AGENDA
CITY OF DOVER BOARD OF ADJUSTMENT
WEDNESDAY – August 17, 2011 9:00 AM – CITY HALL

ROLL CALL

APPROVAL OF AGENDA

APPROVAL OF MINUTES OF July 20, 2011 MEETING

NEW 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.

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.

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
May 18, 2011

A Regular Meeting of the City of Dover Board of Adjustment was held on Wednesday, May 18, 2011 at 9:00 AM with Chairman Sheth presiding. Members present were, Mr. Sheth, Mr. Senato, Mr. Keller, and Mr. Hufnal. Colonel Ericson was absent.

Staff members present were Ms. Cornwell, Mr. Albert, Ms. Metsch and Mr. Rodriguez. Also present was Mr. William F. Holden, Mr. Charles Grimes and Mr. Keith Grimes.

APPROVAL OF AGENDA

Mr. Senato moved to approve the agenda as submitted, seconded by Mr. Hufnal and the motion was unanimously carried 4-0 with Colonel Ericson absent.

APPROVAL OF THE REGULAR BOARD OF ADJUSTMENT MEETING MINUTES OF APRIL 20, 2011

Mr. Keller stated that he has submitted to Staff a few typing errors and a word change located on Pages #4 and #5. Mr. Keller moved to approve the minutes as amended, seconded by Mr. Senato and the motion was unanimously carried 4-0 with Colonel Ericson absent.

OPENING REMARKS CONCERNING DEVELOPMENT APPLICATIONS

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

Applicant #V-11-04:

640 S. Governors Avenue, Holden Leasing, LLC has requested a variance from the requirements of Article 4 §4.15 of the *Zoning Ordinance* pertaining to the front yard set-back for the C-3 Zone.

Subject property is zoned C-3 (Service Commercial Zone) and the Tax Parcel ID #'s are ED05-077.13-01-40.00 and ED05-077.13-01-41.00. The owner of record is Holden Leasing, LLC.

Representative: Mr. William F. Holden, Property Owner.

Ms. Cornwell provided an overview of the application. Staff submitted for the record the staff report, architectural elevations, site plan, photographs, and diagrams provided by the applicant.

Ms. Cornwell stated that legal notice was published in the Delaware State News on May 8, 2011, and the public was notified in accordance with the regulations.

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

Mr. Holden stated that he does not have a formal presentation to make here this morning. The facts as presented in the written presentation are what they are. He does need to correct one inaccuracy. In their opening paragraph under "background" he will provide a short explanation

as to why this needs to be corrected. His architect, Gregory Kindig, wrote the first paragraph, I (Mr. Holden) wrote the second paragraph and then Mr. Kindig wrote the rest of it. He did not think too much about the fact that the building was not on its original setback line. In 1972 the showroom which is the north portion of the property, was added to the original structure. About three (3) weeks ago a customer came up to him and handed him a picture of their gas pumps which had been taken from the south looking north. He pointed out that it looks like it used to be a gas station which it probably was. In that photograph, he noted that the showroom was sticking out approximately five (5) feet further than the original structure was.

Mr. Holden further stated that he emailed Staff to advise of this correction and at that late hour as it was either May 6th or May 7th, the statement was not corrected for the record. He wanted to make this clear, if your decisions are based upon the fact that the building was on its original setback line, it was not. The showroom was added in 1972 and when the renovation to the south side, which is the service side of the building, was made in the early 80's, it was moved out to match the setback on the showroom side. It now sits about two (2) inches over the original setback line. In 1945 there was no setback line.

Ms. Cornwell stated that the building is still considered legal non-conforming with regards to setback. Even if it was added onto in 1972, today it would still be considered legal non-conforming.

Mr. Keller stated on one of the exhibits provided, the new façade and the archway will protrude approximately one (1) foot two (2) inches is this your understanding? Responding to Mr. Keller, Mr. Holden stated that yes that is correct. The reason for the extra two (2) inches is that it requires a foundation. It is the foundation itself that will be one (1) foot two (2) inches.

Mr. Keller further stated for clarification on Mr. Richard Vetter's survey layout plan, it does appear as though there is an encroachment into the existing setback line of approximately 6/10 of a foot. Is this what Staff is also stating? Responding to Mr. Keller, Ms. Cornwell stated that yes; there is an existing encroachment into the front yard setback. The variance would be for an additional one (1) foot two (2) inches.

Mr. Keller further questioned with regards to the exhibit for façade renovations, there is an engineering note "due to existing setback limitations, arch to be attached to existing building façade with minimal stand-off." Is this an alternative plan if your application plan for a variance would be denied? Would it be put on the face of the existing façade and not have the one (1) foot two (2) inch protrusion? Responding to Mr. Keller, Mr. Holden stated when the architectural rendering was done there was no consideration for not having it protrude. When he talked to Staff, he asked the architect if there were any flush alternatives. We have not done any formal architectural drawings of the flush alternative. His comment to Staff and to the architect is that any effort to make it appear that it is a standalone arch i.e., mounting it flush to the building is obviously going to be faux. This arch in and of it itself is going to cost $50,000. He does not want to spend $50,000 on something that would be aesthetically much worse looking than having it protrude. He has an architectural sketch of what he suggests we could possibly do and it obviously looks faux.

Mr. Keller further stated that regarding your current term agreement with Chrysler Corporation, how long is the term agreement? Responding to Mr. Keller, Mr. Holden stated that he did not want to cloud this request with a lot of legalese. He has all the term agreements in writing and can provide them if you need them at a later time. A term agreement is an agreement that is worked out between myself, the franchisee and the franchisor. The length of time all depends on how long it will take to do all the things necessary to meet the standards that Chrysler requires in this case. His term agreement expires January 1, 2012. The term agreement started in July 2009 so he has had two and a half years. In the process, we have been diligently searching for a property to move to. We found a couple of properties; however, financially the numbers just do not seem to work. He cannot push this back any further with Chrysler.

