AGENDA
CITY OF DOVER BOARD OF ADJUSTMENT
WEDNESDAY – October 21, 2009 9:00 AM – CITY HALL

ROLL CALL

APPROVAL OF AGENDA

APPROVAL OF MINUTES OF September 16, 2009 MEETING

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.

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 (Sourcewater 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.

ADJOURN
29 Del.C. § 10004(e)(2)

CITY OF DOVER
BOARD OF ADJUSTMENT
September 16, 2009

The Regular Meeting of the City of Dover Board of Adjustment was held on Wednesday, September 16, 2009 at 9:00 AM with Chairman Sheth presiding. Members present were, Mr. Sheth, Mr. Senato, and Mr. Hufnal. Colonel Ericson and Dr. Goate' were absent.

Staff members present were Mrs. Townshend, Mr. Albert, Ms. Cornwell, Ms. Metsch and Mr. Rodriguez. Also present was Mr. Gary Coy, Mr. Conny Malmberg, Mr. Bill Zuccarello, Mr. Joe Jaworski, Mr. Robert Cocozzoli, Mr. Lynn Rogers, Mrs. Darlene Matthes, Mr. Richard Pepper, and Mr. Greg Feld. Also present speaking from the public was Mr. George Isaris.

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

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

APPROVAL OF THE REGULAR BOARD OF ADJUSTMENT MEETING MINUTES OF JULY 15, 2009
Mr. Hufnal moved to approve the regular Board of Adjustment meeting minutes of July 15, 2009 as submitted, seconded by Mr. Senato 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-09-07
430 Kings Hwy.: Lutheran Senior Services of Dover Inc. has applied to the City of Dover Board of Adjustment requesting a variance from the requirements of Article 5 §11.13 of the *Zoning Ordinance* pertaining to the building of structures within 75 feet of a shore line.

Subject property is zoned RG-5 (General Residence Zone for Mid-Rise Apartments). The Tax Parcel IDs # are ED05-068.17-03-20.00 and ED05-068.13-01-89.00. The owner of record is the Lutheran Senior Services of Dover Inc.

Representative: Mr. Gary Coy, Executive Director, Luther Towers.

Mr. Albert presented an overview of the application.

Ms. Cornwell stated that the legal notice was published in the Delaware State News on September 6, 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. Coy stated that what they are proposing is a meditation garden located behind Luther Towers I and the shoreline. They have some existing walkways that are located behind the building that the residents enjoy. The garden access will be on the lake side and will require an extension of the existing walkway along the shoreline. We will also do a clean-up of the shoreline and planting of vegetation to enhance the beauty. The variance is requested because they need a hard surface to allow the senior residents to be able to enjoy the view, as many use walkers, wheelchairs and motorized scooters.

Mr. Hufnal stated that if we were to grant this request, it does look like it is pressing the issue of runoff and water quality because of what you would put there. Also, it extends the walkway that is already in the buffer zone. He would agree that it adds to the character of this area and would have no affect where it is placed on the character of the neighborhood.

Mr. Senato questioned what are the current walkways that are there made out of? Responding to Mr. Senato, Mr. Coy stated that they are made out of hot mix and is what the proposed walkways would be made of.

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.

Mr. Hufnal moved to approve Applicant #V-09-07; 430 Kings Hwy.: Lutheran Senior Services of Dover Inc, in conjunction with Staff recommendations and also in conjunction with coming into conformance with some of the concerns of the run-off water and the re-planting of the buffer zone, seconded by Mr. Senato and the motion was unanimously carried with a 3-0 vote with Colonel Ericson and Dr. Goate' absent.

Applicant #V-09-08

879 N DuPont Hwy.: Robert Cocozzoli 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 (Sourcewater Protection Overlay Zone). The Tax Parcel ID # is ED05-057.00-01-39.00. The owner of record is Robert Cocozzoli.

Representative: Mr. Constantine Malmberg, Attorney on Behalf of the Applicant; Mr. Bill Zuccarello, McDonald's Corporation; Mr. Robert Cocozzoli, Franchise Owner of McDonalds; and Mr. Joe Jaworski, Project Engineer.

Ms. Cornwell presented the application.

