AGENDA
CITY OF DOVER BOARD OF ADJUSTMENT
WEDNESDAY – December 2, 2009 9:00 AM – CITY HALL

ROLL CALL

APPROVAL OF AGENDA

APPROVAL OF MINUTES OF October 21, 2009 MEETING

NEW BUSINESS

Applicant #V-09-13
229 S Governors Ave: Action Tire has applied to the City of Dover Board of Adjustment requesting a variance from the requirements of Article 5 §7.4 of the *Zoning Ordinance* pertaining to outdoor storage trailers.

Subject property is zoned C-2 (Central Commercial Zone) and H (Historic Zone). The Tax Parcel ID # is ED05-077.09-04-35.00. The owner of record is Dover Hardware Co.

Applicant #V-09-14
508 S State St: Yozima, LLC has applied to the City of Dover Board of Adjustment requesting a variance from the requirements of Article 4 §4.13 of the *Zoning Ordinance* pertaining to impervious cover.

Subject property is zoned RGO (Residential/General Office Zone) and H (Historic Zone). The Tax Parcel ID # is ED05-077.09-03-70.00. The owner of record is Yozima LLC.

Applicant #V-09-15
211 Delaware Ave: Capital School District has applied to the City of Dover Board of Adjustment requesting a variance from the requirements of Article 5 §4.7 of the *Zoning Ordinance* pertaining to the size of signage.

Subject property is zoned IO (Institutional/Office Zone). The Tax Parcel ID # is ED05-068.17-03-66.00. The owner of record is Capital School District.

ADJOURN
29 Del.C. § 10004(e)(2)

CITY OF DOVER
BOARD OF ADJUSTMENT
October 21, 2009

The Regular Meeting of the City of Dover Board of Adjustment was held on Wednesday, October 21, 2009 at 9:00 AM with Chairman Sheth presiding. Members present were, Mr. Sheth, Colonel Ericson, and Mr. Hufnal. Mr. Senato and Dr. Goate' were absent.

Staff members present were Mr. Albert, Ms. Cornwell, Ms. Metsch and Mr. Rodriguez. Also present was Mr. John Marble and Mr. William McPoyle. Also speaking from the public was Mrs. Sophia Russell.

NOTE: These minutes were prepared using the "Action Minutes" format.

APPROVAL OF AGENDA

Mr. Hufnal moved to approve the agenda as submitted, seconded by Colonel Ericson and the motion was unanimously carried.

APPROVAL OF THE REGULAR BOARD OF ADJUSTMENT MEETING MINUTES OF SEPTEMBER 16, 2009

Mr. Hufnal moved to approve the regular Board of Adjustment meeting minutes of September 16, 2009 as submitted, seconded by Colonel Ericson and the motion was unanimously carried.

OPENING REMARKS CONCERNING DEVELOPMENT APPLICATIONS

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

NEW BUSINESS

Applicant #V-09-11

323 Cecil Street: Marble Management, LLC has applied to the City of Dover Board of Adjustment requesting a variance from the requirements of Article 4 §4.2 of the *Zoning Ordinance* pertaining to bulk standards for the RG-1 zone.

Subject property is zoned RG-1 (General Residence Zone). The Tax Parcel IDs # is ED05-076.08-02-31.00. The owner of record is Marble Management, LLC.

Representative: Mr. John Marble, Property Owner.

Ms. Cornwell presented an overview of the application.

Ms. Cornwell stated that the legal notice was published in the Delaware State News on October 11, 2009 and the public was notified in accordance with the regulations.

Mr. Sheth questioned if there was any member who would have a conflict of interest and there was none.

Mr. Marble stated that what they are attempting to do is to help promote more ownership within this general area of Cecil, Queen, and New Street as this is an area that is a difficult area with rental houses and crime. He has been involved in this area for awhile as he owns several houses in this area. We are trying to promote homeownership in a reasonable price range. We also feel that this would improve the quality of the neighborhood. We would like to sell the homes at a profit and feel that it would also be a good way for the City to raise their tax base as well as the Counties.

Mr. Hufnal stated that it looks like all of these were in existence prior to the current zoning regulation is this Staff's opinion? Responding to Mr. Hufnal, Ms. Cornwell stated that this is Staff's understanding.