Mr. Senato questioned what the impact would be if this was not granted regarding the arch and effect on the business? Responding to Mr. Senato, Mr. Holden stated that he has not approached Chrysler on what their reaction would be to having to install a flush arch. He has talked to their dealer standards people. There are two separate issues since you asked a business question. Our manufacturer has a set of dealer standard requirements one of which is having the millennium arch as presented in the architectural drawings and the Chrysler design intent drawings. They have a graded scale that takes in a number of issues; how we treat our customers, how we follow-up, how we make appointments, and how we communicate our facility as far as its capacity. On the business side of it, we can earn as much as $50,000 a quarter if we meet those standards. If he does not install the millennium arch as it is presented, it does not meet dealer standards.

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

Mr. Sheth questioned if there was any correspondence received for this application and there was none.

Mr. Senato moved to approve Applicant #V-11-04 located at 640 S. Governors Avenue, Holden Leasing, LLC for the arch as he feels that the applicant has demonstrated Exceptional Practical Difficulty due to the fact that the building encroaches into the front yard setback and is required by Chrysler, for the franchise, to have that type of arch.

Mr. Hufnal stated that he would like to add to the motion that Staff has already agreed that the existing building is considered legal non-conforming and it currently already encroaches into the front yard setback. The additional fourteen (14) inches into the front yard would not impact surrounding uses and would not be noticeable to surrounding properties. The motion was seconded by Mr. Hufnal with this addition and the motion was unanimously carried 4-0 with Colonel Ericson absent.

Applicant #V-11-05:
29 S. West Street, Grimes Family Limited Partnership has requested a variance from the requirements of Article 5 §4.7 of the *Zoning Ordinance* pertaining to the size of permitted signage.

Subject property is zoned C-2A (Limited Central Commercial Zone) and the Tax Parcel ID # is ED05-076.08-06-05.00. The owner of record is Grimes Family Limited Partnership.

Representatives: Mr. Charles Grimes and Mr. Keith Grimes, Property Owners.

Ms. Cornwell provided an overview of the application. Staff submitted for the record the staff report, application, and photographs.

Ms. Cornwell stated that legal notice was published in the Delaware State News on May 8, 2011, and the public was notified in accordance with the regulations.

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

Mr. Charles Grimes stated their big problem is where they are located. He understands that Downtown Loockerman Street, thirty-two (32) square feet is a lot of signage; however, they are in the middle of nowhere. They have the railroad tracks and a storage garage across from them and a junk yard located across the street. Their front door to Loockerman Street is 492 feet. From our front door to Division Street is 429 feet. From that distance, of one and a half football field length, if cars are coming down Division or Loockerman Street and this is our attraction, are they going to be able to see a sign that is fifteen (15) inches high from one and a half football field distance away?

Mr. Charles Grimes further stated that he has a drawing that they just received from the canopy contractor to put a canopy up. That was passed out at this time and submitted into the record. NAPA's theme across the United States is the pipeline of the automotive business and the yellow that you see on the drawing is nothing more than a pipeline that is lit up. We do not feel that with what is in front of us that we should be concerned about the public or that it is a bad or ugly sign. We just do not feel that anyone can see it. We were told that we could put up a monument sign that would be big enough; however, the problem would be that we do not feel that you would be able to see it if you are coming down Division or Loockerman Street. By the time you see this sign, you would already be across the railroad tracks and into Dover.

Mr. Keith Grimes stated that the building is 160 feet long. The first sign that we have is within requirements. We feel that the sign will get lost in such a large building. This is the size of the sign that we would like to put up as we do not feel that this is a huge sign. We just want to capture as much business as we can, especially with the move.

Mr. Sheth questioned how big the sign would be? Responding to Mr. Sheth, Mr. Charles Grimes stated that if you would include the yellow lighted sign it would be sixty-four (64) square feet. More than half of the sign is the yellow pipeline and red streak.

Ms. Cornwell stated that when she met with Mr. Charles Grimes in previous discussions Staff was not including the yellow pipeline as part of the signage. They were just going with the NAPA and then everything that says auto parts. Responding to Ms. Cornwell, Mr. Keith Grimes stated that in an email from Ms. Cornwell she had provided, excluding the yellow pipeline, the square footage which would be forty-seven (47) square feet.

Mr. Keller questioned to clarify the photograph that was just passed around it depicts the south end of the building, is this correct? Responding to Mr. Keller, Mr. Charles Grimes stated that the picture faces the west towards the railroad tracks.

Mr. Keller further stated that he has a depiction similar to the posted exhibit on a demonstration board that shows signage over what appears to be a front door entryway then a depiction of what he presumes is a monument sign. What, if any, existing signs are already up and established on the building? Responding to Mr. Keller, Mr. Charles Grimes stated that there is a sign over the entryway. This demonstration is only proposed signage there is none up now or currently in place.

Mr. Hufnal questioned if they would also be putting up a monument sign? Responding to Mr. Hufnal, Mr. Charles Grimes stated that no, they would not. They feel that with a monument sign by the time you see it, you are already at West Street so you would have missed it. The main signage is right over the front door.

Also responding to Mr. Hufnal, Mr. Keith Grimes stated that they were worried about putting the monument sign up because it would get damaged in this area that they are moving to.

Mr. Keller questioned Staff if the applicant foregoes a monument sign and would agree to forego that option as an alternative; does that change in any respect the allowable square footage on a wall sign? Responding to Mr. Keller, Ms. Cornwell stated that no it does not in this application; however, it could be something that this Board could consider.