Ms. Cornwell stated that the legal notice was published in the Delaware State News on September 6, 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. Malmberg stated that this McDonald's is a thirty-three (33) year old building. McDonald's is in the process of updating the building by building a new franchise building that is being built across the country which would require completely demolishing the existing building and updating it with a new prototype along with new signage. Some of the newer affects would be that the new building would be setback further from the roadway. The reason for the variance is that there is an existing pylon sign on this site that would remain as is; however, the problem is that this sign has been here for thirty-three (33) years and in the intervening years, the City has approved signage for Bubba's and Shuckers on the adjacent parcel on both sides of the McDonalds property. Because of the width of these properties, there is an exclusionary zone under the *Zoning Ordinance* that states you cannot build a pylon sign within 150 feet of another pylon sign and the affect of the two newer signs is that that there is no zone on the McDonalds property that we could build a conforming pylon sign. McDonalds would lose their signage if we applied the current ordinance regulations for a business that has been there for thirty-three (33) years because of the new signage from Bubba's and Shuckers.

Mr. Malmberg further stated that to impose a hardship on McDonalds would discourage people from updating buildings and trying to make the City look cleaner, newer, and fresher. It is also good for the economy as well.

Mr. Senato questioned how far back will you go with the sign from where it is currently located? Responding to Mr. Senato, Mr. Malmberg stated that the sign as it exists is 26.9 feet back from the road and would be required to be 31 feet; however, the width of the lot is such that you could not place it on the property at all.

Mr. Hufnal stated that the sign to the north which is the Shuckers sign is closer than the sign that is located to the south which is Bubba's. The McDonald's sign has been there for thirty-three years. Responding to Mr. Hufnal, Mr. Malmberg stated that yes it has.

Mr. Zuccarello stated that the building today is approximately thirty feet setback and where it would be with the new rebuild would be fifty-nine feet setback.

Mr. Senato stated that his concern would be setting a precedent. Responding to Mr. Senato, Mr. Malmberg stated that it is a narrow precedent and that would be that if you have a sign that was conforming and then other people build along side of you that is not a bad precedent. In all fairness we should not lose a pre-existing right because of that.

Mr. Sheth opened a public hearing.

Mr. George Isaris – Owner of Raceway Liquors and Shuckers Pier 13 – Stated that Shuckers Pier 13 and Raceway Liquors is thirty years old also. He did a renovation in 2000 and the sign that was there before was in the same location that the McDonald's sign is located now. He did not change his footprint; however, had to move his sign back fifteen feet when he did an outside renovation. He does not have any objections for them keeping their sign up; however, if they are going to change their footprint they are going to have to move the sign back or he would hope

that he would receive the same consideration if he decides to change his footprint or demolish his building. He would be against this sign being kept where it is currently located.

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

Mr. Hufnal moved to approve Applicant V-09-08; 879 N DuPont Hwy.: Robert Cocozzoli, based on Staff's recommendation and also to highlight that approval of the variance would not negatively impact the long term character of the area as there are already two legal non-conforming pylon signs in existence and there is no other place to put the pylon sign as they do meet the exclusion on one side; however, not the other. The pylon sign that would cause this to be in violation was permitted legally prior to the creation of the exclusion zone, seconded by Mr. Senato and the motion was unanimously granted with a 3-0 vote with Colonel Ericson and Dr. Goate' absent.

Applicant #V-09-09
11 N DuPont Hwy.: Dover Airport Plaza, LLC 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 number of permitted signs.

Subject property is zoned C-4 (Highway Commercial Zone). The Tax Parcel ID # is ED05-068.18-05-06.00. The owner of record is Dover Airport Plaza, LLC.

Representatives: Mr. Lynn Rogers, Rogers Sign Company; Mrs. Darlene Matthes, Rogers Sign Company; and Mr. Richard Pepper, Service Neon.

Ms. Cornwell presented the case.

Ms. Cornwell stated that the legal notice was published in the Delaware State News on September 6, 2009 and the public was notified in accordance with the regulations.

Mrs. Matthes handed out addition pictures of the project as this time.