Mr. Hufnal further stated that homes for sale to individuals have a tendency to increase the standard and character of the neighborhood rather than having all rentals units.

Mr. Sheth opened a public hearing.

Mrs. Sophia R. Russell – 208 N. New Street – Stated that she has lived in this neighborhood for over twenty some years and crime is going to be everywhere. She does not know if he thinks because of the location and the neighborhood he will make a big profit. The only problem she sees is if he thinks he is going to sell affordable houses there is not enough space in between two houses to sell property. On this basis, she does not see what he would gain by doing it. Parking spaces are bad and in the last couple of years it has gotten bad; however, it is a fairly decent neighborhood. She does not approve of this request.

Mr. Sheth closed the public hearing after seeing no one else wishing to speak.

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

Mr. Hufnal stated that he knows that in Staff's comments there are a number of houses in the neighborhood that do not have off-street parking so this does fit in with the character of the other houses in the neighborhood.

Mr. Hufnal moved to approve Applicant #V-09-11 located at 323 Cecil Street: Marble Management, LLC with comments made this morning and in conjunction with Staff's recommendations of approval, seconded by Colonel Ericson and the motion was unanimously approved 3-0 with Mr. Senato and Dr. Goate' absent.

Applicant #V-09-12

575 N DuPont Hwy.: William McPoyle has applied to the City of Dover Board of Adjustment requesting a variance from the requirements of Article 5 §4.10 of the *Zoning Ordinance* pertaining to the replacement of non-conforming signage.

Subject property is zoned C-4 (Highway Commercial Zone) and SWPOZ (Source Water Protection Overlay Zone) Tier 3 Excellent Recharge Area. The Tax Parcel ID # is ED05-068.09-01-23.00. The owner of record is William McPoyle Sr.

Representative: Mr. William McPoyle, Property Owner.

Ms. Cornwell presented an overview of the application.

Ms. Cornwell stated that the legal notice was published in the Delaware State News on October 11, 2009 and the public was notified in accordance with the regulations.

Mr. Sheth questioned if there was any member who would have a conflict of interest and there was none.

Mr. McPoyle stated that he would ask this Board to approve a sign that has been at this particular location for over twenty years. Prior to a closing date on the property of September 11, 2009, everyone thought this sign to be on the property of this location. (At this time photographs of the property were passed around.)

Mr. McPoyle further stated that he won this building at an auction a year and a half ago; however, they did not sell it to him at that time because he did not meet their minimum. It went back on the market and he purchased it. He always thought that this sign was a part of the deal and so did Burns and Ellis Realty Company. The sign is located just off of this property as indicated on the survey. He would like to move this landmark sign over by two (2) feet with plenty of room on the property that he purchased. The motel also did a survey for their construction and their surveyor did not pick up on it. The motel will permit an easement to allow the sign to remain there as long as he would be responsible for anything that would happen with regards to the sign.

Mr. McPoyle further stated that what he would like is not just an easement agreement from the motel because he would have the issue of liability constantly over his head; therefore, he would like to be able to move the sign over two (2) feet. His contention is that he does not see the harm in that this sign, that has been a landmark and his neighbors do not care that it would be moved, to serve the needs of a potential tenant. State Farm would like to rent this property and the issue regarding the sign was discovered after their intention to rent with a confirmation contract. He now has a real deal contract with State Farm and he would like to give them the pylon sign that they thought they would be getting.

Ms. Cornwell stated that Staff has recommended approval with the caveat that if the sign is relocated that it be pushed back so that it is thirty-one (31) feet from the right-of-way which is only a couple of feet away from that now. We do not actually know the square footage of the sign area. It would then be in conformance of the sign area, depending on what the square footage of the sign is; however, if the sign is over one hundred (100) square feet it would still be a legal non-conforming sign.

Colonel Ericson stated that if this sign is to be moved, it should at least be legally conforming. If you could do that by reducing the sign or at least knowing what it is, maybe this application should be tabled until next meeting so that we have the facts that we need to make the right decision.