Ms. Cornwell stated for clarification the permitted area for a sign is sixteen (16) square feet. When Staff originally met with the applicant, she originally stated thirty-two (32) square feet; however, upon further review and discussion with the Planning Director, it was determined that there is a house next door. The Code reads if there is a house with frontage within 200 feet on the same street which means that it is adjacent to residential; the overall sign area comes down to sixteen (16) feet. What they first submitted to Staff was a fifty-two (52) square foot sign and then they did submit that they had a twenty-eight (28) square foot sign for the wall sign. Neither would meet Code of sixteen (16) square feet.

Mr. Hufnal stated that he knows our Codes are designed to protect neighbors and neighboring properties; however, in this particular case, he knows where the building is and you cannot build anything across the road because it is along a railroad track and no one is going to see this unless you are going to be going down that street or you see it from a distance. A sixteen (16) square feet sign from 500 feet away is very difficult to see. You had originally requested fifty-six (56) square feet and now you are saying that it is forty-seven (47) square feet so that is reduced somewhat from your original request. If you do not put up the monument sign and you just go with the one sign, he feels because it is a lightly travelled street anyway and without anyone noticing where you are, they do need bigger signage.

Mr. Keller questioned how Mr. Grimes as the applicant would feel as a condition to the variance request that any future right to a monument sign would be waived if the variance was approved otherwise for a larger wall sign? Responding to Mr. Keller, Mr. Keith Grimes stated that they do not want to put up a monument sign because it would sustain physical damage. They are also

afraid of where the parking lot is located someone would back out into it as they get a lot of traffic that comes in with trailers hooked to them.

Mr. Keller further stated that if the variance is granted in whatever fashion and with whatever conditions would run with the land. In any event, if this were to be a condition that the subsequent owner could not erect a monument sign as well, would this create a problem? Responding to Mr. Keller, Mr. Charles Grimes stated that this would not create a problem.

Mr. Sheth questioned if the Downtown Dover Development Corporation has expressed any opinion one way or the other? Responding to Mr. Sheth, Ms. Cornwell stated that she does believe that the Planning Director did inform the Downtown Dover Partnership that there was a variance application for signage for the property. They are kept aware of all applications that come before any Board within the City. This was just an informational item for them.

Mr. Hufnal questioned if they have had any negative correspondence from anyone? Responding to Mr. Hufnal, Ms. Cornwell stated that there has been no correspondence regarding this application.

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

Mr. Sheth questioned if there was any correspondence received for this application and there was none.

Mr. Senato moved to approve Application #V-11-05 located at 29 S. West Street, Grimes Family Limited Partnership for a forty-seven (47) square foot sign as they have demonstrated based on location in their discussion with this Board that they have Exceptional Practical Difficulty in that area with the sign and that the applicant will waive future rights to erect a monument sign, seconded by Mr. Hufnal and the motion unanimously carried 4-0 with Colonel Ericson absent.

Mr. Keller stated that with the testimony given and exhibits presented, he is not in total agreement that there is a demonstrated Exceptional Practical Difficulty. Likes and dislikes of location often times represent routine difficulties as opposed to an exceptional one. There are means and methods of vision for that building. The building in itself is of a size and nature in color that is an eye catching feature as you are traveling easterly on Loockerman or Division Street. Otherwise, he would agree that granting of the variance would represent minimal impact to surrounding properties. He would also state that with the imposition of the waiver of a future monument sign that fairness is exhibited.

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

Meeting adjourned at 9:42 AM

Sincerely,

Diane Metsch
Secretary

CITY OF DOVER
BOARD OF ADJUSTMENT
July 20, 2011

A Regular Meeting of the City of Dover Board of Adjustment was held on Wednesday, July 20, 2011 at 9:00 AM with Chairman Sheth presiding. Members present were, Mr. Sheth, Mr. Senato, Mr. Keller, and Mr. Hufnal. Colonel Ericson was absent.

Staff members present were Mrs. Townshend, Ms. Cornwell, Ms. Metsch and Mr. Rodriguez. Also present was Mr. John Tracey, and Mr. Andrew Petersohn.

APPROVAL OF AGENDA

Mr. Senato moved to approve the agenda as submitted, seconded by Mr. Keller and the motion was unanimously carried 4-0 with Colonel Ericson absent.

APPROVAL OF THE REGULAR BOARD OF ADJUSTMENT MEETING MINUTES OF MAY 18, 2011

The May 18, 2011 meeting minutes were deferred to the August 17, 2011 Board of Adjustment meeting.

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-11-06:

889 N. DuPont Hwy, PIP Enterprises, LLC has requested a variance from the requirements of Article 4 §4.15 of the *Zoning Ordinance* pertaining to the height of buildings for the C-4 Zone.

Subject property is zoned C-4 (Highway Commercial Zone) and subject to the SWPOZ (Source Water Protection Overlay Zone) Tier 3 Excellent Recharge Area and the Tax Parcel ID # is ED05-057.00-01-38.00. The owner of record is PIP Enterprises.

Representative: Mr. John Tracey, Young, Conaway, Stargatt & Taylor; and Mr. Andrew Petersohn, DBM Engineering, P.C.

Mr. Tracey stated that they are seeking a single variance from the height requirements of the C-4 zone for purposes of constructing a telecommunications monopole to a height of 76 feet. The last six (6) feet would be the lightening rod that is located on top of the pole. The property is located at 889 N. DuPont Highway and is currently the site of J.D. Shucker's Restaurant. The current height limitation in the City of Dover is forty-five (45) feet. Forty-five (45) feet in this instance is not going to be sufficient to address the coverage and more importantly the capacity needs of Verizon Wireless from this point which is why we are before you requesting a variance.

Mr. Tracey further stated he would now have their Radio Frequency Engineer, Mr. Andrew Petersohn come forward for most of the rest of the testimony as the difficulty with this case is the

radio frequency needs of the carrier as opposed to a strict property situation in this instance.

Mrs. Townshend provided an overview of the application. Staff submitted for the record the staff report, application, site plan, engineering report, and photographs provided by the applicant.

