximately 35.88 acres of land.

Referendum Results

The City Clerk reported that one vote was cast in favor of annexation, with no votes cast against annexation.

Mr. Salters moved to accept the results of the annexation referendum, seconded by Mr. Leary and unanimously carried.

Annexation

The City Planner explained that the property is located on the east side of Horsepond Road, approximately 977+/- feet south of the intersection of Horsepond Road and South Little Creek Road. The property also fronts on the south side of South Little Creek Road, approximately 1164+/- feet east of the intersection of Horsepond Road, containing approximately 35.88+/- acres of vacant land. Mr. DePrima offered the following information on the parcel:

The proposed annexation would be compatible with the "Employment Goal" outlined in the Comprehensive Plan in that the proposal would further the diversity of the economy by bringing job opportunities to the Dover area.

It is unlikely that the land would be annexed into the City for industrial purposes since there has been no industrial development on lands already in the City. Parcels already in the City are likely to develop before this parcel would be annexed and developed as industrial property. The proposed project requires city water and sewer service.

Utility Committee Recommendation

The committee considered the request for annexation and rezoning of the above property, which is currently zoned A/C (Agricultural/Conservation) in the County. Kent General Hospital has proposed to construct a Psychiatric Hospital on the property. The City's Comprehensive Plan for the area recommends Manufacturing and Industrial land uses. The principal reason for this designation is its close proximity to the Dover Air Force Base. The Planning Commission recommended annexation of the property with a zoning classification of I/O (Institutional/Office). The Planning Commission also recommended annexation of adjacent property owned by the City of Dover, which is utilized as an electric sub-station.

Staff assured committee members that a significant amount of buffering would be required as a part of the site plan approval to protect the hospital from the noise generated by the Dover Air Force Base.

It was felt by some that the issue of drug abuse could be addressed and assistance offered in this area with the type of facility proposed by Kent General Hospital and that this type of facility is very much needed in Dover.

Council President Christiansen suggested that the tax exempt status be given only for that portion of the property where the facility will actually be located.

The committee recommended approval of the annexation/rezoning request of property located on South Little Creek and Horsepond Roads, owned by S & R Farms, Inc., as recommended by the Planning Commission.

The committee also recommended an administrative annexation of adjacent property, owned by the City of Dover, as recommended by the Planning Commission.

Mr. Lambert moved that the property located on S. Little Creek and Horsepond Roads, owned by S & R Farms, Inc. be annexed into the corporate limits of Dover. The motion was seconded by Mr. Salters and by a unanimous roll call vote, Council adopted the following Resolution:

A RESOLUTION APPROVING THE INCLUSION OF AN AREA WITHIN THE LIMITS OF THE CITY OF DOVER.

WHEREAS, the Charter of the City of Dover authorizes Council to extend the boundaries of the said City after a special election of the qualified voters and real estate owners of the territory proposed to be annexed, and

WHEREAS, the Mayor and Council of the City of Dover deem it in the

best interest of the City of Dover to include an area contiguous to the present City limits, and hereinafter more particularly described within the limits of the City of Dover, and

WHEREAS, the Charter of the City of Dover provides that if a majority of the Votes cast in an election held in a territory proposed to be annexed shall be in favor of inclusion of that territory within the limits of the City of Dover, the Council may thereupon adopt a resolution annexing said territory and including same within the limits of the City of Dover.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF DOVER, IN COUNCIL MET:

1. That the following described area, situated in East Dover Hundred, Kent County, State of Delaware, shall be annexed to and included within the limits of the City of Dover:

> BEGINNING for this Description at a point located on the southerly side of South Little Creek Road (S.R. 67) at the southeasterly corner for the lands owned by the City of Dover and the northwest corner of the parcel herein described. The beginning point being further described as being S 77° 50' 00" E 1164.48', thence S 12° 10' 00" W, 30.00' from the certerline intersection of South Little Creek Road with the centerline of Horsepond Road. Thence from the place of beginning and with the southerly right-of-way line of South Little Creek Road, S 77° 50' 00" E, 51.52', thence S 12° 10' 00" W, 5.00', thence S 77° 50' 00" E, 200.00 feet, thence, N 12° 10' 00" E, 5.00', thence S 77° 50' 00" E, 962.75' to an iron pipe and lands owned by E. Z. Farms, Inc., thence leaving the right-of-way of South Little Creek Road and with the lands of E. Z. Farms, Inc., S 58° 54' 43" W, 1895.99' to an iron pipe and lands of Wesley Realty, thence with said Wesley Realty Lands, S 59° 00' 42" W, 602.13' (passing through an iron pipe at 601.93') to a point on the easterly right-of-way line of Horsepond Road (S.R. 348), thence with said right-of-way, N 12° 02' 26" W, 664.58' to a point and beginning if a curve to the right having a radius of 1884.86', thence with said curve the following chord bearing and distance, N 09° 04' 37" W, 194.91' to a point and lands owned by William B. & Dorothy Schauber, thence leaving Horsepond Road and with the Schauber Lands, N 58° 38' 06" E, 873.28' to a point and lands owned by the City of Dover, thence with said lands, N 59° 09' 48" E, 471.78' to a point on the southerly right-of-way line of South Little Creek Road and the place of

beginning; CONTAINING 35.88 acres of land.

2. The above described property shall be annexed into the City of Dover with a zoning classification as set by City Council and in accordance with the zoning map and environs, then in force, effective upon such lands being included within the limits of the City of Dover.

3. That the certified copy of the resolution of annexation, together with a plot of the area annexed, shall be filed for record with the Recorder of Deeds of Kent County.

4. That the effective date of this resolution shall be the 27th day of July, 1993 at 12:01 a.m. o'clock.

ADOPTED: July 26, 1993

Public Hearing - Zoning Classification

City Planner, Mr. DePrima, explained that the property is currently zoned as A/C (Agriculture/Conservation) in the County. To the immediate north of the site is the location of a Food Service Equipment Company zoned B-G (General Business) in the County, and the location of a City owned electric sub-station zoned A/C (Agricultural-Conservation) in the County. To the east and across South Little Creek Road and to the immediate east is agricultural land in the county, and a few scattered single family homes. To the south is a large beverage warehouse that is zoned M (Manufacturing) in the City. To the west is vacant wooded land and a fence company zoned C-3 (Service Commercial) in the City and to the northeast is the McDaniel Industrial Park that is zoned M (Manufacturing).

This parcel is located within an area that the Comprehensive Plan calls for Manufacturing and Industrial land uses. The principal reason for this designation is its relatively close proximity to the Dover Air Force Base. The Land Use Compatibility Matrix that is included in the Comprehensive Plan finds that institutional uses such as the Psychiatric Hospital would be considered moderately compatible with Industrial Parks but would require moderate buffering. With respect to compatibility with Manufacturing the Matrix considers institutional uses to be incompatible and would need heavy buffering.

With respect to institutional uses, the Comprehensive Plan limits this designation to "existing" campuses, and does not designate any large vacant areas of the City for new institutions. There are no areas within the City under the current land use designations that would be considered compatible. This appears to be a deficiency in the Comprehensive Plan that should be compensated for. With respect to natural and man made constraints on the property, the Comprehensive Plan finds only limited constraints due to its proximity to the Air Base and its prime agricultural soil. The project requires City Water

and Sewer Service. The developers of this project have been meeting with officials of Dover Air Force Base and will construct the building in such a way that noise is suppressed.

The Planning Commission felt that the City Council should give serious consideration to approving this annexation. They felt that the facility would bring an expanded community service to Dover as well as new employment opportunities. Dover, as the central city for the region, is the appropriate place for such a facility, especially given its status as a nucleus for the health care industry. Dover is recognized for its growing medical community and derives a variety of economic benefits from the jobs and clients that its draws to Dover. The Planning Commission felt that the benefits clearly outweigh the fact that the hospital has a tax exempt status.

While this particular site is somewhat remote, the surrounding land uses and zoning are not necessarily incompatible if buffering occurs. Access to the site via South Little Creek Road and Horsepond Road, which are both collector roads, are compatible with the proposed use. However because of the surrounding land uses and zoning, a significant amount of buffering to protect the hospital would be required as a part of the site plan approval.

The Planning Commission recommends that the zoning classification for this property be approved as IO (institutional and office). This recommendation was made after holding a public hearing on the matter. At the public hearing, several surrounding property owners expressed their belief that the site is inappropriate because of its close proximity to Dover AFB, industrial areas, and truck traffic. There was also concern that the hospital would oppose future development of surrounding industrial areas. A few people spoke in favor of the application because of the need for such a service in Dover.

The Planning Commission also recommended annexation of the land owned by the City of Dover and used for an electric sub-station that is adjacent to the land proposed for annexation.

Council President Christiansen declared the public hearing open.

Mr. Ed Daube of 552 Westwood Drive voiced his objections to the proposal on the basis that the City is comprised of approximately 50% tax exempt property. Approval of additional tax exempt property development only dilutes the tax base at the burden of the taxpayers.

Mayor Aaron Knopf spoke in favor of the annexation and rezoning, stating that it will enable Kent General Hospital to construct a modern facility to serve those in need in central Delaware. He urged members of Council to approve the proposal, stating that it is their responsibility to ensure that the proper services are made available

to our citizens. He stated that Central Delaware's mental health needs should be met locally, reminding Council that hardships are created for families who must travel distances to facilities in New Castle County and surrounding states to receive mental health care for themselves or family members.