Mr. McPoyle stated that he has contracts on this property and he is going to lose this contract if delayed. Currently, he has had four (4) tattoo places that would love to have this location. As a person who conducts business and lives in the City of Dover he would rather see a State Farm professional business take this location than a tattoo location right in a prime section of town.

Ms. Cornwell stated that Staff, when contacted on the September 11, 2009 closing regarding this issue that they thought they had a legal non-conforming sign, Code Enforcement Staff had determined that this sign is legal non-conforming and considered it abandoned which means that it needed to be blackened over and the sign come down within a certain time period. There is a caveat stating that the Planning Director can issue, if we know the building is going to be re-occupied immediately, then the legal non-conforming sign could be reused until a new caveat of the legal non-conforming sign issue comes up then it would have to come into compliance.

Colonel Ericson questioned how much of a financial hardship would it be to take the sign down? Responding to Colonel Ericson, Mr. McPoyle stated that the financial hardship would be $8,500 if a new sign is installed as opposed to $2,000 to simply move the sign. It is a perfectly good sign and it is what his tenant would like in that he could advertise his business and be seen on the highway and make his rent work for him because he has new business as well as established business.

Mr. McPoyle further stated that he owns the blue house right beside this property and if he can save the money that it would take to replace the sign versus what it would take to simply move the sign, he will put that money into placing stucco on the outside of this building to make it more attractive.

Mr. Hufnal stated that if we have had a legal non-conforming sign here and all we are doing is moving it over two feet and back two feet to conform to our standards, any future improvements he would make to the site would then require the sign regulations to come into compliance. He does not see a problem moving it to get it onto his property and make it legally his.

Colonel Ericson stated that the issues are that this sign does need to be moved and does need to be setback thirty-one (31) feet at least and the question is are we going to allow a non-conforming sign to exist as the applicant stated it would cost him a consumable amount of money; $6,500 to put the other sign in there. If we stated that we would allow this as an exception; however, in the future, if there are any changes to the property, the sign would have to come into compliance as legally conforming.

Ms. Cornwell stated that with regards to short term it states that "in certain circumstance where it is evident that the reoccupation or reuse of premises which contains an abandoned non-conforming sign is imminent, the City Planner may grant an extension of time to reestablish the use of the non-conforming sign." At that point, he had a signed contract or a contract with a tenant to go back into this building and this is how Staff was utilizing imminent reoccupation and reuse of this building.

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 and there was none.

Colonel Ericson moved to approve Applicant #V-09-12 located at 575 N. DuPont Highway; William McPoyle in accordance with Staff's recommendation provided the legal non-conforming sign is moved back on the property and is thirty-one (31) feet setback from the right-of-way and that in the future, if there is any change in usage of this property, the non-conforming sign must meet City standards or approved by a variance at that time, seconded by Mr. Hufnal and the motion was unanimously carried 3-0 with Mr. Senato and Dr. Goate' absent.

Mr. Hufnal moved to adjourn the meeting, seconded by Colonel Ericson and the motion was unanimously carried 3-0 with Mr. Senato and Dr. Goate' absent.

Meeting adjourned at 9:42 AM

Sincerely,

Diane Metsch
Secretary

City of Dover

Board of Adjustment

December 2, 2009

V-09-13

Location:	229 South Governors Avenue
Applicant/Owner:	Dover Hardware Co. Inc.
Application Date:	October 16, 2009
Present Zoning:	C-2 (Central Commercial Zone) H (Historic District Overlay Zone)
Present Use:	Action Tire
Reviewed By:	Janelle M. Cornwell, AICP

Project Description:
The applicant is requesting variances from the *Zoning Ordinance*, Article 5, Section 7.4 Outdoor Storage Trailers. Specifically, they are requesting a variance from the total floor area of storage trailers in relation to the size of the building, placement of storage trailers with regards to setbacks, screening of trailers, and the length of time a storage trailer may be placed on the site.

The applicant has stated that "proposal is a request to be allowed continued use of a storage container on the business property for the sole purpose of tire disposal and subsequent recycling. Request is filed in response to violation details which indicate the trailer's existence on the property are a zoning violation."

The applicant has also stated that "I began work on this property as an employee of Mr. Tire in November, 1985. At that time, this business had already been well established at that location as a used tire shop. In June of 1987, the owner of Mr. Tire gave me the opportunity to purchase the business. I did so, changed the name to Action Tire, and have been operating the business as a used tire shop at that location ever since.