Mrs. Townshend further stated that legal notice was published in the Delaware State Newspaper on July 10, 2011 and the public was notified in accordance with the regulations.

Mr. Tracey stated that he would conduct a question and answer for Mr. Petersohn.

Mr. Tracey asked Mr. Petersohn if it was correct that he is the Radio Frequency Engineer in charge of analyzing coverage for Verizon Wireless. Responding to Mr. Tracey, Mr. Petersohn stated that yes, that was correct.

Mr. Tracey asked Mr. Peterson to briefly provide the Board a quick summary of his background. Responding to Mr. Tracey, Mr. Petersohn stated that he has a Bachelor and Master's Degree from Lehigh University in the field of Electrical Engineering. He has been in the field of wireless facility designs now for over a decade. He has designed several hundred facilities much like this one. He is a registered Professional Engineer in the State of Delaware, the Common Wealth of Pennsylvania and six (6) other jurisdictions.

Mr. Tracey further questioned Mr. Petersohn. How does Verizon Wireless, in general come to a determination that new facilities are needed in a particular area? Responding to Mr. Tracey, Mr. Petersohn stated that it is a several pronged approach depending on the specific need in the area. It includes drive test data, network statistics, customer complaints, and propagation monitoring. In this case, it is the network statistics that are driving the need here, specifically the capacity growth that we have seen with the advent of data services and all that comes along with that on the Verizon Wireless network that is pushing things in this particular instance.

Mr. Tracey further questioned Mr. Petersohn that in particular it is not just phone call usage; however, the event of smart phone technology as well? Responding to Mr. Tracey, Mr. Petersohn stated that this is correct. Smart phone technology and data growth, specifically people downloading videos, watching streaming videos, texting, emailing, and all the other great services that the providers now offer really puts a strain on the network structure because data uses a bigger band than is necessary for voice whereas ten (10) years ago it was voice calls that really determined the capacity needs. That is now such a small piece of the overall capacity that Verizon Wireless is currently reaching its capacity ceiling in many towns and cities, Dover being one of them.

Mr. Tracey further questioned Mr. Petersohn on how Verizon Wireless came to a decision that they needed a new facility at this location? Responding to Mr. Tracey, Mr. Petersohn stated that the idea in a capacity starved situation is to get the facility as close to the action as possible. In this case, Route 13, the racetrack, all the commercial uses that are nearby, and the folks who travel Route 13 on a daily basis, that population center that exists very close to the proposed facility location makes it an ideal location for a new facility.

Mr. Sheth questioned if this added facility was necessary to accommodate race weekends?

Responding to Mr. Sheth, Mr. Petersohn stated that this facility is not just geared towards the race weekends. In years past, Verizon Wireless has deployed a temporary site for race weekends. In years past, this has been okay to handle the traffic on Route 13 during race weekends; however, now because of the capacity demand increase that he spoke of earlier, it is a year round capacity demand shortage that Verizon Wireless is up against in Dover. This facility will absolutely help during race weekend and may negate the need for a C.O.W. (Cell's on Wheels). It will remain to be seen if we would still need these during race weekend.

Mr. Tracey stated that in the report that was submitted to Board members, in addition to the Smart Phone technology, there are more people that have cell phones now than they did ten years ago. There is a chart in the report that shows the capacity needs and Mr. Petersohn will walk you through that.

Mr. Sheth questioned what the chances would be that in five (5) years you will come back needing a larger tower? Responding to Mr. Sheth, Mr. Petersohn stated that there are some other avenues that Verizon Wireless is pursuing. They recently acquired and are deploying an LTE Network at 700 MHz. It is not deployed in this area yet; however, it will address needs further down the road. The wireless industry has seen unprecedented growth year after year. Just from last year to this year for points specifically on the New Jersey shore, there was a 100% increase in data use. It is still growing at a phenomenal rate and he is unsure what the next five (5) years will bring.

Mrs. Townshend stated that she would note that this is probably an area where we have a gap in our Ordinance. We are still utilizing a Code Interpretation from the 1990's that states that radio towers and cell towers need to comply with the building height requirements of the zone and that relief needs to be sought through the Board of Adjustment. There are other locations where the *Zoning Ordinance* has specific regulations for radio and cell phone towers.

Mr. Tracey asked Mr. Petersohn to walk through the statistics that we have that shows the need for this particular facility.

Mr. Petersohn stated that on Page 2 of the report titled "Radio Frequency Design Analysis" he compiled the data for the facilities that are currently serving the City. A chart shows that Verizon Wireless is predicting that the sites that are currently serving Dover are going to hit a capacity ceiling. With the most modern state-of-the-art equipment that the base station manufacturers make today, there is still a hard ceiling where Verizon Wireless just cannot push anymore data through the resources that are available on the market and a lot of that has to do with the spectrum that they own. They are licensed by the FCC to transmit and receive only in specific portions of the radio frequency spectrum and cannot use frequencies beyond that. The bands that they are licensed for are exhausted at this point. The percent utilization crosses the threshold at the end of this year/beginning of next year.

Mr. Tracey asked Mr. Petersohn to walk the Board members through the existing network coverage for this area and the impact that we anticipate this proposed facility to have.

Mr. Petersohn stated that he would demonstrate the coverage area by an illustrated board that shows the existing coverage that is illustrated in green. The black triangles that dot the

peripheral of the exhibit indicate the existing Verizon Wireless on-air facilities in the area. The local roads are indicated in grey/brown and the blue dot central to the exhibit indicates the location of the proposed facility. You can see by the exhibit that coverage is not the problem it is the capacity issue that we are here to address. The two are intertwined as you cannot have capacity without coverage because you need to be able to serve the mobile units wherever they go. You cannot offer capacity to the subscriber if you do not have the coverage as a pre-requisite which Verizon Wireless does have; however, the capacity is the issue here.