Mayor Knopf stated that not only will the facility provide a service to the community, but that it will be a revenue source to the City through their need for water, sewer and electric services. The facility is also expected to employ 80 people which is advantageous to the citizens of Dover. He reminded Council and the citizens that this facility is not a facility for the criminally insane, for patients held against their will, a reform school, or a facility for the State prison system inmates. It is a 50 bed facility that deals with voluntary admissions for adults and adolescents with short term mental health concerns. He urged approval of the request.

Mr. Ron Smith, President of Kent County Levy Court, urged approval of the application for Kent General Hospital. Although Levy Court denied approval for a similar facility on Lebanon Road, Mr. Smith explained that Levy Court Commissioners were concerned with the lack of infrastructure available to support a facility of this size and with the loss of agricultural land within the County. Mr. Smith stated that the City of Dover is capable of providing the necessary services to this facility and urged Council's approval, stating that it would be an asset to the community and to Kent General Hospital.

Mr. John Paradee, attorney representing Kent General Hospital, addressed the proposed facility and urged Council's approval of the required zoning classification. Referring to the speaker relating to taxes, Mr. Paradee reminded the public that the property is currently not within the City and therefore would be taking away from the tax base. If the property were annexed at its current use, it would be agricultural and would be tax exempt. Although the hospital maintains a tax exempt status, they would add revenue sources to the City through their substantial utility uses. Responding to questions by Mr. Hutchison, Mr. Paradee stated that the hospital has had discussions with Dover Air Force Base relative to possible noise concerns. Kent General Hospital will assure that there will be no noise complaints lodged by the hospital against aircraft noise from DAFB. The hospital and DAFB have worked together in the past and will continue to do so. The hospital plans to construct the facility with maximum sound proofing. The doctors are also comfortable that there will be no problems from a clinical point of view. Mr. Tudor stated that the hospital needs to understand that City Council will never ask DAFB to alter their flight path if the hospital's soundproofing attempts are not completely successful. Mr. Paradee stated that the hospital fully understands the City's position on this issue.

Mr. Lambert suggested that staff pursue the committee's suggestion of

EXHIBIT D
Excerpt of minutes from
Legislative, Finance &
Administration Committee meeting
of July 9, 2001

Proposed Ordinance Amendment - Airport Environs Overlay Z

Members were provided proposed amendments to the Zoning Ordinance, Land Subdivision Regulations and Zoning Map intended to protect the Dover Air Force Base Mission as well as the health and safety of future development by regulating uses and construction in areas around Dover Air Force Base (DAFB). The proposed ordinance will replace the Flight Path Zone that was antiquated and could no longer be actively used.

Mr. DePrima, Interim City Manager, reminded members that this amendment was originally recommended in the City's 1996 Comprehensive Plan. Staff worked closely with Kent County Planning and the DAFB to develop the proposed ordinance amendment. He stated that public workshops were held with property owners within the Overlay Zone to explain the proposal and its affect. The proposed amendments define the specific uses permitted with the Accident Potential and Clear Zones, as well as prescribe noise attenuation for new structures within the noise contours generated by the operations of DAFB.

Mr. DePrima explained that there are three (3) parts to the proposed amendments, as follows:

1)Part A - proposed ordinance amending Article 3 by deleting Section 22 entitled *Flight Path Zone (FP)*, in its entirety and inserts in lieu thereof a new Section 22 entitled *Airport Environs Overlay Zone (AEOZ)*. This proposed amendment defines the three (3) basic zones that extend beyond the ends of the Runways of DAFB. The Clear Zone (CZ), which prohibits all but a minimum of uses. The Accident Potential I and II Zones (APZ I and APZ II), which have a much greater effect on the City. The APZ I zone prohibits most uses except for warehousing, industrial and similar uses with a low concentration of people. The APZ II zone allows for more diverse uses but discourages higher density residential uses or uses which attract a large number of people such as schools, churches, hospitals, recreational facilities, etc. This proposed amendment is based upon standards and guidelines developed by the United States Air Force and are intended to promote land use compatibility among Air Force installations and surrounding communities.

The second component of the AEOZ is the noise contours, which are the decibel levels associated with the noise generated by aircraft operations. The "noise contours" radiate from DAFB and generally follow the flight paths of aircraft. Building in noise zones are required to be constructed so that noise levels are reduced on the interior. The proposed amendment incorporates the land use and interior noise level reduction recommendations of the most recent Dover Air Force Base Air Installation Compatible Use Zone (AICUZ) study, which was completed by the United States Air Force in March of 1999.

2)Part B - proposed ordinance amending Article V of the Land Subdivision Regulations by adding item (p) to Article V, Section B.1 - Preliminary Layout and Data, and proposed ordinance amendments to Article 10 of the Zoning Code, by adding item (l) to Section 1.62 - Legal Data, item (n) to Section 2.52 - Legal Data, and item (q) to Section 5.182 - Legal Data. These proposed amendments require the APZ and noise contour boundaries to be shown on site plan and subdivision maps, if applicable, and requires a Plan Note to be placed on the plans indicating that the property is in an impacted area and must comply with acoustical performance standards.

3)Part C - proposed amendments to the zoning map. Members were provided a map depicting the location of the new zones.

Mr. DePrima stated that the proposed amendments will not affect existing buildings and uses and that the Planning Commission recommended approval of the proposed ordinance amendments.

Mr. Snaman stated that he concurs with the requirement for commercial properties since they could effect others, such as employees, that would not have a choice in the matter; however, a homeowner could choose to live in an area near the base and accept the noise that is generated.

Responding, Mr. DePrima stated that this is not a retroactive ordinance and explained that these regulations would pertain to new constructions. He stated that unless a property is sold and there is a change of use, existing properties are exempt. For clarification, he suggested that an additional item (e) could be included in Subsection 22.4 to provide an exemption for existing residential properties.

Mr. Ruane moved to table the matter to allow staff the opportunity to include exemptions for residential properties and to obtain additional information regarding an inventory of residential and commercial properties. The motion was seconded by Mr. Snaman and unanimously carried.

EXHIBIT D
Excerpt of minutes from Legislative, Finance & Administration Committee meeting of June 25, 2001

Proposed Ordinance Amendment - Airport Environs Overlay

During the committee meeting of June 25, 2001, membe define specific uses permitted within the Accident Potential and Clear Zones, as well as prescribe noise attenuation for new structures within the noise contours generated by the operations of Dover Air Force Base (DAFB). Having several questions regarding types of structures in the affected area and the impact the ordinance would have on existing buildings, members tabled action to allow staff the opportunity to include exemptions for residential properties and to obtain additional information regarding an inventory of residential and commercial properties. Mr. Ruane moved to lift the item from the table, seconded by Mr. Salters and unanimously carried.

Mr. Petit de Mange informed members that staff has completed an analysis of existing land uses and structures within the area of impact for the noise contours and accident potential zones. He stated that there are four (4) agricultural structures, 25 commercial structures, 36 industrial buildings, three (3) institutional buildings, and 716 residential structures which would be impacted by the noise attenuation measures. Within the accident potential zone there is one (1) agricultural building, two (2) commercial buildings, 23 industrial buildings, one (1) institutional building, and 39 residential buildings. Mr. Petit de Mange indicated that there are 95 undeveloped residential lots within the area.

Mr. Petit de Mange stated that the revised proposed ordinance would exempt proposed additions to existing residential and commercial buildings. The regulations would impact new construction only.

Mr. Speed questioned how the ordinance would affect mobile homes. Mr. Petit de Mange stated that an existing mobile home could be replaced under the existing non-conforming ordinance; however, new mobile home units would be subject to the proposed amendments.

Mr. Ruane moved to recommend adoption of the proposed Airport Environs Overlay Zone (AEOZ) amendments **(Attachment #1)**, seconded by Mr. Salters and unanimously carried. *(It is noted that a public hearing is required and it is recommended that the public hearing be scheduled for August 13, 2001 at 7:30 p.m.).*

E. BRADFORD BENNETT
STATE REPRESENTATIVE
Thirty - Second District



HOUSE OF REPRESENTATIVES
STATE OF DELAWARE
LEGISLATIVE HALL
DOVER, DELAWARE 19901

COMMITTEES
Housing & Community Affairs, Vice Chair
Economic Development, Banking, Insurance & Commerce
Policy Analysis & Government Accountability
Revenue & Finance
Clearinghouse

Sept. 09, 2011

Board of Adjustment
Dover City Hall
15 Loockerman Plaza
Dover, DE 19901

Dear Board of Adjustment members:

I am writing in support of an "area" variance from the City of Dover Board of Adjustment to allow for the expansion of the Dover Behavioral Health System for Behavioral Health by Dover Behavioral Health Systems (DBHS) to increase its bed capacity.

DBHS has expanded programs for the treatment of mental health and substance abuse since purchasing the center in 2007. These increased services have resulted in an annual double digit growth at the center, which caused the facility to reach 95 percent capacity in 2010. Due to this, DBHS must frequently divert people with acute mental health crises to New Castle County for hospitalization because the Dover Behavioral Health System has limited bed capacity. This is a disservice to those in Kent and Sussex counties who require behavioral health treatment and must travel long distances to receive such services.

I fully support of the expansion of the Dover Behavioral Health System and request that the City of Dover Board of Adjustment grant this variance so our constituents in need of behavioral health services can be treated locally.