For several years I had a reliable supplier for used tires. Up until sometime in 2003, this supplier would deliver ordered tires weekly, and haul away the junk tires the shop had generated during the week. When this supplier got out of the used tire business, I quickly developed a problem not only with supply, but also with disposal.

To address the problem of tire disposal, I contracted Magnus Environmental in Wilmington, and my first container was delivered on 12/23/03. I arranged to have this done without any prior approval from the City of Dover – not defiantly – but only because I saw it as a good solution to a real problem, and it never occurred to me that approval for such a thing would be necessary.

These trailers are registered vehicles, and when on filled up, Magnus would bring an empty and haul away the full. I have switched trailers 27 times since the first one was delivered, at $1000.00-$1100.00 each! Obliviously, if these containers weren't absolutely necessary I would not continue to commit to such an expensive arrangement. As it is, this is the most cost-effective and environmentally friendly solution to the problem of tire disposal that I am aware of.

For the first three years of so of having a trailer on the property, there was absolutely no repercussions. The trailers came and went as was necessary. The first time I got a violation detail, it was for graffiti on the container, not a zoning violation. I informed Magnus of the violation, and they have since made every effort to deliver containers that are not blemished by graffiti. The first violation detail for a zoning violation came sometime in late 2008 – nearly 5 years after having a container on the property full time. Negotiations with the City of Dover have been ongoing ever since, and now, with no apparent solution in sight, I appeal to the Board of Adjustments."

Adjacent Land Uses

The adjacent properties are commercial uses. The properties to the east and north are C-2 (Central Commercial Zone) and subject to the H (Historic District Overlay Zone) Zone. The properties to the south across the North Street are zoned C-2 (Central Commercial Zone) and subject to the H (Historic District Overlay Zone) Zone. The properties to the west across South Governors Avenue are zoned C-2 (Central Commercial Zone) and subject to the H (Historic District Overlay Zone) Zone. The properties to the southwest across North Street and South Governors Avenue are zoned IO (Institutional Office Zone) and subject to the H (Historic District Overlay Zone) Zone.

Code Citations

Article 5 Section 7

7.4 *Outdoor storage trailers.* Storage trailers accessory to an approved use shall be prohibited on a site, except when meeting the following conditions:

1. The total floor area of storage trailers shall be less than two percent of the gross floor area of the principal building.

2. All storage trailers shall be placed in accordance with all zoning regulations regarding permanent structures, including setbacks, parking, and other bulk regulations.

3. All such trailers shall be screened from public streets, and shall not be located between the principal building and the public road right-of-way.

4. Trailers placed during approved construction phases or those used as collection facilities for non-profit, governmental or philanthropic organizations shall not be calculated into floor area totals used to determine parking requirements, but must conform to setbacks and all other bulk regulations.

5. Storage trailers accessory to an approved use are to be temporary features on a site. No such trailer shall be in place for more than 18 months, except for those trailers to be used during construction or those used as collection facilities for non-profit, governmental or philanthropic organizations.

Hardship/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 a hardship/exceptional practical difficulties exists.

Specifically the Board must determine:

(a) That there are physical conditions, fully described in the findings of the board, applying to the land or building for which the variance is sought, which conditions are peculiar to such land or building, and have not resulted from any act of the applicant or any predecessor in title; and

(b) That, for reasons fully set forth in the findings of the board, 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 for 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; and

(c) That the 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 there from, will not be injurious to the neighborhood, will not change the character thereof and will not be otherwise detrimental to the public welfare.

In assessing the potential hardships/exceptional practical difficulties the Board must consider responses to four questions provided by the applicants in their completion of the application.

1. Are there physical conditions of the property (size, shape, location) peculiar to the land or building that would justify a variance?
2. Is the applicant responsible for the physical conditions listed above?
3. Do the zoning requirements for which the variance is sought otherwise deprive the applicant of all reasonable use of the subject property?
4. Would the requested variance be in keeping with the character of the neighborhood?

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.