Mr. Tracey stated to wrap up what Mr. Petersohn is saying is that there are a number of facilities in the area where the capacity does not exist.

Mr. Tracey questioned Mr. Petersohn what would happen when you do not have the capacity in this particular instance? Responding to Mr. Tracey, Mr. Peterson stated that once the capacity is exhausted, it is just as bad as not having coverage because service is what Verizon Wireless cares about and what their subscribers care about. Service is the intertwined mix of capacity and coverage neither of which is more important than the other. Exhaustion of either will result in a denial of service or dropped calls, ineffective data attempts, data sessions with inadequate input where the wheels are just spinning on your device and the web page does not load or the text message does not go through.

Mr. Sheth questioned if the height makes a difference with regards to this above mentioned issue? Responding to Mr. Sheth, Mr. Petersohn stated that Verizon Wireless and the other players in the field all use the most state-of-the-art equipment. In the case of this specific facility, it is the height that is needed. You need to be able to clear the prevailing clutter in the area to maintain the line of sight technology. If the mobile unit can see the antennas and vice versa, you have a clear line of sight and a clear path for radio waves to travel through. Any obstruction you put between the two whether it is man-made, foliage, or even a truck passing by serves to attenuate that signal.

Mr. Tracey asked that most, if not all, of the Verizon Wireless sites that this will be in the middle of, actually exceeds 100 feet, is this correct? Responding to Mr. Tracey, Mr. Petersohn stated that this is correct. The average around them is a little bit higher than 100 feet. It is more around 110 feet. For this facility to serve the area and offload the other sites effectively, it needs to be at least seventy (70) feet in order for it to compete with the surrounding sites for subscribers.

Mr. Tracey further asked Mr. Petersohn to explain to the Board the post tower construction map to show them what the coverage would look like afterwards. Responding to Mr. Tracey, Mr. Petersohn stated that this illustration is different in that it still illustrates coverage; however, now we are illustrating it by color on a per-site basis. The green color on the top is coverage from Site 213 in which is labeled by the black triangle. When he says coverage site, it is where the site is the dominate server. Anywhere in the green area in the north is best served by 213. Similarly right down the line the other sites best served areas are highlighted with a distinct color. The peach covered footprint on the illustration is where we proposed this facility at seventy (70) foot antenna center line. You can see that at seventy (70) feet, it now offers a distinct footprint of peach dominant coverage where it will effectively offload traffic from other sites. It is a contiguous nice footprint and not interrupted by the other facilities and you do not see any blue or yellow areas coming in where a mobile will be served kind of between two sites

and ping pong between the two where it hands off from one to the other which is a bad situation from a network capacity standpoint. From a radio frequency design standpoint, this is what you want to see, nice distinct geographical areas of best server coverage.

Mr. Tracey further stated that because we are in front of the Board of Adjustment and we are asking to have the tower be extended to a height of 76 feet which is 31 feet above the height limitations and recognizing that six (6) feet of that is the lightening rod, we need to demonstrate the need to be at that height.

Mr. Tracey questioned Mr. Petersohn what would be the affect if we were compelled to be at forty-five (45) feet for an antenna height in this instance? Responding to Mr. Tracey, Mr. Petersohn stated that if we were limited to forty-five (45) feet, what we would have is a footprint that is much smaller, is not contiguous, is not dominant, and the surrounding facilities would steal traffic from that site. It would not be offloading them as effectively as possible creating some very bad scenarios where there is soft handover situations which is where you have multiple facilities serving one subscriber or serving an area where there may be many subscribers; however, that one subscriber is then bouncing between the two for its service which creates overhead traffic. These types of scenarios are not ideal and we want to design away from them if possible. In this case, the only way to do that is up in height.

Mr. Tracey further questioned if this site is designed so that it can accommodate other co-location options should other carriers want to co-locate? Responding to Mr. Tracey, Mr. Petersohn stated that it is.

Mr. Sheth questioned if this would be for an existing tower? Responding to Mr. Sheth, Ms. Cornwell stated that no this would be for a new tower. There is an existing forty-five (45) foot tower that is not Verizon Wireless and the applicant is looking to add a new tower in addition to the existing tower.

Mr. Sheth questioned that a case came before the Board on South State Street near the St. Jones River bridge and it was denied, if this case was approved, would it set precedent. Mr. Rodriguez stated that he felt that this is a different situation.

Mrs. Townshend stated that if something else were to come forward, they would, just as this applicant has tried to do, have to demonstrate the need and why the facts support that the need is there and that denial of the variance would cause an Exceptional Practical Difficulty.

Mr. Senato questioned with regards to the other towers located on this site, are they owned by different companies or are they Verizon Wireless towers? Responding to Mr. Senato, Mr. Petersohn stated that their ownership varies; however, Verizon Wireless is installed on each and every one of them and is currently using them as a platform for their wireless network.

Mr. Senato further questioned what the range of the towers is in each different colored area depicted on the illustration? Responding to Mr. Senato, Mr. Petersohn stated that in this instance, it is not so much the range in terms of coverage footprint that is the issue. In general these sites will offer coverage anywhere from a mile to two and a half miles away depending on their surroundings.

Mr. Senato further stated that he asked this questioned because different colored areas are depicted on the illustration could overlap coverage in each area. Responding to Mr. Senato, Mr. Petersohn stated that currently they do overlap. It is not so much an issue of coverage; the range speaks only to coverage. Verizon Wireless is after service as they want to provide it and their subscribers expect service. There is a coverage component and then there is a capacity component. The coverage component is currently not an issue; however, the capacity component is quickly becoming an issue and is projected to become a service effecting issue by the end of this year.

Mr. Senato questioned how long the other towers have been up? Responding to Mr. Senato, Mr. Petersohn stated that he is unsure; however, the 214 Verizon tower has been up for some time close to fifteen (15) years.

