AGENDA
CITY OF DOVER BOARD OF ADJUSTMENT
WEDNESDAY – September 16, 2009 9:00 AM – CITY HALL

DRAFT
ROLL CALL

APPROVAL OF AGENDA

APPROVAL OF MINUTES OF July 15, 2009 MEETING

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.

Applicant #V-09-08
879 N DuPont Hwy.: Robert Cocozelli 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 Cocozelli.

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.

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.

ADJOURN
29 Del.C. § 10004(e)(2)

CITY OF DOVER
BOARD OF ADJUSTMENT
July 15, 2009

The Regular Meeting of the City of Dover Board of Adjustment was held on Wednesday, July 15, 2009 at 9:27 AM (Audio difficulties) with Chairman Sheth presiding. Members present were, Mr. Sheth, Colonel Ericson, and Dr. Goate'. Mr. Senato and Mr. Hufnal were absent.

Staff members present were Mrs. Townshend, Mr. Albert, Ms. Cornwell, Ms. Metsch and Mr. Rodriguez. Also present was Mr. Adam Perza, Mr. John Paradee, Mr. Arthur Geary, and Mr. Matthew Phillips.

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

Dr. Goate' recommended moving Applicant #V-09-06 in front of Applicant #V-09-05.

APPROVAL OF AGENDA
Dr. Goate' moved to approve the agenda as amended, seconded by Colonel Ericson and the motion was unanimously carried.

APPROVAL OF THE REGULAR BOARD OF ADJUSTMENT MEETING MINUTES OF JUNE 17, 2009
Colonel Ericson moved to approve the regular Board of Adjustment meeting minutes of June 17, 2009 as submitted, seconded by Dr. Goate' and the motion was unanimously carried.

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

NEW BUSINESS

Applicant #V-09-06
545 South State Street: Adam Perza has applied to the City of Dover Board of Adjustment requesting a variance from the requirements of Article 4 §4.1 of the *Zoning Ordinance* pertaining to the rear-yard setback and lot coverage.

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

Representative: Mr. Adam Perza, Property Owner.

The legal notice was published in the Delaware State News on July 5, 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.

Mrs. Townshend presented an overview of the application.

Mr. Perza presented his case.

Mr. Perza stated that they spoke with their neighbors on State Street and Elm Terrace and had them sign statements which he handed out to Commission members at this time.

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

Dr. Goate' moved to approve Applicant #V-09-06; 545 South State Street: Lands of Adam and Kasey Perza, seconded by Colonel Ericson and the motion was unanimously carried.

Applicant #V-09-05
1404 Forrest Avenue, Kent Eight Plaza: Halpern Eye Associates 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 SC-1 (Shopping Center Zone) and is subject to the COZ-1 (Corridor Overlay Zone). The Tax Parcel ID # is ED05-076.10-02-12.00. The owner of record is the Stoltzfus-Mast Partnership.

Representative: Mr. John Paradee, Prickett, Jones and Elliott; Mr. Arthur Geary, President, Halpern Eye Associates; and Matthew Phillips, Phillips Sign Company.

Ms. Cornwell presented the application.

Mrs. Townshend stated that the legal notice was published in the Delaware State News on July 5, 2009 and the public was notified in accordance with the regulations.

Mrs. Townshend further stated that she would note that the property owner has not yet signed the application; therefore, if the variance is granted, Staff will need that signature prior to issuance of a sign permit.

Mr. Sheth questioned if there was any member of the Board with a conflict of interest? Mr. Sheth disclosed that Mr. Paradee is his attorney. It was determined that there would not be a conflict of interest with any Board member.

Mr. Paradee stated that this is an application for an area variance as opposed to a use variance. He would respectfully state that Staff has gotten the legal statute wrong in the Staff report. The standard that they have set forth is not the standard recognized for area variances under Delaware law. The standard as annunciated by the Delaware Supreme Court and a case know as "Board of Adjustment of New Castle County vs. Quick Check Realty" states that "the standard is whether a literal interpretation or application of the applicable zoning regulation results in Exceptional Practical Difficulties to the applicant."

Mr. Paradee further stated that in applying that test, this board must weigh four (4) factors. One,

the nature of the zone where the property lies; two, the character and uses of the immediate vicinity; three, whether if the restriction upon the applicants property were removed, such removal would seriously affect neighboring properties and uses; and four, whether if the restriction is not removed, the restriction would create unnecessary hardship or Exceptional Practical Difficulty for the applicant in relation to its effort to make normal improvements in the character of its use of the property which is a permitted use under the ordinance.