Applicant Responses:

1. Physical Conditions:
   Yes. 1. The building is what it has been for decades. It is small, measuring only 27x 42 feet. The typical container measures 8 x 40-45 feet. There is simply no way possible that the conditions for chapter 7.4#1 could be satisfied under the circumstances.

2. Both attached photos show the property in its entirety; one taken from the northwest, the other from the southwest. My building is the small one painted "turnkey gray". The large white building to the east of (behind) mine is the warehouse for Delaware Tire, to my north. Given the small size of the property, there is simply no place else to set the container. The edge of the north wall has been considered, but there is an electrical service obstruction (photo #1 above the black car), the trailer would protrude well beyond the west (north-south) line of the building (given its 27' width), and the trailers' presence between my building and Delaware Tire's building would seriously limit available parking for Delaware Tire. Over the years I have allowed them full use of the space between our buildings, and on a typical business day, this area fills with customer vehicles from Delaware Tire. Is it, therefore, impossible to satisfy the provisions of chapter 7.4#2 regarding setbacks and bulk regulations.

3. Regarding chapter 7.4#3 in the City Code, the issue of placement has already been addressed above. Additionally, the issue of screening presents yet another impossibility. while it is not outside the realm of possibility to erect an aesthetically pleasing fences to screen the container from view of the roadway, to do so would render the maneuvering required to switch our the trailers physically impossible. To briefly explain what is involved in switching the trailers:

- An empty trailer is brought from the north and drooped directly in front of the building on the east side of the "island". The island is clearly visible in both photos. East is towards the building, west is towards Governors Ave.

- The tractor disconnects from the empty trailer and hooks up to the full one, which is always situated where it is in the attached photos. The driver then backs up to within 3-4" of the building, "jackknifes" to the right as hard as possible, and after several points of going forward and backwards swings the trailer around so it is pointing northward. Traffic signal posts and the light pole are narrowly missed. The entire area of blacktop on the southwest corner is needed for this maneuver. The trailer is brought to rest in front of the building on the west side of the island.

- The tractor disconnects from the full trailer, hooks up again to the empty, pulls it southbound across North St., and backs it into position along the fence line. Once positioned, he is ready to hook up to full trailer for departure.

If a fence were erected to conceal the trailer from the roadway, it might be impossible for the driver to "slip" a trailer into the appointed space, given the lack of room to maneuver n the south side, and the inevitable traffic on North St.

2. Applicant's responsibility for conditions:
No. Not at all. The property is as it was when purchased by the owner, and is as it was when I began work there as an employee in 1985.

3. Deprivation of all reasonable use of the property:
Yes. Absolutely. The inability to keep a container on site for the purpose of tire disposal seriously threatens the viability of the business. If this were not so, I would not be

appealing the BOA. In the absence of a supplier that is capable of proper tire disposal, I see no other practical alternative. I could increase the size of the existing outdoor enclosure (visible in photo #2 behind trailer) to accommodate storage of a tractor trailer sized load of junk tires, but they would then still need to be loaded on a trailer. This would mean that a trailer would still need to be brought to the property, dropped off to be loaded, and then picked up 4-5 days later after loaded. It would mean fully double the work for me, and two round trips for Magnus from Wilmington to accomplish what takes only one round trip now. Another alternative would be to purchase my own truck, park it where the trailer is now, and haul junk up to Wilmington myself. This, is seems, would make no appreciable difference in the overall appearance of the property.

If this property is to remain a tire shop that the community has grown to appreciate and depend on, then I simply must have means of disposing of the junk that any operation like this generates. If I lose the trailer, I lose that ability. If I lose that ability, I will, in short order, lose my livelihood – a business that I have worked very hard at now for over 22 years!

4. Character of the neighborhood:
   Yes. Very little has changes on this block since I began working here in 1985, and the addition of a trailer on the property does little to diminish the overall appearance of the corner, provided of course, that the trailer is in reasonable condition and reasonably neutral in color. This property has been a tire shop for nearly 30 years. It is fitting, actually, that a trailer such as the one pictured be on site in support of such an operation. Everyone knows a tire shop generates junk tires, and those junk tires have to go somewhere.