Mr. Senato further questioned if there would be any radio tower emissions coming off of this new tower that could be harmful? Responding to Mr. Senato, Mr. Petersohn stated that there are emissions that come out of these facilities; however, according to the FCC guidelines, they are not harmful. He did an analysis of this and a copy was provided for the Board entitled "Electro Magnetic Emissions Analysis" in which he analyzes the cumulative effect of the proposed facility and the existing forty-five (45) foot facility operated by AT&T. Speaking from a cumulative standpoint, it will be in excess of 70 times below what the FCC considers safe.

Mr. Senato further stated that since you have a tower existing there now that has been there for fifteen years and now you are requesting another tower, how long do you think it would be before you would again request another tower based on the capacity of this tower being put in to take care of the overage of the other towers? Responding to Mr. Senato, Mr. Petersohn stated that he does not know for sure. There is an overall capacity issue in Dover so there is this site that we are here before you seeking a variance for and then there are two other facilities that he is aware of that are in the planning stages in the area to address this overall capacity issue; however, they are not very close. They are several miles from this site; one located at the toll booth and one located at the Air Force Base. With these 3 sites being constructed, he would say that they would be in the middle range density that he would expect in the size of the City of Dover. No one really knows what data will do over the next five (5) years.

Mr. Tracey stated that he would like to follow up on some points. On page 3 of the Design Report there is an identifier showing the location of the six (6) other existing facilities. What he would like to point out is that three (3) of those are co-located on top of water tanks so they do not involve separate towers being constructed. The other three (3) are either monopoles or lattice towers which we either own or have co-located on. We are designing this facility so that other carriers could co-locate on it if necessary. The two other locations that Mr. Petersohn referenced we do not know if we would need to come back before you or not. One of the two towers that were mentioned is located on a water tank on the Air Force Base so your jurisdiction may not dictate that we come before this Board for approval. The other piece would be a tower constructed on State owned land near the toll booth and he is unsure what the City does with DelDOT owned lands.

Mr. Tracey further stated with regards to the emission question, the Federal Tower Communications Act regulates what emissions can and cannot be. The Act also indicates that if

we fall below what the minimum acceptable level is, it is not a subject matter for the local Boards to consider.

Mr. Tracey further stated with regards to capacity, one of the things that we are obligated as a licensed carrier of a particular spectrum is that we are mandated to provide reliable coverage. Once you have cell sites competing with each other to have subscriber coverage be provided, that actually works negatively as far as coverage is concerned because it creates more opportunities for dropped calls and data not going through. Temporary facilities that we have utilized for the two race weekend events are not sufficient to deal with the issues that we are having and are only continuing to grow.

Mr. Sheth questioned that the forty-five (45) foot tower is not sufficient, in building this new tower would you then need both towers? Responding to Mr. Sheth, Mr. Tracey stated that we are not on the forty-five (45) foot tower that is a different carrier. They have a different arrangement with their landlord, a lease that governs what they can and cannot do. By constructing ours to seventy-five (75) feet and by creating the ability for other carriers to co-locate, it is certainly possible for them to decide that they would rather be at sixty (60) feet on this adjoining tower as opposed to forty-five (45) feet on our existing facility; however, it is an arrangement they have to strike with their landlord.

Mr. Keller questioned with regards to the property owner being PIP Enterprises, LLP, do we have acknowledgement and endorsement for the applicant's request? Responding to Mr. Keller, Ms. Cornwell stated that they would have signed the application so they are aware of this application here today.

Mr. Keller further stated that he is curious if efforts have been taken and if so, to what extent, to look for alternative sites since there are various zoning classifications within that area which would support a seventy-six (76) pole without application for a variance. Responding to Mr. Keller, Mr. Tracey stated that they did look at other properties. The zoning classification that is immediately behind us is SC-1 which would support a taller structure and is owned by Dover Downs. We did explore locating on the Dover Downs property and the problem lies in the sponsorship of the race system. It is the Sprint Cup Series not the Verizon Wireless or AT&T Series. To put it bluntly, the sponsorship arrangements for the NASCAR races make that property owner extremely leery of allowing a different carrier other than their sponsor to build facilities on their property. This is why we are locating where we are.

Mr. Keller further questioned if there is a concern with regards to fall zones for safety matters? Responding to Mr. Keller, Mr. Tracey stated that everyone has that feeling when you see a tall structure such as this that it will fall like a tree or bowling pin if it were to collapse. These facilities are not designed to do that. They are built with lynch pin systems so that if there is a failure, and these failures are extremely rare, after Hurricane Andrew went through about the only thing standing were cell phone towers. With the lynch pin system, they are designed so that the top third half would bend. They do not detach so as to avoid the effect the structure falling like a tree or a bowling pin.

Mr. Tracey stated that this is an area variance application which means that we need to satisfy the Exception Practical Difficulties test which was created in Quick Check Realty case. He

submitted to the Board, as required by the Department, our position paper as to why we believe that we meet that. Staff has provided their own rational and support. He feels that the Board has heard the hardship given the area that we are in with it being highly commercial with structures of varying heights. This is a small three (3) to four (4) foot wide pole that narrows at the top and will not be very noticeable. If we are not able to get to the height that we are talking about, the capacity issues that we have voiced to you today will not be addressed and likely be back before you in another area looking for additional facilities. With this facility being 70 feet tall, it is enough to do the job and enough to do the job for the foreseeable future.

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

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

Ms. Cornwell stated that there was no correspondence received for this application.

Mr. Hufnal moved to approve Applicant #V-11-06 PIP Enterprises, LLC located at 889 N. DuPont Highway based on testimony provided today, based on Staff's responses to the Exception Practical Difficulty test, and based upon Staff's variance recommendations and their highlighted points that were covered in testimony today, seconded by Mr. Senato and the motion was unanimously carried 4-0 with Colonel Ericson absent.