Sincerely,

E. Bradford Bennett

E. Bradford Bennett
State Representative
32nd District

P.O. Box 344, Dover, DE 19903
Home: 302-734-8699 House Office: 302-744-4351 Fax: 302-739-2313
bradford.bennett@state.de.us

City of Dover, DE
Department of Planning and Inspections
P.O Box 475, Dover, Delaware 19903
(302) 736-7010 Fax. (302) 736-4217
www.cityofdover.com

_____ Area Variance
_____ Use Variance
_____ Appeal
2/7/11 Pre-App Date

Board of Adjustment Application

Application Information

Property Address: 725 Horsepond Road, Dover, DE 19962
Tax Parcel Number: ED 05-078.00-01-08.00-000
Owner Name: UHS of Dover, LLC
Property Zoning: IO / AEOZ (APZII)
Variance (s) Requested: From the provisions of Article 3, Section 22.4 of the Dover City Code to permit the expansion of a structure located in the AEOZ.

*Provide eight (8) copies of any survey, drawings, photos, site plan, etc. that may help support your application, and your response to the criteria. The criteria for a use variance and appeal are on the back of the form.

Area Variance

An area variance shall be evaluated on the following criteria: **Please state how your request meets each of these four (4) criteria.**

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

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

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

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.

Signature

I William Weaver do affirm that I am the property owner on which the variance is sought and that all the information provided in this application is accurate to the best of my knowledge and belief.

Signature | CEO / Managing Director (Title) | 8/16/11 (Date)

City of Dover, DE
Department of Planning and Inspections
P O. Box 475, Dover, Delaware 19903
(302) 736-7010 Fax: (302) 736-4217
www.cityofdover.com

Board of Adjustment Application- cont.

Use Variance
A use variance shall be evaluated on the following criteria. **Please state how your request meets each of these criteria.**

1. That there are physical conditions applying to the land or building for which the variance is sought, which conditions are peculiar to such land or buildings, and have not resulted from any act of the applicant or any predecessor in title; and

2. That the aforesaid circumstances or conditions are such that the strict application of the provisions of this ordinance would deprive the applicant of all reasonable use of such land or building and the granting of the variance is necessary of the reasonable use of the land or building, and that the variance as granted by the board is the minimum variance that will accomplish this purpose,

3. That granting of the variance under such conditions as the board may deem necessary or desirable to apply thereto will be in harmony with the general purpose and intent of this ordinance, will not represent a radical departure therefrom, will not be injurious to the neighborhood, will not change the character thereof and will not be otherwise detrimental to the public welfare.

Appeal
Please state the administrative order, requirement, decision, or determination that you are appealing. (Provide a copy of the original decision that is being appealed)

RECEIVED
AUG 19 2011
CITY OF DOVER
PLANNING & INSPECTIONS

PJS ESQ, LLC
209 MEADOWDALE DRIVE
NEWARK, DE 19711
302-598-2661
PSCOTTLAW@COMCAST.NET

August 18, 2011

VIA FEDERAL EXPRESS
City of Dover
Department of Planning and Inspections
15 Loockerman Plaza
Dover, DE 19903
Attn.: Ann Marie Townshend

Re: Board of Adjustment Application
UHS of Dover, LLC

Dear Ann Marie:

Enclosed please find a Board of Adjustment Application being filed on behalf of UHS of Dover, LLC, in connection with their property located at 725 Horsepond Road, Dover, Delaware (the "Property"). UHS of Dover, LLC operates the Dover Behavioral Health System, a private, 47,105 square foot, fifty-seven (57) bed, psychiatric facility located at the Property (the "Facility"). The Facility is located in the "IO" Zoning District and within the Airport Environs Overlay Zone, specifically APZ II.

By way of background, the development of the Facility was approved in 1993 when the Property was annexed into the City of Dover. At the time that the proposed use was being considered by Dover City Council, it was determined that the proposed annexation would be compatible with the "Employment Goal" outlined in the City's Comprehensive Plan in that the proposed use would further the diversity of the economy by bringing job opportunities to the Dover area. While the City's Comprehensive Plan at the time recommended manufacturing and industrial land uses for the Property due to its proximity to the Dover Air Force Base ("DAFB"), the Planning Commission recommended annexation of the Property with a zoning classification of IO (Institutional Office). The Planning Commission determined that the proposed use was very much needed within the City of Dover but that it would be best located away from the general population, thus making the Property an ideal location. The Comprehensive Plan at the time limited institutional uses to "existing campuses" and did not designate any large vacant areas of the City for new institutional uses. As a result, there were no areas within the City under the existing land use designations which were considered compatible, an apparent deficiency in

the Comprehensive Plan. The Planning Commission determined that the Facility would bring an expanded community service to Dover as well as new employment opportunities, and that the City, as the "nucleus for the health care industry" was the appropriate place for such a facility. Further, the existing land uses and zoning classifications were not necessarily incompatible with the proposed use, especially with significant buffering to protect the Facility, thus the Planning Commission supported the annexation and rezoning of the Property and City Council approved such action.

Subsequently, in 2001, City Council adopted the Airport Environs Overlay Zone (AEOZ), the purpose of which was to protect the DAFB as well as the health and safety of future development by regulating uses and construction in areas around the DAFB. The apparent intent of the APZ II zone was to permit more diverse uses within the vicinity of the DAFB but to discourage higher density residential uses or uses which attract a large number of people such as schools, churches, hospitals, recreational facilities, etc. During the public hearing to discuss the proposed Ordinance it was stated that the adoption of the Ordinance would not affect existing buildings and uses. Just prior to its adoption, language was added to the Ordinance to exempt proposed additions to existing one family dwellings, and additions to existing commercial buildings up to an additional 3,000 square feet for buildings designed and intended for human occupancy. Unfortunately, however, the City's records do not indicate the basis for the determination to limit expansions to 3,000 square feet, nor is there any record as to the involvement of the prior owners of the Facility in such discussions. Considering that the adoption of the AEOZ Ordinance significantly impacts the future use of the Property and the Facility (a use specifically approved by the City through annexation of the Property), it is curious that there is no information in the record on this particular issue.

The Applicant proposes to expand the Facility beyond what is permitted by Article 3, Section 22.4 of the City of Dover Code, in order to add sixteen (16) beds, which necessitates an area variance. In that regard, in evaluating the Application based upon the criteria for an area variance, I offer the following:

1. **The nature of the zone in which the property lies.** The underlying zoning for the Property is "Institutional Office", and the use of the Property is permitted within this zoning district. As was outlined above, the City of Dover specifically annexed the Property into the City and rezoned it to the IO zoning classification because it was determined that there was a need within the community for the proposed use and that the location provided an area with significant buffering from other uses. Unfortunately, however, subsequent limitations imposed by the AEOZ did not take into account the need for the Facility to expand to meet the growing needs of the community. This has created a particularly unique issue for the Applicant.

2. **The character of the immediate vicinity and the contained uses therein.** The Property is surrounded by a mixture of uses being largely warehousing and light industrial in nature, being a concrete recycling facility, a beer distributor and a microbrewery, to name a few. The MCD Business Park is located across Horsepond Road to the west, and Dover East Industrial Park is located to the south. The use of the Property is compatible with the surrounding uses.

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 restrictions on the Property, which prohibit the extent of the proposed expansion, will have little if any impact upon neighboring properties and uses. The use of the Property is a very low intensity use which generates little traffic and does not cause noise, odor or have other negative impacts upon the surrounding properties. In addition, due to the unique nature of the use with the need to have it located away from more populated areas, especially residential uses, the present site is ideally suited for it.

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 use under the provisions of the zoning ordinance.** If the restriction is not removed through the approval of the area variance, the Applicant will not be permitted to make improvements to the Facility to accommodate the needs of patients who are referred to it. The Facility is currently at maximum capacity and, due to legal mandates, cannot refuse to treat those who are referred to it. The Facility is currently operating with fewer beds than it has patients, an untenable situation. It is the only facility in the area which offers these types of services and to not permit its expansion would have a negative impact upon the community it serves.

The Application Fee in the amount of $300.00 was paid when the Application was previously filed on February 11, 2011. The Application was subsequently withdrawn on March 8, 2011; however, the Application Fee was never returned to the Applicant and therefore still remains in the possession of the City of Dover. Since the previous Application was withdrawn before it was advertised or any work done by the City in connection therewith, we ask that the City apply the previously paid Application Fee to this Application. Also enclosed with the Application is the Request for Mailing List Form, the Project Contact List Form, and eight (8) copies of the Site Plan for the Property.

I understand that this Application will be placed on the Board of Adjustment's agenda for a hearing in September. Once the date has been confirmed, please let me know.

Thank you for your assistance. Should you have any questions or require any additional information, please do not hesitate to contact me.

Very truly yours,

Pamela J. Scott

Enclosures

City of Dover

Board of Adjustment

September 21, 2011

V-11-09 Lands of Perza at 545 South State Street

Location:	545 South State Street
Applicant/Owner:	Adam and Kasey Perza.
Application Date:	August 12, 2011
Present Zoning:	R-8 (One Family Residence Zone) H (Historic District)
Present Use:	Residence
Reviewed By:	Michael J. Albert, AICP

Variances Requested

- **Variance from the rear-yard setback for an addition to the principal structure**
- **Variance from the impervious coverage limit of 35%**

Project Description:

The applicant is seeking a variance from Article 4, Section 4.1 of the *Zoning Ordinance*, the bulk standard requirements of the R-8 zoning, specifically as those requirements relate to the rear-yard setback and to impervious coverage. The applicant seeks to construct an addition on to the rear portion of the existing structure. The requested variance would allow for a 10 foot rear-yard setback and permitting the property to exceed the 35% lot coverage regulation by 3.7% for a total of 38.7% lot coverage. The property is located at 545 South State Street in Dover's Historic District.

Adjacent Land Uses

The lands to the north and east are all similarly zoned R-8 and are residential uses. The lands to the south and west are zoned IO (Institutional/Office). These properties are used as part of the Bayhealth operations.