   There have been complaints about the appearance of the corner over time. I understand this, but I believe those complaints came at times when the trailers that had been delivered were more on the "unsightly" side than what I have received from Magnus more recently. And it's apparent that it was these complaints that ultimately alerted the City to the existence of a zoning code violation, as a trailer had been on site for nearly 5 years before I was made aware that there was a zoning code problem. I have made it clear to Magnus that I can't have raggedy-looking old dilapidated ugly trailers on the property, and they have responded accordingly. Certainly, the photos do indicate that they have made a positive effort in this regard. I am certain that, if allowed, Magnus will continue to do their utmost to insure that I continue to get trailers that don't diminish the appearance of the corner.

Staff comments and recommendations:

1. Physical Conditions:
   Yes. The property is a small lot and the building is small.

2. Applicant's responsibility for conditions:
   No. The parcel has existed for a long time. The loss of the old pick up of tires is not the responsibility of the business owner.

3. Deprivation of all reasonable use of the property:

No. The owner has indicated that he could purchase a vehicle and transport the tires himself or he could expand the enclosure and store tires within the expanded enclosure and have a trailer located on the premises for a shorter period of time.

4. Character of the neighborhood:
   No. The long term use of a trailer negatively impacts the character of the neighborhood. The character of the neighborhood in that area has two automotive businesses, an appliance business, and a mixture of commercial and residential uses. The site is located within the Historic District and is diagonally across from Museum Square.

Recommendation:
Staff recommends denial of the variance for reasons as follows:

- The loss of the use of the trailer will not deprive the owner of use of the business. The owner has indicated that there are other alternatives to addressing the junk tires.
- The character of the neighborhood is impacted by the trailer. The long term use of the trailer negatively impacts the area.
- The needs or desires of a particular owner or tenant or of a particular prospective owner or tenant shall not, either alone or in conjunction with other factors, afford any basis for the granting of a variance. The fact that the improvements already existing at the time of the application are old, obsolete, outmoded or in disrepair, or the fact that the property is then unimproved, shall not be deemed to make the plight of the property unique or to contribute thereto.
- Storage trailers are designed to be temporary in the code. The *Zoning Ordinance* recognizes the need for them during construction or in short term basis. The use of a trailer for a long period of time indicates the need for other alternatives for the storage or transportation of the junk tires.

If the Board of Adjustment is inclined to approve the application, staff would recommend that approval only be granted for a finite amount of time until another option sought.

City of Dover

Board of Adjustment

December 2, 2009

V-09-14

Location:	508 S. State Street Southwest corner of S. State and Water Streets
Applicant/Owner:	Yozima, LLC
Application Date:	October 16, 2009
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 88.2 percent lot coverage be granted.

According to the applicant, changes were made in the field, resulting in the increased impervious cover. These changes were "necessitated by an easement dispute with a neighboring property owner which required that the drive access for the building be increased in width to accommodate two-way traffic. The dispute arose during construction."

Adjacent Land Uses
The surrounding properties are primarily institutional and office in use. 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%		

Hardship/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 a hardship/exceptional practical difficulties exists.

Specifically the Board must determine:

(a) That there are physical conditions, fully described in the findings of the board, applying to the land or building for which the variance is sought, which conditions are peculiar to such land or building, and have not resulted from any act of the applicant or any predecessor in title; and

(b) That, for reasons fully set forth in the findings of the board, 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 for 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; and

(c) That the 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 there from, will not be injurious to the neighborhood, will not change the character thereof and will not be otherwise detrimental to the public welfare.

In assessing the potential hardships/exceptional practical difficulties the Board must consider responses to four questions provided by the applicants in their completion of the application.

1. Are there physical conditions of the property (size, shape, location) peculiar to the land or building that would justify a variance?
2. Is the applicant responsible for the physical conditions listed above?
3. Do the zoning requirements for which the variance is sought otherwise deprive the applicant of all reasonable use of the subject property?
4. Would the requested variance be in keeping with the character of the neighborhood?

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.