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

Meeting adjourned at 9:52 AM

Sincerely,

Diane Metsch
Secretary

City of Dover

Board of Adjustment

August 17, 2011

V-11-07

Location:	155 North DuPont Highway
Applicant:	Scot Parsons
Owner:	Scot Parsons
Tax Parcels:	ED-05-068.18-01-31.00-000 and ED-05-068.18-01-37.00-000
Application Date:	July 15, 2011
Present Zoning:	C-4 (Highway Commercial Zone)
Present Use:	Retail
Reviewed By:	Janelle M. Cornwell, AICP
Variance Type:	Area Variance
Variances Requested:	Allow a pylon sign to be located within the setback and to reduce the exclusion zone for a pylon sign.

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 pylon sign to be located within the setback from the right-of-way and to allow a pylon sign to be located within the exclusion zone. The applicant is requesting a two (2) foot setback from the right-of-way and to allow a pylon sign to be located within the 150 foot exclusion zone from other pylon signs.

Adjacent Land Uses
The adjacent properties are a mixture of commercial and residential uses. The properties to the north and south are zoned C-4 (Highway Commercial Zone). The properties to the west across North DuPont Highway are zoned C-4 (Highway Commercial Zone). The properties to the east across Edgehill Avenue are zoned RM-2 (Medium Density 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 in Non-Residential uses	Urban Principal Arterial	Pylon or*	1 per frontage	75 SF	30 ft.	N/A	15 ft.	150 ft.
		Pylon*	1 per frontage	100 SF	30 ft.	N/A	31 ft.	150 ft.

* Denotes that an additional wall sign may be permitted/added in lieu of a freestanding pylon sign.

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:
   The nature of the zone of this property is C-4. This is various dense commercial properties.

   Staff Response:

The property is zoned commercially and is surrounded by commercial and residential uses. Signage is determined based on road classification. The property is located on an Urban Principal Arterial (North DuPont Highway/Route 13) and an Urban Local Collector (Edgehill Avenue). An Urban Principal Arterial allows for a pylon freestanding sign. The *Zoning Ordinance* takes into consideration that if a pylon sign is not permitted due to the exclusion zone that an additional wall sign may be permitted on the building.

2. The character of the immediate vicinity and the contained uses therein.
   Applicant Responses:
   On Rt. 13, our building is called the "South of the Canal" building, between the restaurant Hollywood Diner and Philly Pretzel Factory. We're across the highway from an empty field and Hangs Chinese Express. Behind the building & our parking lot is a trailer home park off of Edgehill Avenue, and a few smaller homes. Other businesses nearby are ICI Paints, Rita's Italian Water Ice, Dunkin Doughnuts, Dry Clean Central, and Troy Spencer & Sons auto dales. All businesses nearby <u>have existing pylon sign</u>.

   Staff Response:
   The character of the vicinity is a mixture of commercial and residential uses. The other pylon signs in the immediate vicinity comply with the regulations regarding the exclusion zone or are considered legal non-conforming (the sign located the Hollywood Diner). There are several businesses that do not have pylon signs in the area (Rita's Water Ice and ICI Paints). A number of the existing pylon signs and the associated buildings in the vicinity are estimated to have been constructed in the 1950's and 60's. the building and site improvements on the site were developed as part of a Site Plan application (S-02-34) and constructed in 2003 -2004.

   The proposed pylon sign will be located very close to the right-of-way. The setback for a pylon sign is measured from the edge of the sign and not as shown in this application from the pole. The other legal pylon signs in area meet the setback requirement of either 15 feet or 31 feet from the right-of-way.

3. Whether, if the restriction upon the applicant's property were removed, such removal would seriously affect neighboring properties and uses.
   Applicant Responses:
   Since all direct neighbors are commercial in nature & have pylon signs, I do not see any harm or effect on their properties as a result of our proposed pylon sign. Their uses are the same as ours, that is, they are all commercial uses.

   Staff Response:
   The removal of the restriction of the setback of the sign permitted would not affect neighboring properties. There are few monument signs located within the area. The area consists of small commercial businesses and residential uses to the rear of the property.

   The removal of the restriction of the exclusion zone could affect the neighboring properties. The sight distance between the pylon signs would be reduced and could

impact the visibility of the other pylon signs. One of the photos shows the proposed pylon sign. The location of the proposed pylon sign could block the visibility of the Philly Pretzel Factory sign as you travel north and the Hollywood Diner sign going south as the sign could be in alignment with the existing signs.

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

Applicant Responses:

Yes, there is hardship and we will continue to have hardship if we cannot install a pylon sign. This hardship existed before and after this current financial recession.

Leasing Problems:

We lost an upstairs tenant, before the recession, directly because they said we have no signage. Most of the tenants ask about signage in the front of the buildings, or a pylon sign, when inquiring about the units. We continually have problems renting our upstairs units due to lack of signage. We cannot rent the units for the cost of our mortgage. When you add taxes and other expenses, it gets worse. With the past increases with building in general within the City of Dover limits, buildings on a more expensive highway location, building during recent boom years, our costs and mortgage may be higher than many older buildings in the surrounding Dover area as a result, this forces us to charge higher rents to cover our expenses & mortgage. We need tenants that can pay higher rents. Our City taxed doubled in 2010. I've had little luck charging tenants my actual cost of the building after I tell them they'll have little to no effective signage.

Subsidizing Problems:

We are in the middle of a recession. Recent stats don't look promising for the US economy. The business that is subsidizing this building is slated to make less money in the near future regardless of the recession. The business that subsidies this building has already lost 1/3 of its gross profit in the last couple of years, and will lose another 25% due to government policy changes. If this building doesn't become self-sufficient soon, there will be problems, and that's a fact. Part of self-sufficiency is the ability to rent units. Currently, every single units has some sort of issue including; vacancy, not paying, not planning on renewing their lease, and not paying amounts sufficient to cover the lease.