Code Citations

Section 4.1. [One-family residence zones.]

Bulk and parking regulations for one-family residence, R-20, R-15, R-10, R-8 and R-7 zones [are as follows] (see also article 12, definitions; article 5, supplementary regulations; and article 6, off-street parking, driveways and loading facilities):

TABLE INSET:

			For Dwellings In:				
			R-20	R-15	R-10	R-8	R-7
Minimum required:							
	Lot area (sq. ft.)		20,000	15,000	10,000	8,000	7,000
	Lot width (ft.)		120	100	80	70	50
	Lot depth (ft.)		150	125	110	100	100
	Front yard (ft.)		30	30	25	25	20
	Minimum side yard (ft.)		25	20	15	10	5
	Total both side yards (ft.)		50	40	30	20	10
	Rear yard (ft.)		40	40	30	30	30
	Livable floor area/DU (sq. ft.) 1,200		1,200				
	Off-street parking spaces/dwelling units		3	3	2	2	2
Maximum permitted:							
	Building height						
		Stories	2 1/2	2 1/2	2 1/2	2 1/2	2 1/2
		Feet	35	35	35	35	35
	Lot coverage		20%	25%	30%	35%	40%

(Ord. of 12-14-1992)

Exceptional Practical Difficulties Tests

Article 9, §2 dictates the specific powers and duties of the Board of Adjustment with regard to granting variances. In order to grant a variance the Board must determine in that exceptional practical difficulties exists.

Specifically the Board must determine:

2.1 Variance **–** The board shall have the authority to authorize variances from provisions of the zoning ordinance that are not contrary to public interest where the board determines that a literal interpretation of the zoning ordinance would result in undue hardship or exceptional practical difficulties to the applicant. In granting variances, the board shall determine that the spirit of the zoning ordinance is observed and substantial justice done.

2.11 Area Variance. A variance shall be considered an area variance if it relates to bulk standards, signage regulations, and other provisions of the zoning ordinance that address lot layout, buffers, and dimensions. In considering a request for an area variance, the board shall evaluate the following criteria and document them in their findings of fact:

(a) the nature of the zone in which the property lies;
(b) the character of the immediate vicinity and the contained uses therein;
(c) whether, if the restriction upon the applicant's property were removed, such removal would seriously affect neighboring properties and uses; and
(d) whether, if the restriction is not removed, the restriction would create unnecessary hardship or exceptional practical difficulty for the owner in his efforts to make normal improvements in the character of that use of the property that is a permitted use under the provisions of the zoning ordinance.

In order to allow for the proposed addition to the principal structure, the applicant is requesting two variances. Applicant responses to the area variance criteria and the Staff position on those responses is as follows:

1. **<u>The nature of the zone in which the property lies.</u>**

Applicant Response:

R-8 single family residential zoning

APPENDIX B ZONING : ARTICLE 4. ZONING BULK AND PARKING REGULATIONS: Section 4.1.

			For Dwellings In:	
			R-8	545 South State Street
Minimum required:				*As approved (10/23/2003)*
	Lot area (sq. ft.)		8,000	5,877
	Lot width (ft.)		70	61
	Lot depth (ft.)		100	91
	Front yard (ft.)		25	25
	Minimum side yard (ft.)		10	8 *(grandfathered R-8 code)*
	Total both side yards (ft.)		20	>20
	Rear yard (ft.)		30	30
	Off-street parking spaces/dwelling units		2	>2
Maximum permitted:				
	Building height			
		Stories	2 1/2	2
		Feet	35	24.25
	Lot coverage		35%	35%

(Ord. of 12-14-1992)(City of Dover approved site plan 10/23/2003 for "State Street Residence")

Staff Response:

The property is 5,877 S.F. in size. It is below the minimum lot size prescribed for the R-8 zoning. The prescribed size in square feet of an R-8 zoned property is 8,000 S.F. The property is approximately 91 feet deep. It is below the minimum prescribed lot depth of 100 feet. The property is also below the minimum prescribed lot width of 70 feet.

2. <u>The character of the immediate vicinity and the contained uses therein.</u>

Applicant Response:

Elm Terrace is a small community of single family residences developed in the 1920's prior to the enactment of modern municipal zoning codes. Many of the lots within the community are smaller than the 8,000-square foot minimum lot size defined by the R-8 residential zoning classification. In part due to the smaller lot sizes, many of the homes and properties in the community do not conform to the zoning restrictions defined by the current zoning classification.

Structural additions and exterior outbuildings such as sheds and garages are common in the Elm Terrace and State State Street residential community. In many instances these additions and outbuildings are situated within the rear and side yard setbacks as defined in the 1992 zoning code.

The proposed variance would not alter the residential or aesthetic character of the community. Home additions including rooms, porches, and garages are common within the community. If approved, the proposed variance would not create a circumstance unique to the Elm Terrace.

The proposed addition is situated to the extreme rear of the land parcel and would not be visible to the public from the road. In addition neighboring properties to the east and south are undeveloped and have no physical structures constructed thereon for which the setback would directly protect from encroachment.

Neighboring property owners have been supportive of this application and no opposition from community members is anticipated.

Staff Response:

The area surrounding the Applicant's property has numerous instances of buildings with reduced rear-yard setbacks. The addition as proposed would be in character with the immediate vicinity as there are other existing buildings with similar conditions. The requested variance from the impervious coverage limit is a condition that is less prevalent in the area, however several obvious instances of lots exceeding the current prescribed lot coverage exist in proximity to the subject property.

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

Elimination of the rear setback and lot coverage limitation would have no impact on neighboring properties or their use. The Applicant's property is presently zoned and used only as a single family residence.

Staff Response:
The removal of the restriction of the rear-yard setback and an increase in the permitted impervious coverage would be consistent with the rest of the residential properties within the area and would not seriously impact the neighboring properties or 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 Applicant did not create the hardships from which relief is sought with this variance application.

The extraordinary small lot size (5,877 square feet) renders it not possible to modify the residence without a variance from a setback or the resulting increase in lot coverage. Acquiring additional land to add to the existing parcel acreage is not possible as the parcel is landlocked by neighboring residential property to the north and east, and by land owned by corporate entities associated with Bayhealth Medical Center to the South.

The application seeks a variance of the 35% lot coverage requirement to construct a 20x15 foot (300-square ft) addition as illustrated on the Site Plan. The post-construction lot coverage would be 38.7% to construct a 20x15 foot addition as illustrated on the attached Site Plan.

Setbacks are designed in part to provide neighboring home owners with privacy. The northeast corner of the Applicant's property where the addition would be situated shares a boundary with a vacant parcel to the east (ED-05-077.09-05-71.00-000 owned by Richard Kosior). The neighboring parcel to the east has no residential structure situated on it, and this variance is supported by its owner.

Staff Response:
The ability of the owner to make normal improvements for the use of his property would be impeded without the granting of the variance. The smaller, non-standard dimensions of the property for an R-8 zoned lot impose a practical difficulty in the normal expansion and improvement of the principal structure. If the lot met the dimension requirements for R-8, the addition could be constructed without a variance.

Recommendation:

Staff recommends approval of the variance. The reasons for this recommendation are specific to the existing lot size and failure of the lot to meet minimum bulk standard requirements:

- Staff finds that there is compelling reason for granting the variance as the lot does not meet the minimum width, length, or area of the current and intended zoning (R-8).
- Variances which are particular to the size and dimension of a property should be evaluated primarily on those reasons of dimension alone.
- The variance as proposed would have no effect on the existing neighborhood character.

City of Dover, DE
Department of Planning and Inspections
P.O. Box 475, Dover, Delaware 19903
(302) 736-7010 Fax: (302) 736-4217
www.cityofdover.com

_____ Area Variance
_____ Use Variance
_____ Appeal
_____ Pre-App Date

BOARD OF ADJUSTMENT APPLICATION

Application Information

Property information:	545 South State Street, Dover, Delaware
Tax parcel number:	ED-05-077.09-05-71.01-000
Owner name:	Adam Perza and Kasey Perza
Property zoning:	R8
Variances requested:	Variance of 30-foot rear yard setback (R8 zoning) Variance of 35% lot coverage (R8 zoning)

Attached as exhibits to this application are eight (8) copies of a site survey illustrating the location of the variance sought.

Overview

The Applicant is seeking a variance from Article 4, Section 4.1 of the 1992 city zoning ordinance. The purpose of the variance application is to gain permission to construct an addition onto the rear of an existing residence situated at 545 South State Street in Dover.

545 South State Street is zoned R8. The City's contemporary 1992 zoning code defines R8 in part as possessing (1) a 30-foot rear yard setback, and (2) a maximum lot coverage not to exceed 35% on an 8,000 square foot lot.

A variance of the rear yard setback is sought to permit construction of an addition to the rear of an existing home not closer than ten feet from the shared property line with a subdivided vacant parcel that is part of 12 Elm Terrace.

A variance of the lot coverage requirement is sought to permit construction of a 20x15 foot addition to the home to result in a post-construction lot coverage area of 38.7% of the approved 5,877 square foot lot as illustrated on the attached Site Plan.