Applicant Responses:

1. Physical Conditions:

Yes. The land and building consists of a completed office building. The office building is adjacent to another office building under different ownership. There is an easement agreement between the two parcels of property but a dispute as to whether or not that easement agreement permitted using the drive isles of the neighboring property. As a result the only reasonable means of resolving that dispute was to widen the drive isle to permit two-way traffic which field change was approved by city personnel and DelDOT. Because of parking requirements and the fact that the building was under construction at the time that the field modification was made, redesigning or changing the structure that would result in an increase in the pervious surface would be a hardship.

2. Applicant's responsibility for conditions:

No. The physical condition was primarily caused by an access dispute with the neighboring property owner and as outlined above.

3. Deprivation of all reasonable use of the property:

Yes. If the variance is not granted the property would be non-conforming, would not receive a certificate occupancy and could not be used.

4. Character of the neighborhood:

Yes. The neighboring properties are extremely similar to the property which is the subject of the variance and the variance requested is diminimus (approximately 3% from the lot coverage otherwise permitted).

Staff comments and recommendations:

1. Physical Conditions:

Yes. There are physical conditions peculiar to this property that warrant a variance. The building and associated site improvements are constructed so that they exceed the permitted lot coverage of 85 percent.

2. Applicant's responsibility for conditions:

Yes. The applicant is responsible for constructing a building and improvements to the site that exceed the permitted lot coverage. The site plan, as approved, complies with the lot coverage requirements; however, alterations were made during the site's construction that do not comply with the approved final site plan. These improvements bring the site's lot coverage to 91.1 percent. The applicant proposes to saw cut portions of the hard surface to reduce the amount of impervious cover to 88.2 percent of the site, but this would still exceed the 85 percent permitted by the *Zoning Ordinance*.

The applicant indicated that the exceedence of the permitted lot coverage was due to a field correction that occurred with City approval after the project commenced. City records indicate that the easement dispute was brought out after the project was under construction;

however, there is no record that the City or DelDOT approved the widened drive aisle. No amended drawings were submitted to address this issue. The final site plan showed a drive aisle of 20 feet in width, which is consistent with zoning requirements for two-way traffic (although arrows indicate only one-way traffic). The amended plan, submitted with the Board of Adjustment application, shows a 27.4-foot-wide drive aisle. The increase in impervious cover was discovered, along with several other site issues, as the project approached completion. The City never reviewed or approved an amended plan showing an increase in width of the drive aisle.

3. Deprivation of all reasonable use of the property:
No. Failure to grant the requested variance would not deny the property owner of all reasonable use of the property; however cost necessary to reduce the impervious cover by 3.2 percent would be significant in comparison to the benefit gained by such a reduction. The applicant has agreed to remove a portion of the impervious cover to bring the site closer to compliance with the lot coverage requirement.

4. Character of the neighborhood:
Yes. Approval of the variance would be in keeping with the overall character of the area.

Recommendation:
Staff recommends approval of the variance for the following reasons and conditions:

- The requested variance is for an increase of 3.2 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, the blacktop area along the south 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. These changes should be conditions of the variance.
- The current condition 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:

- The needs or desires of a particular owner or tenant or of a particular prospective owner or tenant shall not, either alone or in conjunction with other factors, afford any basis for the granting of a variance. The fact that the improvements already existing at the time of the application are old, obsolete, outmoded or in disrepair, or the fact that the property is then unimproved, shall not be deemed to make the plight of the property unique or to contribute thereto.

City of Dover

Board of Adjustment

December 2, 2009

V-09-15

Location:	211 Delaware Avenue
Applicant/Owner:	Capital School District
Application Date:	October 16, 2009
Present Zoning:	IO (Institutional/Office Zone)
Present Use:	Central Middle School
Reviewed By:	Janelle M. Cornwell, AICP

Project Description:
The applicant is requesting a variance from the *Zoning Ordinance*, Article 5, Section 4.7 Permitted Signs. Specifically, they are requesting a variance from the square footage permitted.

	Permitted by Code	Request
Square Footage Permitted	16 SF	64 SF

The applicant has stated that "install building medallion on façade medallion is being considered signage by city and exceeds the 16 SF allowance."

"Elevations were submitted and approved at January 2008 Planning Commission hearing. Those elevations show similar medallion size and location."