Safety Issues:

Anyone coming to the building for the first time usually doesn't know the location. These people ask for directions. They are traveling the highway slightly distracted as they are searching for proper signage their attention is obviously split between driving and searching. Our poor visibility drawn more of their attention off driving and instead of searching the side of the road for the store they're looking for. This may slow down traffic or cause an unnecessary stopping hazard. This scenario is probably an argument for pylon signs in general, because they can be read at a further distance and motorists can appropriately slow down. Well-placed pylon signs can be easily read, not hidden, and if all stores are represented, then the

signage for those stores actually exists and will be spotted. Therefore, I would imagine there would be a safer traffic pattern in an around our building if granted a pylon sign. Highway motorists can presently search all they want for the businesses in the upstairs units but will never find them because the signage doesn't exist.

Poor Visibility of Existing Signage:
Highway traffic moves at 50mph. The northbound traffic comes around at a slight curve. It is very tough to see the existing facade signage traveling north until you're passing the store. We were required to plant four trees in front of our building and parallel to the highway. These four trees have grown & effectively block the façade signage. Traveling southbound, your window of opportunity to see what's there is diminished, especially at highway speeds, due to these trees. A pylon sign will not work if the existing trees remain blocking the monument proposed location. Kent Signs walked me through and pointed out that <u>currently you will not be able to see a pylon sign if replaces the monument sign location.</u>

Our Original Intention was a Pylon:
When planning construction, a pylon was our first chose, however, we were talked out of it and into a monument sign that faced parallel to the highway. We were told the City was doing away with pylon signs. This was something we felt may do harm to our rental business, but we weren't professional builders and did not know the actual repercussions. Our properties (2 lots) were deeded in such a way that we had to building on the front lot bordering the highway. This reduced our land in front. The additions, we had to place a water retention pond on the southern front side of our property. There is only a narrow median parallel between our property and the highway. This use of land and the location of the entrance & exits limited our ability to place a properly sized monument sign perpendicular to the highway for a better use of signage.

Monument Sign at our proposed location won't work:
A monument sign was already suggested for this proposed location. However, it would effectively block all visibility of incoming traffic for our parking lots, sot it was rejected. Placing a monument further back would place it close to the storm drainage area, behind parked cars & out of practical visibility.

Thought-out Decision:
We have a good-looking monument sign. Unfortunately we'll have to remove it. We are not taking this lightly. This decision was thoroughly thought out an ultimately decided for the best. There will be considerable cost trashing or existing monument sign and replacing it with a new pylon sign. There is no desire to do this on a whim. Even so, we believe it will be worth it.

Aesthetics:
We plan to try to keep an attractive look that the City would be proud of. We believe our building is one of the nicer looking buildings in the surrounding area, and do not wish to ruin any good looks. This is why we spent so much time removing power lines, which was our chose. Power lines up & down the highway are ugly. We decided to remove them from our property. Coincidentally, that may be an

argument against pylon signs. However, if done appropriately, concerns of unattractiveness are minimized. Also, new pylon signs are still going up on the highway, the power lines are still there, and so the argument for our pylon sign detracting from the surrounding area is weak.

Staff Response:
Exclusion Zone
The property is not permitted a pylon sign as the site does not meet the 150 foot exclusion zone from other pylon signs. The *Zoning Ordinance* allows for additional wall signage if a pylon sign is not permitted due to the exclusion zone. The site appears to have adequate space to place a 63 SF monument sign on the south side of the site; however, a variance may be necessary for the setback as the ten foot setback may not be feasible. The Site Plan (S-02-34) reviewed by the Planning Commission in 2002 indicated two monument signs. The staff person at that time indicated that the two monument signs would not be appropriate. The staff report to Planning Commission also indicated that the architecture of the building may impact wall signage. The existing sign is a monument sign located parallel to and five feet back from the right-of-way of North DuPont Highway/Route 13. Wall signage is provided on a sign band above the tenant spaces. The posted speed limit is 35mph or 40 mph in this portion of North DuPont Highway.

Setback
The site has little open space along the front of the property to install a sign that would meet the setback. The site has two entrances off of North DuPont Highway with a drive aisle and parking located in front of the building. The required setback for a 75 SF pylon sign is fifteen (15) feet from the right-of-way. Along the front of the building, placement meeting the setback would place the sign within the drive aisle at the front parking area. There are grass areas on the sides of the building; however, the area to the south of the building includes the stormwater management area and placement of sign within the stormwater management area is not permitted.

Variance Recommendations:
Staff recommends denial of the exclusion zone sign area variance for reasons as follows:

- The applicant has not demonstrated exceptional practical difficulty as there is the ability to install a monument sign in a different location on the site perpendicular to the road that would be visible to traffic.
- The applicant has the opportunity to place additional wall signage on the building that would meet the Sign Regulations of the *Zoning Ordinance* in lieu of the pylon sign.
- The applicant has the opportunity to place a monument sign on the property.
- The variance if granted could impact the visibility of the pylon signs on the adjacent properties.
- If variance is granted staff would request that if there is additional wall signage other than the two permitted wall signs that the signage be removed as they would have only been permitted due to the lack of a pylon sign. Each tenant is permitted

two wall signs as the site has two road frontages; additional wall signs would be permitted if the pylon sign was not installed.

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

- 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 notes that the setback of any type of sign is measured from the edge of the sign and not the post that supports the sign.

City of Dover

Board of Adjustment

August 17, 2011

V-11-08

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

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

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

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

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

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

Exceptional Practical Difficulties Tests
Article 9, §2 dictates the specific powers and duties of the Board of Adjustment with regard to granting variances. Specifically the Board must determine:

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

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

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

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

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

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

Staff Response:

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

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

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

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

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

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

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

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

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

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

Staff Response:

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

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

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

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

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

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

Advisory Comments:

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