Mr. Rogers stated that the new CVS being constructed on the corner of Route 13 and North Little Creek Road is being constructed at an odd angle that points to the corner. The way that the ordinance reads in the City of Dover is that square footage has a maximum on a minor arterial road and the way that CVS buildings are built, they design the buildings to get equal balance with square footage on each side. On a minor arterial road the ordinance allows for thirty-two (32) square feet which is basically the size of a piece of plywood on the side of a building that is over 3,000 square feet. The majority of the traffic that would head north on Route 13 and down North Little Creek Road would view the side of the building that would have the smallest signage on it. Our request today is a variance of sixty-six (66) square feet from the allowed thirty-two (32) square feet to make ninety-eight (98) square feet which is smaller than the 102 square feet allowed on the major arterial roadway.

Mr. Pepper presented a diagram of graphics and an explanation of what the sign would look like on the building at the requested size and what it would look like at the required size. There is a

similar building in close proximity to this project (Rite Aid) that has similar signage that we are requesting today.

Mr. Hufnal questioned when the Rite Aid was granted approval for their sign? Responding to Mr. Hufnal, Ms. Cornwell stated that she was not with the City when the Rite Aid was done; however, the code changed in 2001 and she would assume that it predates the changes in the code.

Also responding, Mrs. Townshend stated that Rite Aid refaced their sign because it used to be an Eckerd Drug Store and she believes that they were there prior to 2001.

Mr. Hufnal questioned if Rite Aid were to come in today for the same signage that they already have up, does that sign meet the requirements? Responding to Mr. Hufnal, Ms. Cornwell stated that some of the signs do not; however, because it is a corner they would be permitted two wall signs and they actually have five signs. The business fronts on Route 13 that has no maximum sign area; however, there are two requirements that it has to meet for percentages. The side that fronts on a minor arterial roadway or collector would permit thirty-two feet on the other side of the building.

Mr. Hufnal further questioned that since we do not know what the exact square footage is on the Rite Aid sign, would you be willing to compromise if we did not go along with the full ninety-eight (98) square feet sign and the requested thirty-two (32) square feet sign? Responding to Mr. Hufnal, Mr. Rogers stated that if they were to receive a negative response for their request, we would have to accept what the balance would be.

Mr. Pepper stated that there are some excessively large signs on the Rite Aid building that is competition for the type of signage we would be placing on this building. It places them in a unique situation where our competition from the area from the most direct flow we are getting for this store is much larger than ours. It will be much more visible and will take away any chance CVS would have for advertising value.

Mr. Senato stated with regards to the sign located to the right of the entrance on the north side of the property is ninety-eight (98) square feet. In coming up the highway and looking at the front of the store on DuPont Highway heading north, south, or east you have high visibility of the CVS pharmacy sign. Are you saying coming from the south heading north that they would not recognize the store if the sign was not there? Responding to Mr. Senato, Mr. Rogers stated that no, coming north the right hand reader is the smaller thirty-two (32) square foot sign that is viewed. The larger sign of ninety-eight (98) square feet located to the left of the entrance faces Route 13.

Mrs. Townshend stated that the applicant has presented some justification today during the public hearing that was not in the application. In terms of the Boards weighing of the issue, you would weigh everything that is part of the public record which would be the application, Staff report, and testimony during the hearing. You have heard some testimony that was not part of the application that can give you some justification.

Mr. Senato stated that although a lot of these companies are known as "box buildings" when he travels he does not look at signage. He recognizes the building.

Mr. Hufnal questioned that they are allowed three wall signs, two monument signs, and one pylon sign and you are only putting up three wall signs is this correct? Responding to Mr. Hufnal, Ms. Cornwell stated that yes the three building signs and they will be putting up a pylon sign and one monument sign as well that all meet code.

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. Hufnal moved to approve V-09-09; 11 N DuPont Hwy.: Dover Airport Plaza, LLC based on the fact that is does fit into the character of the neighborhood and with some testimony that they provided regarding the architectural balance and testimony today that was not previously provided would give us the choice to allow this variance to move forward, seconded by Mr. Senato for discussion purposes. After discussion Mr. Senato did second the motion.

Mr. Senato questioned that he is 50/50 on the vote and if he were to make a second on the vote does this indicate that he is in favor of a motion if he seconds it by either a yea or nay? Responding to Mr. Senato, Mr. Rodriguez stated that he thinks that it does if you second the motion it indicates your approval.