Adjacent Land Uses
The adjacent properties are a mixture of residential and institutional uses. The properties to the south across Delaware Avenue are zoned RG-1 (General residence Zone) and IO (Institutional and Office Zone). The properties to the east across the St. Jones River are zoned R-8 (One Family Residence Zone) and R-20 (One Family Residence Zone).the properties to the north and across Smith Street are zoned R-10 (One Family Residence Zone) and R-8 (One Family Residence Zone). The properties to the west across Pennsylvania Avenue are zoned R-8 (One Family Residence Zone) and RG-1 (General Residence Zone).

Code Citations

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.

TABLE INSET:

SIGN TABLE									
Use			Permitted Signs						
	Specific	Road Type	Sign Type	Number Permitted	Max Size	Max Height	% of Wall**	Setback (R.O.W.)	Exclusion Zone
Non-Residential uses adjacent to Residential Districts or uses	Places of Worship Daycare Centers Approved Conditional Uses Educational/ Institutional All other approved Non-residential Use	Urban Local Collector	Wall &	1/frontage	16 S.F.	20’	≤ 5 %	N/A	N/A

Hardship/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 a hardship/exceptional practical difficulties exists.

Specifically the Board must determine:

(a) That there are physical conditions, fully described in the findings of the board, applying to the land or building for which the variance is sought, which conditions are peculiar to such land or building, and have not resulted from any act of the applicant or any predecessor in title; and

(b) That, for reasons fully set forth in the findings of the board, 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 for 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; and

(c) That the 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 there from, will not be injurious to the neighborhood, will not change the character thereof and will not be otherwise detrimental to the public welfare.

In assessing the potential hardships/exceptional practical difficulties the Board must consider responses to four questions provided by the applicants in their completion of the application.

1. Are there physical conditions of the property (size, shape, location) peculiar to the land or building that would justify a variance?
2. Is the applicant responsible for the physical conditions listed above?

3. Do the zoning requirements for which the variance is sought otherwise deprive the applicant of all reasonable use of the subject property?
4. Would the requested variance be in keeping with the character of the neighborhood?

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.

Applicant Responses:

1. Physical Conditions:
   Yes. 1.) Size- building frontage along Pennsylvania Avenue is approximately 435 feet. A sign that conforms to the regulations would be dwarfed by the wall area. 2.) Location- the configuration of the façade calls for signage in this location.

2. Applicant's responsibility for conditions:
   Yes, Absolutely. Building was specifically designed and renovated with this medallion in mind.

3. Deprivation of all reasonable use of the property:
   No.

4. Character of the neighborhood:
   Yes. This civic building has been in existence since the 1920's. the new addition and the medallion were designed the compliment the historic character of the building and surrounding neighborhood.

Staff comments and recommendations:

1. Physical Conditions:
   Yes. Wall of the building is a large wall. The scale of the 16 SF sign on the wall will be out of scale with the building and look inappropriate. The *Zoning Ordinance* states that signs are an integral architectural element of the building and signs shall be of an appropriate scale and size in relation to the building.

2. Applicant's responsibility for conditions:
   Yes. The applicant created the building with the intent of this design and medallion to be installed on the side of the building.

3. Deprivation of all reasonable use of the property:
   No. The applicant will still be able to utilize the building as a school without the sign.

4. Character of the neighborhood:
   Yes, the medallion sign would be an architectural component to the building and help alleviate a large expanse of blank wall on the building. The sign will provide additional character to the building. The sign will not be easily legible from the adjacent property owners.

Recommendation:

Staff recommends approval of the variance.

The reasons for these recommendations are as follows:

- The physical attributes of the building, including size of the wall, create an exceptional practical difficulty in providing signage for the site.
- The sign would be in keeping with the scale of the building. A sign of 16 SF would look out of place and not in keeping with the design of the building.
- The sign would be in keeping with the character of the neighborhood as it would provide additional architecture element to the site.

Advisory comments:

- This could set a precedent for other legal non-conforming signs.
- The needs or desires of a particular owner or tenant or of a particular prospective owner or tenant shall not, either alone or in conjunction with other factors, afford any basis for the granting of a variance. The fact that the improvements already existing at the time of the application are old, obsolete, outmoded or in disrepair, or the fact that the property is then unimproved, shall not be deemed to make the plight of the property unique or to contribute thereto.