Mr. Paradee further stated that Delaware courts have previously held on numerous occasions that Economic Hardship is a factor which may justify granting an area variance. The inability to improve one's business or stay competitive as a result of area limitations is a legitimate Exception Practical Difficulty which justifies the granting of a variance. Such practical difficulty, courts have stated, is present where the requested dimensional change is minimal and the harm to the applicant if the variance is denied would be greater than the probable affect on neighboring properties if the variance is granted. At this time, he submitted these five cases for consideration.

Mr. Paradee further stated that it will be their position that, under the test annunciated by the Quick Check Case for area variances, this application satisfies the standard. At this time, he requested that he be able to walk Mr. Geary through some testimony that will help demonstrate this.

Mr. Paradee further stated that he would like to talk about the nature of the zone where the property lies. The Staff report notes that the subject property is zoned SC-1 for shopping center use. The property to the west is zoned C2-A, the property to the east is zoned C-3 and the properties to the north are zoned C2-A and SC-2.

Mr. Paradee asked that Mr. Geary step up to the microphone for questioning.

Mr. Paradee asked Mr. Geary by showing him the tax map for this area that will be submitted for the record, the subject property is designated with a hatch mark, is that correct? What is directly west of the subject property? Also, what is located to the east of the property and directly across the street from this property? Mr. Paradee also questioned if there was anything located between the apartments and subject property. Responding to Mr. Paradee, Mr. Geary stated that yes the map was designated with the hatch mark and there is a McDonald's, a Wawa, and a WSFS bank located to the west. Located to the east of the property is a Valero Gas Station. Located across the street are a bank and the Greentree Shopping Center with Rite Aid and Super Fresh, as a part of the strip mall. Located to the northwest are apartments and townhouses. In between there is a retention pond on the corner; however, the apartments that are located along Route 8 are directly opposite the Wawa and WSFS bank. There is a buffer located behind their property and the residential use.

Mr. Paradee further stated that the Staff Report indicates that there are some properties zoned R-8 located behind this property. Would the residents of these properties be able to view the sign at the front of your building? Responding to Mr. Paradee, Mr. Geary stated that no they would not.

Mr. Paradee requested that the tax map be entered into the record.

Mr. Paradee further questioned Mr. Geary on how he would characterize the nature of the zone where the subject property lies and the uses in the immediate vicinity? Responding to Mr. Paradee, Mr. Geary stated that it is a commercial area with retail/commercial uses.

Mr. Paradee further questioned if they were permitted to have the sign for which they have applied, do you believe that it would affect neighboring properties in anyway? Responding to Mr. Paradee, Mr. Geary stated that no it would not.

Mr. Paradee further questioned if Mr. Geary recalled what use was made of this location prior to leasing the site and are you familiar with what the sign on the building looked like at the time they occupied it? Responding to Mr. Paradee, Mr. Geary stated that it was a Harrington Real Estate Office and he is familiar with what it looked like.

Mr. Paradee submitted for the record two (2) photographs. The first photograph shows the subject property just after the Harrington Real Estate sign was removed and you can still see the outline of that sign. The second photograph shows a sign that they have proposed. There were also two (2) additional photographs. One is of the large marquee located on the shopping center where the Dairy Queen and Great Clips stores are located and the other large marquee store where Talbots is located.

Mr. Paradee stated that the reasons these photographs are being submitted is to show you what exists at the other adjacent locations and what existed on this marquee previously. Mr. Paradee resumed questioning Mr. Geary; the sign that you have proposed is it larger, the same size, or smaller than the former Harrington Realty signs? Responding to Mr. Paradee, Mr. Geary stated that it is smaller than the Harrington Realty sign.

Dr. Goate' questioned how much smaller their requested sign was from the Harrington Realty sign? Responding to Dr. Goate', Mr. Paradee stated that the sign they are proposing is sixty-nine (69) square feet and asked that Mr. Phillips from Phillips Sign Company come forward and address this question.

Mr. Phillips stated that the sign that is proposed would be smaller than the Harrington Realty sign. The fascia is nearly twenty-two (22) feet wide. The proposed sign would be approximately thirty (30) square feet smaller than the previous sign.

Mr. Paradee further questioned Mr. Geary if he could describe for the Board members the size of the marquee for your site relative to the other sites in the shopping center? Responding to Mr. Paradee, Mr. Geary stated that they are one of two anchors so they have a very large façade by comparison to the other tenants. If you were to compare it to the Great Clips or the Dairy Queen, their façade is approximately a quarter of the size of our façade. According to Code, we are only permitted the same amount of square footage for signage that they currently have.