Mr. Senato further stated that he understands why the motion was made; however he does not want to set precedent and he feels in his opinion that the buildings are a box that people recognize and the area heading north, east, or south have high visibility and has a doubt whether they would have a financial hardship.

Mrs. Townshend questioned Mr. Rodriguez since we have three board members present today and it takes three to approve a variance does it take a majority of those present or a majority of the board? Responding to Mrs. Townshend, Mr. Rodriguez stated that it would be a majority of those present.

Mr. Hufnal stated that in conjunction with his motion to accept this, it is for the facts that he had stated plus the fact that they are really allowed more signage than what they are proposing and therefore, the difference would be, in his opinion, made up in this additional size.

Mr. Sheth requested that Ms. Cornwell take a roll call for the application on whether against or for approval. Mr. Hufnal, yes; Mr. Senato, no; Mr. Sheth, yes. By a 2-1 vote the motion was granted.

Applicant #V-09-10

561 N DuPont Hwy.: Mohammad Zubair has applied to the City of Dover Board of Adjustment requesting a variance from the requirements of Article 5 §4.3 and 4.7 of the *Zoning Ordinance* pertaining to the definition of 'sign area', size, height, and location of signage.

Subject property is zoned C-4 (Highway Commercial Zone). The Tax Parcel ID # is ED05-068.09-01-33.00. The owner of record is Mohammad Zubair.

Representatives: Mr. Greg Feld, K.C. Sign Company Representing the Owner of the Company.

Ms. Cornwell presented the application.

Ms. Cornwell stated that the legal notice was published in the Delaware State News on September 6, 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. Feld stated that what the owner of the property is proposing is a wall sign and a pylon sign. The wall sign they wish to place on the south side of the hotel would be placed between forty (40) and fifty (50) feet above height from the ground to the top of the sign which is above the thirty (30) feet allowed by ordinance. The pylon sign will replace an existing sign that is currently located on Route 13 in the same position and location and the issue with this sign is the depth of it is three (3) feet wide as opposed to the regulated two (2) feet.

Mr. Feld further stated that the owner believes that the wall sign would, if placed on the south side of the property, give them better visibility along DuPont Highway heading north than a sign on the front of the building which is right on DuPont Highway. They feel that a sign on the front of the building which would be within the ordinance would be redundant with the pylon sign. By the time you are upon this property while driving along DuPont Highway, you will already see the pylon sign and be past it. If placed up higher on the south side, you would have visibility for approximately two blocks down DuPont Highway heading north.

Mr. Hufnal questioned why they would need a three foot depth sign? Responding to Mr. Hufnal, Mr. Feld stated that the Holiday Inn manufactures them to certain specs and this is the width for any sign this size.

Mrs. Townshend stated that this is one of the areas that the proposed changes for the Sign Ordinance would on the principal arterial allow the thirty-six (36) inches between the sign faces so Staff is already on record through our draft ordinance in supporting this concept. The issue is that if it does not pass as such, you could in fact set a precedent.

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 deny V-09-10; 561 N DuPont Hwy.: Mohammad Zubair as he believes that it might set a precedent and that there is no exceptional difficulty with the viewing of the signs that are existing within the building itself. There was no second received on this motion so the motion did not carry and failed.

Mr. Hufnal moved to approve V-09-10; 561 N DuPont Hwy.: Mohammad Zubair and that the two step approval for their request; the approval of the height of the sign on the south side of the building would not be setting a precedent as we have approved previous signs in the past and second, he would approve the variance for the depth of the pylon sign for their request of three feet as they have come down in the height of the sign by reducing it by half and they have also reduced the pylon sign square footage by approximately forty (40) feet, seconded by Mr. Sheth. The motion carried with a 2-1 vote with Mr. Senato against.

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

Meeting adjourned at 10:16 AM

Sincerely,

Diane Metsch
Secretary

City of Dover

Board of Adjustment

October 21, 2009

V-09-11

Location:	323 Cecil Street
Applicant/Owner:	Marble Management, LLC
Application Date:	September 11, 2009
Present Zoning:	RG-1 (General Residence Zone)
Present Use:	Three Single Family Residences
Reviewed By:	Janelle M. Cornwell, AICP

Project Description:
The applicant is requesting variances from the *Zoning Ordinance,* Article 4, Section 4.2 Zoning Bulk and Parking Regulations. Specifically, they are requesting a variance from the front yard setback, rear yard setback, lot coverage, lot size, lot width, lot depth and off street parking.