Area Variance

1. Nature of the zone in which the property lies.

   R-8 single family residential zoning

APPENDIX B ZONING : ARTICLE 4. ZONING BULK AND PARKING REGULATIONS Section 4 1

			For Dwellings In	
			R-8	545 South State Street
Minimum required:				*As approved (10/23/2003)*
	Lot area (sq ft)		8,000	5,877
	Lot width (ft.)		70	61
	Lot depth (ft)		100	91
	Front yard (ft)		25	25
	Minimum side yard (ft)		10	8 *(grandfathered R-8 code)*
	Total both side yards (ft)		20	>20
	Rear yard (ft.)		30	30
	Off-street parking spaces/dwelling units		2	>2
Maximum permitted.				
	Building height			
		Stories	2 1/2	2
		Feet	35	24 25
	Lot coverage		35%	35%

(Ord. of 12-14-1992)(City of Dover approved site plan 10/23/2003 for "State Street Residence")

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

Elm Terrace is a small community of single family residences developed in the 1920's prior to the enactment of modern municipal zoning codes. Many of the lots within the community are smaller than the 8,000-square foot minimum lot size defined by the R-8 residential zoning classification. In part due to the smaller lot sizes, many of the homes and properties in the community do not conform to the zoning restrictions defined by the current zoning classification.

Structural additions and exterior outbuildings such as sheds and garages are common in the Elm Terrace and State State Street residential community. In many instances these additions and outbuildings are situated within the rear and side yard setbacks as defined in the 1992 zoning code.

The proposed variance would not alter the residential or aesthetic character of the community. Home additions including rooms, porches, and garages are common within the community. If approved, the proposed variance would not create a circumstance unique to the Elm Terrace.

The proposed addition is situated to the extreme rear of the land parcel and would not be visible to the public from the road. In addition neighboring properties to the east and south are undeveloped and have no physical structures constructed thereon for which the setback would directly protect from encroachment.

Neighboring property owners have been supportive of this application and no opposition from community members is anticipated.

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

Elimination of the rear setback and lot coverage limitation would have no impact on neighboring properties or their use. The Applicant's property is presently zoned and used only as a single family residence.

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

The Applicant did not create the hardships from which relief is sought with this variance application.

The extraordinary small lot size (5,877 square feet) renders it not possible to modify the residence without a variance from a setback or the resulting increase in lot coverage. Acquiring additional land to add to the existing parcel acreage is not possible as the parcel is landlocked by neighboring residential property to the north and east, and by land owned by corporate entities associated with Bayhealth Medical Center to the South.

The application seeks a variance of the 35% lot coverage requirement to construct a 20x15 foot (300-square ft) addition as illustrated on the Site Plan. The post-construction lot coverage would be 38.7% to construct a 20x15 foot addition as illustrated on the attached Site Plan.

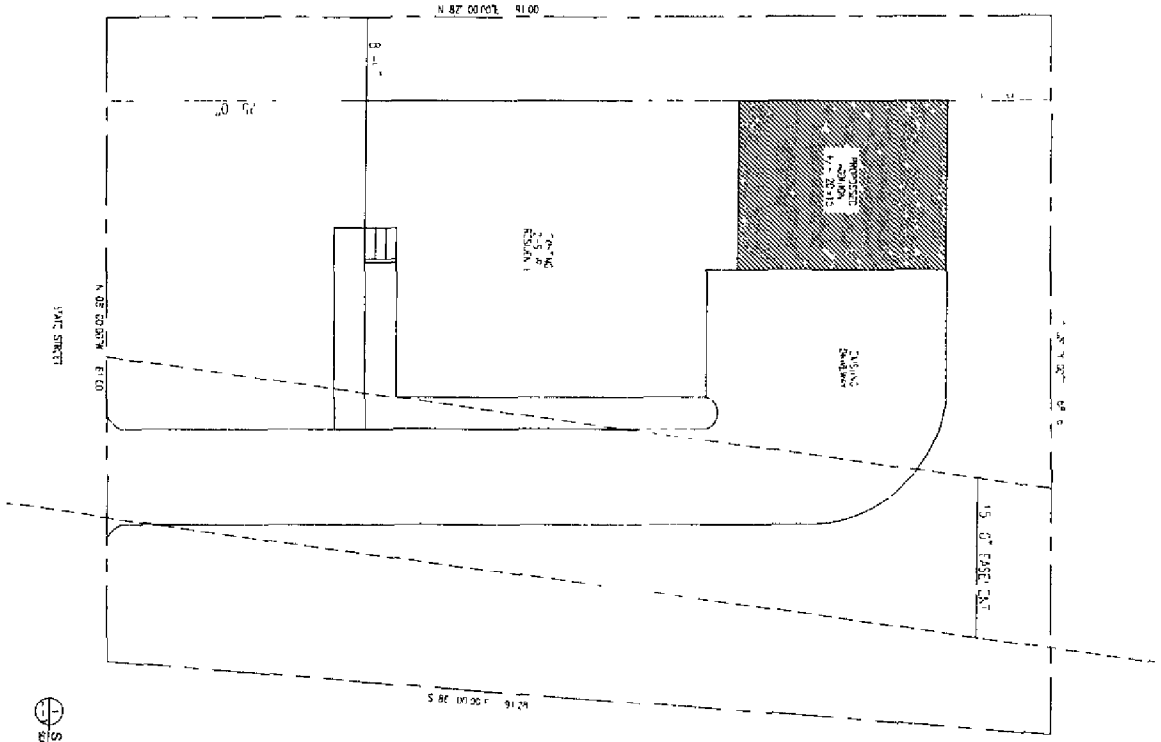
Setbacks are designed in part to provide neighboring home owners with privacy. The northeast corner of the Applicant's property where the addition would be situated shares a boundary with a vacant parcel to the east (ED-05-077.09-05-71.00-000 owned by Richard Kosior). The neighboring parcel to the east has no residential structure situated on it, and this variance is supported by its owner.

Signature

We, Adam Perza and Kasey Perza, do affirm that we are the property owner on which the variance is sought and that all the information provided in this application is accurate to the best of our knowledge and belief.

Adam Perza, Owner Date: 8/11/2011

Kasey Perza, Owner Date: 8/11/11



1 SITE PLAN
SCALE: 1" = 10'-0"

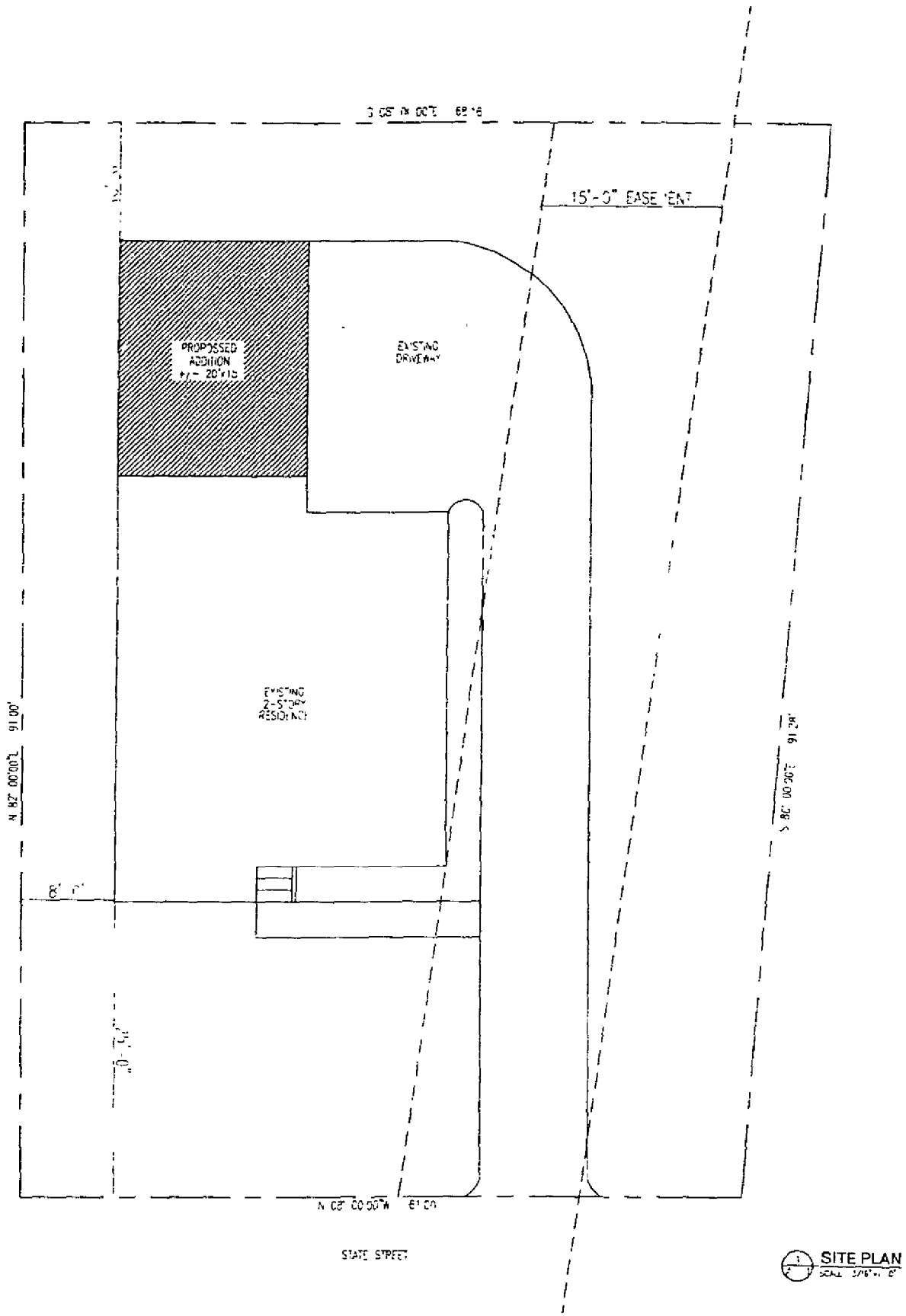
WATER PLUS SURFACE	
HOUSE=	1,044.5SQFT
PATIO=	1,023.5SQFT
TOTAL=	2,068.0SQFT
LOT AREA=	5,677SQFT
MAX LOT CO VERAGE	35%
PROPOSED LOT CO VERAGE	36.7%
FRONT SETBACK	25'-0"
SIDE SETBACK	8'-0"
PROPOSED REAR SETBACK	10'-0"
MINIMUM LOT AREA	8000SQFT
EXISTING LOT AREA	5677SQFT
MINIMUM LOT WIDTH	70'-0"
EXISTING LOT WIDTH	61'-3"
MINIMUM LOT DEPTH	100'-0"
EXISTING LOT DEPTH	91'-0"