	Permitted by Code	Request
Front yard Setback	20 ft.	9.5 ft.
Rear yard setback	30 ft.	9.5 ft.
Lot coverage	40%	Up to 50%
Lot depth	100 ft.	50 ft.
Lot width	60 ft.	44 ft. minimum
Lot size	7,500 SF	2,200 SF minimum
Off street parking	2	0

The applicant has stated that "the following variance requests are being made so that this parcel can be subdivided into three lots, each containing one of the existing houses. This will change the present use of one lot containing three rentals units into three separate lots which can be sold for individual ownership, increasing the value of the homes and neighborhood."

The applicant has also stated that "this is an older neighborhood, in which many of the homes were built prior to existing City zoning requirements. Many of the lots presently do not conform to current zoning, including this lot. Three primary residences on a 50' by 144' lot does not conform. These requests will legitimize current conditions and allow for the future subdivision and sale of these homes."

Adjacent Land Uses
The adjacent properties are a mixture of commercial and residential uses. The properties to the west across North Queen Street are C-2 (Central Commercial Zone). The properties to the east across the alley are zoned C-2 (Central Commercial Zone) and RG-1 (General Residence Zone). The properties to the north are zoned RG-1 (General Residence Zone). The properties to the south across Cecil Street are zoned RG-1 (General Residence Zone).

Code Citations

Section 4.2. [RG-1 zones].

Bulk and parking regulations for general residence zone (RG-1) [are as follows] (see also article 12, definitions; article 5, supplementary regulations; and article 6, off-street parking, driveways and loading facilities):

	One-Family Dwellings Detached
Minimum required:	
Lot area per dwelling unit (sq. ft.)	7,500
Lot width (ft.)	60
Lot depth (ft.)	100
Front yard (ft.)	20
Rear yard (ft.)	30
Off-street parking spaces/DU	2
Lot coverage	40%

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 narrow width of the lot in which three homes were built in approximately 1920, causes a unique problem. As shown above, they are not in compliance with current zoning codes and regulations. These homes were built prior to current zoning codes and regulations. They front along Cecil Street and not on Queen Street. In recent years, the homes act as rental units to "absentee landlords" (landlords who do not occupy one of the homes on the site). In order to subdivide the three homes into three separate lots, these several variance requests are necessary to allow for the legal sale of the homes. Aesthetically, these three homes are spaceed evenly across the lot. Each home is approximately the same size, style and age. This will remove the homes from being exclusive rental units to three separate homes available for affordable ownership. This will increase the values of the neighborhood and encourage the "pride of ownership" of this property. The city tax base for this lot will potentially triple. The current homes have Cecil Street addresses, numbers 323, 325, and 327. The tax map parcel is shown as an un-numbered Queen Street address. Further explanation of the requested variances are listed as follows:

1. Minimum lot width is 60 feet. Requesting 44 foot minimum. Expected lot widths after subdivision would range between 44-50 feet.

   The current lot is 50' by 144' with three existing single family residences. In order to divide the three homes into three lots along the 144 feet of frontage along Cecil Street, which the homes no face, a 44' to 50' minimum would be required.

2. Minimum lot depth is 100 feet. Requesting lot depth of 50 feet.

   The existing homes were building facing Cecil Street, resulting in a current lot depth of 50 feet. This is a pre-existing condition, as the homes were built around 1920.

3. Minimum front yard setback is 20 feet. Requesting front yard setback of 9.5 feet.

   The existing conditions front setback along Cecil Street is 9.9 feet. The request for 9.5 feet is to accommodate any possible minor changes to the exterior to the existing homes, i.e. new siding, wall repair, etc.

4. Minimum rear setback is 30 feet. Requesting rear setback to be 9.5 feet.

   The existing condition rear setback is 9.57 feet. The request for 9.0 feet is to accommodate any possible minor changes to the exterior of the existing home, i.e. new siding, wall repair, etc.

5. Minimum lot coverage is 40%. Requesting lot coverage of 50%.

   The existing condition is 35% lot coverage. Although no new construction is anticipated, this will allow for possible future construction.