PERZA RESIDENCE
545 STATE STREET
DOVER DELAWARE 19901

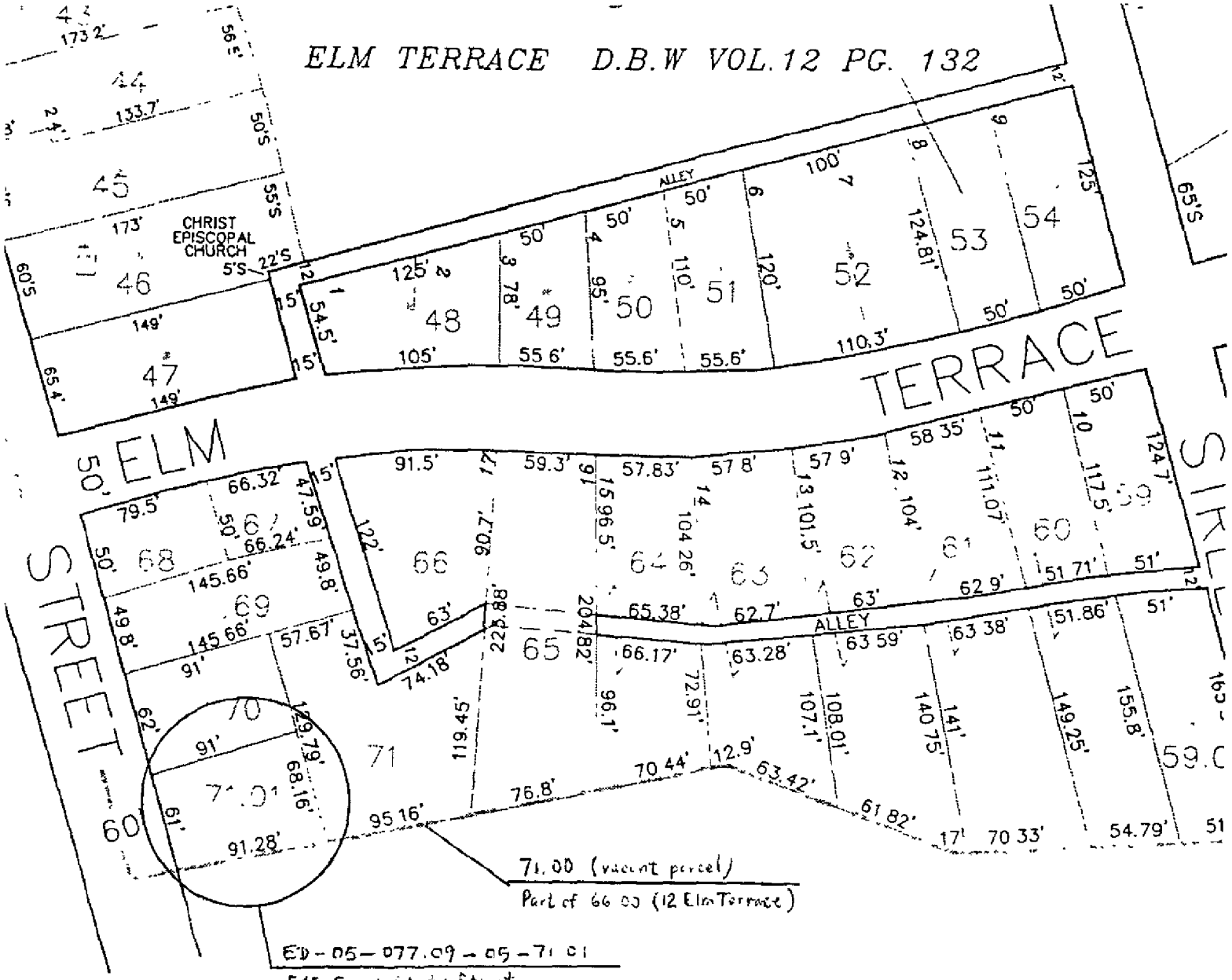
JACKSON ARCHITECTS AIA
ARCHITECTS PLANNERS
PO BOX 57 DOVER DELAWARE 19901 (302) 734 7014

A-1

REVISIONS BY


15'-0" EASEMENT
PROPOSED ADDITION +/- 20'x15'
EXISTING DRIVEWAY
EXISTING 2-STORY RESIDENCE
8' 0"
N 82° 00'00"E 91.00'
S 82° 00'00"E 91.24'
N 08° 00'00"W 61.00'
STATE STREET

SITE PLAN



ED-05-077.09-05-71.01

545 South State Street

Owner Adam and Kasey Perez

Applicant

KENT COUNTY TAX MAP 077.09

City of Dover

Board of Adjustment

September 21, 2011

V-11-10

Location:	852 South Little Creek Road
Applicant:	South Dover Elementary School
Owner:	Dover Special School District
Tax Parcel:	ED-05-077.00-01-02.00-000
Application Date:	August 12, 2011
Present Zoning:	IO (Institutional Office Zone)
Present Use:	School
Reviewed By:	Janelle M. Cornwell, AICP
Variance Type:	Area Variance
Variance Requested:	Allow an increase in sign area of 10 SF.

Project Description:
The applicant is requesting a variance from the *Zoning Ordinance* of Article 5 Section 4.7 Supplementary Sign Regulations. Specifically, they are requesting a variance to allow a larger monument sign. The applicant is requesting a 26 SF monument sign in lieu of a permitted 16 SF monument sign.

Adjacent Land Uses
The adjacent properties are a mixture of commercial and residential uses. The properties to the north across South Little Creek Road are zoned RM-1 (Medium Density Residence Zone) and IO (Institutional Office Zone). The properties to the south are zoned SC-3 (Regional Shopping Center Zone) The properties to the west are zoned IO (Institutional Office Zone) and C-4 (Highway Commercial Zone). The properties to the east are zoned R-8 (One Family Residence Zone).

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 adjacent to Residential uses	Urban Local Collector	Monument or post and panel # or	1 per frontage	16 SF	7 ft.	N/A	10 ft.	50 ft.

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:
   Zoning: Institutional and Office – This property is the site of a Public School Facility, fully compliant and has permitted use of (1) monument sign with maximum size of 16 square feet. With the massive area this Public School Property covers it is necessary for a slightly larger sign to fit within the surroundings of the large parcel. Our client requests for a variance of 9.63 square feet from the permitted 16 square feet. This brings the total of new proposed sign to 25.63 square feet. This slight increase will not be noticeable to the eye with such large surroundings.

   Staff Response:
   The property is zoned institutional and is surrounded by institutional and residential uses. Signage is determined based on road classification. The property

is located on an Urban Local Collector. An Urban Local Collector allows for a monument freestanding sign. The permitted signs within the area for the subdivision, and residential complexes are permitted by code to have a sign area of 24 SF.

2. The character of the immediate vicinity and the contained uses therein.
   Applicant Responses:
   The custom design and fabrication of the sign in question will accent the school property with the brick vertical columns and tasteful look of school name identification. Also, we have selected the smallest size electronic message center available to accommodate the message area needed. The neighboring properties will barely notice the new sign setting within the large school property because of the design blending in so well with the school. Also this new sign mirrors several of nearby housing complex signs. Photos are provided to show similar likeness.

   Staff Response:
   The character of the vicinity is a mixture of commercial and residential uses. The other monument signs in the immediate vicinity comply with the regulations regarding the square footage. The permitted signs within the area for the subdivision, and residential complexes are permitted by code to have a sign area of 24 SF.

3. Whether, if the restriction upon the applicant's property were removed, such removal would seriously affect neighboring properties and uses.
   Applicant Responses:
   To the contrary, School Signs quietly announce current and upcoming events happening at the school, emergency messages, school and student achievements, school closings, teacher of the year, just to name a few. The neighbors of a school like to know what is going on in their neighborhood and also schools like to be good neighbors in return. A school as a neighbor guarantees you by law a Drug Free Environment and that criminals with child related records cannot reside within 1,500 feet of any school. So we feel all would benefit with addition of this slightly increased signs of sign. This property is also very close to nearby commercial areas and large office complexes; national retailers, grocery stores, and restaurants, along with Kent County Levy Court; all within ¼ of mile. Being this close to such commercial area, we feel our proposed sign would definitely not affect the neighboring properties.

   Staff Response:
   The increase of the square footage of the sign permitted would not affect neighboring properties. There are other monument signs located within the area. The area consists of residential uses and institutional uses. The proposed sign would be in keeping with the square footage permitted for the other signs in the area.

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 project is being funded by the State of Delaware, because they feel the proposed sign is a necessity for this school's identification and also to have the ability to properly inform students, teachers, staff, and the public immediately using state of the art technology. With the amount of information in today's education world and the fast pace changes, it is necessary to keep everyone apprised. If this variance is not considered and granted it will cause a hardship and serious difficulty for the East Dover Elementary School to keep the people they serve informed. This new modern electronic message center identification sign in school colors, name, and brick accents will only improve the properties appearance and the mere 9.63 square feet variance requested is not granted would cause the sign to be even smaller in size and hardly functional for the tax payers that actually help pay for the sign. We certainly would appreciate your consideration for this small increase of square footage for proposed signage be approved.

Staff Response:

The property is permitted a monument sign. The increase in sign area from 16 SF to 26 SF +/- would be similar to other signs in the area. Due to the length of the frontage and size of the site a 16 SF sign would not be effective (as shown in the photos). The use of an electronic message center would allow for information to be disseminated at a faster rate than other changeable message centers.

Variance Recommendation:

Staff recommends approval of the sign area variance for reasons as follows:

- The applicant has demonstrated exceptional practical difficulty as the installation of the monument sign at 16 SF monument sign would be difficult to view due to the size of the parcel of land. A 16 SF monument sign would also have less visibility as the sign shall be setback ten (10) feet from the right-of-way.
- The proposed 26 SF monument sign would not be out of character of the neighborhood as the residential sign in the area are permitted to be 24 SF in sign area.
- The sign would have a similar style as the other signs in the area.

Board of Adjustment Application - East Dover Elementary School
852 S. Little Creek Road

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

Zoning: Institutional and Office - This property is the site of a Public School Facility, fully complaint and has permitted use of (1) monument sign with maximum size of 16 square feet. With the massive area this Public School Property covers it is necessary for a slightly larger sign size to fit within the surroundings of the large parcel. Our client requests for a variance of 9.63 square feet from the permitted 16 square feet. This brings total of new proposed sign to 25.63 square feet. This slight increase will not be noticeable to the eye with such large surroundings.

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

The custom design and fabrication of the sign in question will accent the school property with the brick vertical columns and tasteful look of school name identification. Also, we have selected the smallest size electronic message center available to accommodate the message area needed. The neighboring properties will barely notice the new sign setting within the large school property because of the design blending in so well with the school. Also this new sign mirrors several of nearby housing complex signs. Photos are provided to show similar likeness.

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

To the contrary, School Signs quietly announce current and upcoming events happening at the school, emergency messages, school and student achievements, school closings, teacher of the year, just to name a few. The neighbors of a school like to know what is going on in their neighborhood and also schools like to be good neighbors in return. A school as a neighbor guarantees you by law a Drug Free Environment and that criminals with child related records cannot reside within 1,500 feet of any school. So we feel all would benefit with addition of this slightly increased size of sign. This property is also very close to nearby commercial areas and large office complexes; national retailers, grocery stores, and restaurants, along with Kent County Levy Court; all are within 1/4 of mile. Being this close to such commercial area, we feel our proposed sign would definitely not affect the neighboring properties.

Board of Adjustment Application - East Dover Elementary School
852 S. Little Creek Road

Continued:

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.

This project is being funded by the State of Delaware, because they feel the proposed sign is a necessity for this school's identification and also to have the ability to properly inform students, teachers, staff, and the public immediately using state of the art technology. With the amount of information in today's education world and the fast pace of changes, it is necessary to keep everyone apprised. If this variance is not considered and granted it will cause a hardship and serious difficulty for the East Dover Elementary School to keep the people they serve informed. This new modern electronic message center identification sign in school colors, name, and brick accents will only improve the properties appearance and the mere 9.63 square feet variance requested is not granted would cause the sign to be even smaller in size and hardly functional for the tax payers that actually help pay for the sign. We certainly would appreciate your consideration for this small increase of square footage for proposed signage be approved.

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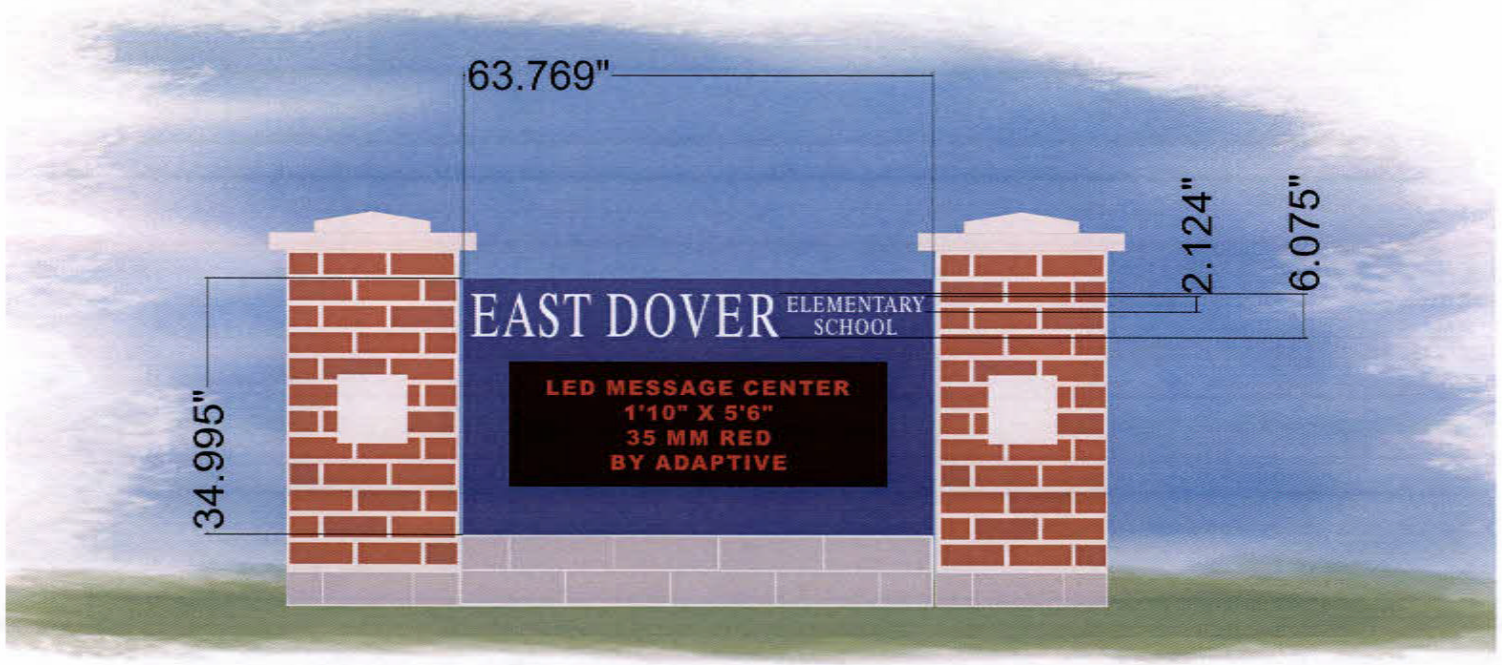
Company Phone 302-684-8338
Company Fax 302-684-0700
Company Address 110 Lavinia St.,
Company City, State, Zip Milton, De 19968
Company Web Site www.rogerssign.com

Capitol School District

Concept Number **35961** Date **07/00/11**

Artist's Name **SUE SHORT**

Permitted – 16 Sq.Ft.



Product Detail		

All Drawings, Renderings, and/or Details are sole property of Rogers Sign Co., Inc. and are not to be duplicated or to be shown to anyone unauthorized by Rogers Sign Co., Inc.

AUTHORIZED SIGNATURE	DATE
X	/ /

Nearby Complex Signs







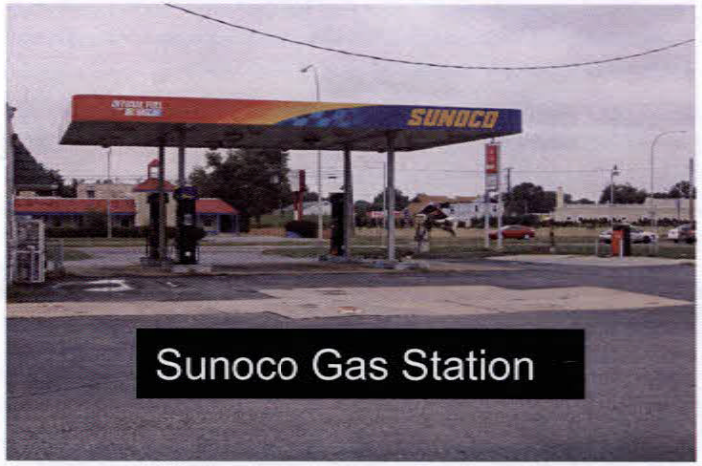


Nearby Commercial and Office Buildings


Kent County Levy Court Office Building



Hardee's Restaurant



Sunoco Gas Station



Air Base Carpet Mart

City of Dover

Board of Adjustment

September 21, 2011

V-11-11 Winner Hyundai at 591 S.DuPont Highway

Location:	591 S.DuPont Highway
Applicant/Owner:	Deanna Hynansky
Application Date:	August 12, 2011
Present Zoning:	C-4 (Highway Commercial)
Present Use:	Automotive Dealership
Reviewed By:	Michael J. Albert, AICP

Variances Requested

- **Variance from the Side-yard setback for an addition to the principal structure**

Project Description:

The applicant is seeking a variance from Article 4, Section 4.15 of the *Zoning Ordinance*, the bulk standard requirements of the C-4 zone related to the side-yard setback. The applicant seeks to construct an addition on to the existing Winner Hyundai structure. The requested variance would create a 16 foot side-yard setback. The property is located at 591 South DuPont Highway.

Adjacent Land Uses

The lands to the north are similarly zoned C-4 uses. The lands to the east and west are zoned IO (Institutional/Office). The lands to the south are zoned C-2A (Limited Central Commercial).