6. Minimum off street parking is two (2) cars. Requesting no off street parking.

   The existing condition is that there is no off street parking available. The request is to maintain that current condition of no off street parking.

7. Minimum lot area per dwelling unit is 7,500 SF., requesting minimum 2,200 SF.

   The existing condition is total lot area of 7,200 SF on which exist the three dwelling units. This results in an existing condition of 2,400 SF per dwelling unit. Requesting 2,200 SF per dwelling unit for flexibility.

2. Applicant's responsibility for conditions:
   No. These conditions were in existence prior to the city's current zoning regulations. These homes should have been subdivided at the time of their construction. Since they were not, the existing conditions of these homes put them out of compliance with current zoning regulations. (Example: they were built too close to setback lines.) This hardship was not created by the current applicant.

3. Deprivation of all reasonable use of the property:
   Yes. Without the variance approvals, the property cannot be sold as three separate single family homes. In the current zoning situation, City Regulations require one single family home per lot. These three units can only be used as three rentals or one primary residence and two rentals. Individual sale of these homes is not now allowed. This restricts the sale to individuals of firms who primarily specialize in rental properties. Typically, these individuals or firms would be "absentee" landlords, who, as stated above, would not live in one of the houses on the site. These zoning variances are necessary to legalize a subdivision of the homes, thereby allow individual sale of each homes an encouraging home ownership. These homes as individual lots will be more affordable and easier to maintain.

   The hardship is that these homes cannot be sold as separate units. They can only be sold together as rental units. The requested variances will allow for the subdivision of the three homes so that they can be sold separately. This is impossible under the present conditions.

4. Character of the neighborhood:
   Yes. The only change would be the legalization of the homes for sale as individual residential lots. The current use would not change. Home ownership typically raises the standard and character of a neighborhood, despite the non-conformance of the lots. As stated, this is an older neighborhood with homes built long before current zoning requirements, i.e., other properties with one block south do not meet current zoning requirements for front and side setbacks and off street parking.

   The three homes lie at the end of a block, one home at the corner of Queen Street and Cecil Street, one home at the corner of Cecil Street and an alley, and one home fronting on Cecil Street. These homes are situated along the existing streets in keeping with character and nature of the neighborhood. The homes are setback similar to other homes along Queen Street.

   The current use of the property is to remaining the same-residential. These variance requests are for the legal subdivision of the three homes into three lots.

   See Exhibit A which is a color aerial photo map showing boundary lines and arrows denoting the apparent non-conforming boundary lines and setbacks.

Staff comments and recommendations:

1. Physical Conditions:
   Yes. The parcel is considered a legal non-conforming lot. The lot does not meet the lot depth of 100 feet. There are also three (3) existing single family dwelling units located on the one parcel. The Zoning Ordinance permits only one dwelling unit per lot. The site does not currently meet the front yard setback. The houses encroach into the front yard setback between 9.92 - 10.15feet. The site does not currently meet the rear yard setback. The houses encroach into the rear yard 20.03 - 20.43 feet. The parcel does not meet the minimum square footage of 7,500 SF. The current parcel is 7,200 SF. The

parcel does not have any off-street parking. This is an existing parcel with three (3) existing houses on the parcel and the houses do not meet a number of the zoning bulk and parking regulations.

2. Applicant's responsibility for conditions:
   No. The parcel has existed with three (3) houses on it for a long time.

3. Deprivation of all reasonable use of the property:
   Yes. Denial of the variance would deprive the applicant of reasonable use of his property. The parcel currently has three (3) single family dwelling on the one parcel. This limits the use of the property to rental properties. Even if the property owner occupied one of the houses the other two (2) houses could only be utilized as rental properties.

4. Character of the neighborhood:
   Yes. There are a number of properties within the area that are considered legal non-conforming with regards to lot size and setbacks. The proposed variances would allow for a subdivision to create parcels that would be smaller than some of the other parcels in the area. The front yard setback is similar to other front yard setbacks in the neighborhood. There are a number of residential properties within the area that do not have off-street parking. Approval of the variance would not negatively impact the long term character of the area.

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

- The physical attributes of the property, including size, shape, and that there are three (3) existing single family houses on the one lot create an exceptional practical difficulty as the only use is as rental properties, and the only way to come into compliance with the *Zoning Ordinance* is to demolish the buildings and the lot still would not be in compliance with the regulations.
- The houses exist and do not currently meet the setback requirements for front yard and rear yard.
- The lot depth, width, and square footage, while being smaller than the other parcels in the area, would be in keeping with the small parcels that are in the area.
- Even if the house were removed the parcel would still not meet the zoning requirements for lot size and front yard (as it is a corner lot and has two (2) front yards).
- A number of the parcels in the neighborhood do not have off-street parking.
- The ability to increase the lot coverage would allow future property owners to possibly add a shed or driveway. It would take small additional square footage to put the proposed parcels over the 40% lot coverage requirement.

EXHIBIT 'A'

Map



Street Labels

Dover Boundary

Dover Parcels

DOVER_PHOTOS 2007
Red: Band_1
Green: Band_2
Blue: Band_3

City of Dover

Board of Adjustment

October 21, 2009

V-09-12

Location:	575 North DuPont Highway
Applicant/Owner:	William J McPoyle, Sr.
Application Date:	September 11, 2009
Present Zoning:	C-4 (Highway Commercial Zone)
Present Use:	Vacant building
Reviewed By:	Janelle M. Cornwell, AICP

Project Description:
The applicant is requesting a variance for the legal non-conforming pylon sign on a Principal Arterial in a Commercial Zone as required in the Supplementary Sign Regulations (Article 5§ 4.10). Specifically the applicant is requesting a variance to alter a legal non-conforming sign. The proposed changes are for the relocation of the sign two (2) feet to the north.

The applicant has stated that "a pylon sign that has been in use for the past 15-20 years or more was discovered in a purchase closing to be 18 inches on the neighboring lot. I wish to move this sign on my newly purchased property. Note: the closing was 9-11-09 and only then was it discovered"

The applicant has also stated that "I have a contract written first on 9-3-09 by R&R Realty to rent my newly purchased property. At that time the sign was sold as being part of the property. This potential renter (State Farm Insurance Agent) planned on the signage and is part of the contract. This sign is in excellent condition and served other companies well over the years. I hope to continue this tradition of usage."

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) and are subject to the SWPOZ (Source Water Protection Overlay Zone). The properties to the east are R-20 (One Family Residence Zone) and are subject to the SWPOZ (Source Water Protection Overlay Zone). The properties to the west across North DuPont Highway are zoned C-1 (Limited Commercial Zone)

and C-4 (Highway Commercial Zone) and are subject to the SWPOZ (Source Water Protection Overlay Zone).

Code Citations

4.10 *Non-conforming signs*.

A. *Exclusions.* Non-conforming signs which are within ten percent of compliance of any height, area or location requirement and which conform to all other provisions of this ordinance shall be considered legal signs for the purposes of these regulations, except as provided in [sub]sec. 4.10.B.5 below.

B. *Removal or compliance required.* Nonconforming signs shall be removed from the premises or otherwise made to comply with these regulations in the following instances:

1. When there is renovation to more than 75 percent of the exterior of the principal building measured in square feet of exterior wall surface area, or expansion of more than 20 percent of the floor area of the principal building measured in square feet of floor area on the premises on which such nonconforming signs are present, except that freestanding signs that are nonconforming with respect to front setback requirements shall not be made to be set back further than the front of the principal structure. When, within any given two-year period, individual renovation projects involving less than 75 percent of the building exterior and/or individual building additions involving less than 20 percent of the floor area of the principal building on the premises would in aggregate exceed the 75 percent renovation and/or 20 percent expansion thresholds set forth herein, all such non-conforming signs shall be brought into conformity with these regulations or shall be removed from the premises.

2. Prior to the issuance of any permit for the placement of any additional signage on the property. No new signs of any type shall be added to the property until the nonconforming sign is removed.

3. Nonconforming signs (including all supporting structures and mounting hardware) which have been abandoned shall be removed from the premises or otherwise made to conform within one year from the date of abandonment. Refacing the sign in accordance with other requirements of this ordinance does not absolve an owner from complying with this [sub] section. In certain instances where it is evident that the reoccupation or reuse of a premises which contains an abandoned non-conforming sign is imminent, the city planner may grant an extension of time within which to reestablish the use of such nonconforming sign.