Code Citations

Section 4.15. [C-3, C-4, R-C, IO zones.]

Bulk and parking regulations for service commercial (C-3), highway commercial (C-4), recreation and commercial (R-C) and institutional and office (IO) zones [are as follows]:

	C-3	C-4	RC	IO
Minimum required:				
Lot area			5 acres	
Lot width (ft.)	100	150 per building	250	50
Lot depth (ft.)	100	150	400	100
Front yard (ft.)	25	30	30	20
Side yard (ft.)	20	25	50	10
Rear yard (ft.)	10	10 or equal to bldg. height	50	15 or equal to bldg. height
Side or rear yards which adjoin a residence zone (ft.)	30	30	100	30
Off-street parking				
Per 300 sq. ft. floor area or	1	1½	1	1
Per employee (whichever is greater)	1	1		1
Maximum permitted:				
Building height				
Stories	2	4	10	10
Feet	30	45	130	130
Floor area ratio	0.5	2.0	4.0	4.0
Lot coverage	0.5	2.0	4.0	4.0
Lot coverage				85%

(Ord. of 9-13-1999)

Exceptional Practical Difficulties Tests

Article 9, §2 dictates the specific powers and duties of the Board of Adjustment with regard to granting variances. In order to grant a variance the Board must determine in that exceptional practical difficulties exists.

Specifically the Board must determine:

2.1 Variance – The board shall have the authority to authorize variances from provisions of the zoning ordinance that are not contrary to public interest where the board determines that a literal interpretation of the zoning ordinance would result in undue hardship or exceptional practical difficulties to the applicant. In granting variances, the board shall determine that the spirit of the zoning ordinance is observed and substantial justice done.

2.11 Area Variance. A variance shall be considered an area variance if it relates to bulk standards, signage regulations, and other provisions of the zoning ordinance that address lot layout, buffers, and dimensions. In considering a request for an area variance, the board shall evaluate the following criteria and document them in their findings of fact:

(a) the nature of the zone in which the property lies;
(b) the character of the immediate vicinity and the contained uses therein;
(c) whether, if the restriction upon the applicant's property were removed, such removal would seriously affect neighboring properties and uses; and
(d) whether, if the restriction is not removed, the restriction would create unnecessary hardship or exceptional practical difficulty for the owner in his efforts to make normal improvements in the character of that use of the property that is a permitted use under the provisions of the zoning ordinance.

In order to allow for the proposed addition to the principal structure, the applicant is requesting two variances. Applicant responses to the area variance criteria and the Staff position on those responses is as follows:

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

Applicant Response:
(Please refer to attached documentation)

Staff Response:
Staff agrees with the Applicant's assessment of the nature of the zone. The intended use of the zone is for heavy commercial use and this would not be affected by the proposed building addition.

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

Applicant Response:
(Please refer to attached documentation)

Staff Response:
The area surrounding the Applicant's property would not suffer any ill effects resulting from an approved variance. The area is entirely commercial and institutional. This proposed side-yard variance would not alter the character of the area.

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

Applicant Response:
(Please refer to attached documentation)

Staff Response:
The current arrangement of uses between the subject property and its northern neighbor would not be negatively affected. There is a potential for future effect on the neighboring

property if and when either site were to redevelop. Additionally, the proposed variance would create changes to the existing travel lane on the north side of the building as traffic enters the site from South DuPont Highway.

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:
(Please refer to attached documentation)

Staff Response:
The degree to which the owner can make normal improvements for the use of his property without the granting of the variance is in question. The Applicant refers to the situation as an "exceptional" practical difficulty, however in reviewing the application, Staff finds that the degree of practical difficulty is routine.

The Applicant states that the building is restricted on all three other sides (east, west, south). Staff concedes the fact that the eastern side of the building has a limiting factor due to internal construction concerns related to the second story of the structure.

Where the western and southern sides of the building are concerned, it appears that the structure could be expanded in one or both of these directions. The Applicant references unmarked fire lanes on the west and south side of the structure. There appears to be sufficient room to expand the structure at the expanse of parking along the building. The fire lane need not be altered to expand the structure. The proposal to expand the building to the north as shown on the Applicant's plans would also result in a loss of parking spaces.

It should be further noted that the Applicant could expand towards the north portion of the building and yet still remain within the current permitted setback. A combination of options is available for expansion.

The Staff position for this issue is that the practical difficulties, of which there are several to be considered, are not exceptional but rather are routine in the expansion of any facility when mandated by an outside agency.

Recommendation:

Staff recommends denial of the variance.

In this instance, Staff acknowledges that the variance as proposed would have no effect on the existing neighborhood character. Staff also acknowledges that by virtue of three out of the four criteria, the variance would not cause difficulties for the surrounding properties or place an undue burden upon enforcement of existing zoning regulations. However, the recommendation

presented here is based upon the fourth criteria to which for this case, Staff finds that an increased degree of relevancy should be placed. Staff questions the extent to which an outside organization's requirements may be employed to constitute an exceptional practical difficulty when those requirements are routine in the practice of business.

- Staff finds that the stated reasons do not constitute an exceptional practical difficulty. The problems referenced in the Applicant responses are routine to the practice of operating a commercial franchise.
- There is sufficient room on two other sides of the building and there is some available space on the referenced northern side of the building that the Applicant is not without options in regards to the building addition.

City of Dover, DE
Department of Planning and Inspections
P.O. Box 475, Dover, Delaware 19903
(302) 736-7010 Fax: (302) 736-4217
www.cityofdover.com

X Area Variance
____ Use Variance
____ Appeal
8-9-11 Pre-App Date

Board of Adjustment Application

Application Information

Property Address: 591 S. DuPont Hwy, Dover, Delaware, 19901 (Winner Hyundai)

Tax Parcel Number: ED-05-077.00-01-12.05

Owner Name: Deanna Hynansky

Property Zoning: C-4 (Highway Commercial)

Variance (s) Requested: Side yard setback reduction. We are requesting a reduction of the required setback along the north property line from 25' to 16'.

*Provide eight (8) copies of any survey, drawings, photos, site plan, etc. that may help support your application, and your response to the criteria. The criteria for a use variance and appeal are on the back of the form.

Area Variance

An area variance shall be evaluated on the following criteria: **Please state how your request meets each of these four (4) criteria.**

1. The nature of the zone in which the property lies;
2. The character of the immediate vicinity and the contained uses therein;
3. Whether, if the restriction upon the applicant's property were removed, such removal would seriously affect neighboring properties and uses; and
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.

Signature

I Deanna Hynansky do affirm that I am the property owner on which the variance is sought and that all the information provided in this application is accurate to the best of my knowledge and belief.

Signature Title 8/10/11 Date

CITY OF DOVER, DE.

Board of Adjustment Application

Lands of Deanna Hynansky (Winner Hyundai)

Area Variance

Criteria / Response

1. The nature of the zone in which the property lies: The existing property is zoned C-4 and is commercial in nature. The property is an operating automobile dealership consisting of three different dealerships under the Winner name (Ford/Hyundai/Mitsubishi). The adjacent properties are all commercial and institutional in nature and are part of a heavy commercial area on Route 13.

2. The character of the immediate vicinity and the contained uses therein: The adjacent properties are all commercial and institutional in nature consisting of commercial office buildings, retail, and DelDOT Central District Offices. The property immediately adjacent (north of the subject parcel) to the requested variance is an electrical equipment supply store/distributer (United Electric Supply). The immediate area between the Dealership and the electric supply building is a large expanse of pavement (see attached photo). Winner Hyundai leases a strip of this paved area from United Electric for additional parking area for the dealership. The property located behind the subject parcel is the DelDOT Central District offices and yard. The properties across Public Safety Blvd. are commercial office buildings and an optometrist's office. The proposed improvements to the Hyundai building are compatible with the neighboring properties and in fact will not change the character of the area nor will the leased parking be affected.

3. Whether, if the restriction upon the applicant's property were removed, such removal would seriously affect neighboring properties and uses: Were the reduction of the setback approved, it would not affect the adjacent property or its use as the existing building on the adjacent property is 97'+/- from the shared property boundary. Additionally, this area is a large expanse of open pavement excepting the parking spaces that Winner Hyundai leases from United Electric Supply. The south side of the United Electric building (side adjacent to the proposed variance) is part of the loading area for the building. The proposed expansion of the Winner Hyundai building will not in any way affect United Electric's operations or use of their property, and Winner Hyundai will continue to lease and use the parking spaces on United Electric's property which are located between the proposed addition and United Electric. The separation between

the United Electric building and the Hyundai building with its proposed addition (113') is actually greater than the separation between the United Electric building and the 84 Lumber building which is adjacent to it (51').

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: The Hyundai Parent Corporation is requiring that the dealership upgrade the facility by constructing the proposed addition. If the setback is not reduced, it will create exceptional practical difficulty for the dealership due to the existing building being restricted on three sides. On the south, the building is restricted by the required fire lane for the Ford dealership. Additionally the parking and display areas required by Ford also restrict the Hyundai building. On the West (front) the building is restricted by the required fire lane and the said parking and display areas for the Ford Dealership. On the east side (rear) the building is restricted by the combined Ford/Hyundai/Mitsubishi service building. Additionally, the existing Hyundai building configuration restricts placing the addition on the east (rear) side of the building as the dealership's two story offices are located within this portion of the building, thus it would not allow for the clear space required for the showroom. This leaves the north side of the building as the only viable location for the proposed addition. The reduction of the setback distance would allow the proposed addition to be constructed. Since Winner Hyundai leases and controls a portion of the adjacent property for additional parking, the proposed expansion will still be separated from the adjacent use by this existing lease area.