4. When there is a change of use to a property where nonconforming signs exist, such signs shall be brought into conformity with these regulations or shall be removed from the premises.

5. Any nonconforming sign which has been removed from the premises shall be considered discarded, and replacement shall constitute a new sign, and require new permits.

C. *Notification and responsibility.* It shall be the responsibility of the owner of record of such property to cause the removal of such nonconforming signs in accordance with these provisions. When any of the above-listed conditions exist, the city planner is authorized to issue written notice by certified mail to the owner of record of such property,

> stating that such signs shall be removed within two calendar weeks of the date of receipt of the written notice. In cases where signs are determined to be unsafe or present a hazard, the city planner may order their removal in a shorter period of time. Failure to comply with these regulations, after due notice, shall be deemed a violation of this ordinance and [is] punishable in accordance with the provisions of article 8, section 4 of this ordinance. In addition, in the event that compliance is not achieved within the stated period, the city planner may remove or cause to be removed from the premises any such signs in violation of this ordinance. All expenses incidental to such removal shall be charged to the owner of record of such property and shall constitute a lien upon such property.

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. This sign is a landmark for this property and enjoyed by prior owners for some 20 years or so.

   This sign sits back enough to present an obstruction to oncoming traffic on route 13 in both directions. The neighboring owner lot south of 575 N. DuPont was never given any reason to believe this sign was on their property and to move it approximately 2 feet would not affect their business.

2. Applicant's responsibility for conditions:
   This sign on my neighbors property makes it a potential liability to me. Any unfortunate event caused by this sign would fall back on me. I need this sign on my property to limit my liability and to adequately advertise my future tenants business.

3. Deprivation of all reasonable use of the property:
   Please review the contract enclosed. State Farm Insurance likes this property as a tenant because of the large pylon sign to advertise his business. My contract was presented 9-3-09 and discovery to the sign not on the property was 9-11-09. I will lose a tenant at $2,700 a month rental. Please note their 9-14-09 follow up agreement to support my facts. I need this sign to bring in a strong tenant.

4. Character of the neighborhood:
   Yes. This sign has served the existing neighborhood well for the past 20 years or so.

   There is no reason why this sign should not be allowed to move 2 feet and cause any problems. My neighbor to the south of 575 N. DuPont is a hotel and does not have any problem with this sign. It was always thought to be on my property prior to 9-11-09.

Staff comments and recommendations:

1. Physical Conditions:
   The sign is located on the property to the south. The sign has been in this location since the sign was installed. All previous owners have utilized the sign without known issue. The movement of the sign may impact one of the required parking spaces on the site.

2. Applicant's responsibility for conditions:
   No. The sign has existed in this location since it was installed.

3. Deprivation of all reasonable use of the property:
   No. The current location does not impact reasonable use of the property. The sign in its current location may be utilized. This sign has been in this location since the sign was installed. The sign is considered legal non-conforming. A notice was sent to the former property owner stating that the sign was considered abandoned as the building had been vacant for a number of months. The letter indicated that the sign needed to be removed and at a minimum covered over. A request was received on September 11, 2009 to permit the legal non-conforming sign to remain as the site would be eminently reoccupied. This request was granted.

4. Character of the neighborhood:
   There are other pylons signs in the area, some of which would be considered legal non-conforming (with respect to setback and possibly sign area). This is a unique situation as the sign was installed on a different property; however, it has existed that way for a number of years without incident.

Recommendation:
Staff recommends approval of the variance, with the caveat that the relocated sign should meet the required set-back of 31 feet from the right-of-way, for reasons as follows:

- The location of the sign on an adjacent property could create an exceptional practical difficulty relating to the new property owner's long-term use of the sign.
- The sign is currently located on an adjacent property and is not on the property it advertises. This could be considered off premise advertising which is prohibited by the *Zoning Ordinance*.

Advisory Comments:
- This could set a precedent for other legal non-conforming signs.
- If the variance is approved, the sign would be considered a legal non-conforming sign if the sign area exceeds the allowable sign area. The applicant did not provide information regarding the sign area of the existing sign. Future improvements to the site may require compliance with the sign regulations in this regard.