Mr. Paradee further questioned Mr. Geary how he believed the size of the façade relates to what size sign should be permitted? Responding to Mr. Paradee, Mr. Geary stated that there are a couple of issues. One is the recognizable ability and visibility of it from someone driving by. Second, he feels that it will look ridiculous because of what the current Code would limit it to. It would be out of character with other signs in this area and on the facade he believes that it may

be detrimental to their business because it would make it appear that we were not financially able to put up an appropriate sign for the façade that we have.

Mr. Paradee further questioned Mr. Geary in the course of the business that is conducted at your site is it fair to say that you rely on the visibility of your location? Could you describe the types of activities that occur at this site? Responding to Mr. Paradee, Mr. Geary stated that yes absolutely. It is retail to an extent as optometry is both a professional business and retail business. This is a new location for us (located on the western edge of town) and we made the investment primarily to draw new patients to us from west of Dover and across the border into Maryland. Being able to see and find the location and be visible for those commuting from out of state is very important to us.

Mr. Paradee further questioned Mr. Geary if he could give an indication of what percentage of their business is new business drawn in by marketing and visibility efforts? How much has been invested at this site so far? Responding to Mr. Paradee, Mr. Geary stated that it would be approximately sixty (60) percent. They have invested $150,000 in lease improvements and approximately $40,000 in equipment and inventory.

Mr. Paradee further questioned Mr. Geary, would a smaller sign than what has been proposed make it more difficult for you to improve your business or stay competitive? Responding to Mr. Paradee, Mr. Geary stated that it absolutely would make it more difficult to improve and/or stay competitive. (This concluded questioning of Mr. Geary by Mr. Paradee)

Mr. Paradee wrapped up his discussion by stating that as he believes, that the testimony has indicated, this application does satisfy the standards set forth in the "Quick Check Case." The nature of the zone where the property lies is predominately commercial and the character and uses of the immediate vicinity are consistent with the application. More critically if this application is denied, we submit that the applicant would suffer economic hardship because it would make it more difficult to improve the business and stay competitive. They do rely substantially on their visibility in order to generate business. If you look at the façade, he feels it is critical that you understand that this is a large façade. If you place a small sign on this large façade, we believe that it would be out of character with the shopping center and would in fact look somewhat ridiculous because you would have a large facade like Talbots, Great Clips, and Dairy Queen with these larger signs and then Halpern Eye Care with a much smaller sign. We believe that it is a minimal dimensional change that we are asking for and the harm to the applicant, if the variance is denied, would be greater than the probable affect on neighboring properties if the variance is granted. The residents in this neighborhood have been looking at the Harrington Realty sign which was bigger than what they are proposing for years now. This would have no adverse affect on the neighborhood.

Mr. Paradee further stated that in closing he would respectfully submit that they satisfy the criteria of the "Quick Check Case" and would respectfully request your favorable consideration.

Colonel Ericson stated that he is having trouble with the economic hardship for this application. How do most people chose to get help with their vision, they drive down the street until they find a sign and pull in, is that what you are telling me? Responding to Colonel Ericson, Mr. Geary stated that a percentage of them do.

Colonel Ericson further stated that he found this hard to believe. Normally with vision it comes on gradual and most people will look in the telephone book or their friends for recommendations. It would seem to him that a sign would play a small role except when you get there to find the building. Responding to Colonel Ericson, Mr. Geary stated that there is also a retail aspect to their business as well so people who may already have scripts or have broken their glasses, frames wore out, or lenses have scratched, will come into our location for services.

Colonel Ericson further stated wouldn't people normally go back to where they bought the glasses to begin with? Responding to Colonel Ericson, Mr. Geary stated that no not necessarily.

Colonel Ericson further asked for the economic hardship to be explained again because as he sees this, the signs all along here are easily visible. You also have another sign on this property located closer to the street. Responding to Colonel Ericson, Mr. Geary stated that all of the people in this mall share a pylon sign.

Colonel Ericson further questioned what the size of their sign is compared to the other signs located on the pylon sign? Responding to Colonel Ericson, Mr. Geary stated that their sign would be similar to Talbots sign in size.

Also responding to Colonel Ericson, Mr. Paradee stated that they are not standing here suggesting that 100% of the business is driven by this sign, clearly it is not. People who come into this business, some are existing patients and he would agree that people who make decisions about where they are going to go for eye care is based on other things rather than driving by and seeing a sign and thinking that is where I want to go. The testimony is that a significant portion of the business does come from people who are able to realize that there is a new Halpern business location here. A significant part of their business is retail and driven by people who were not previously familiar with the business and now realize where the business is now located if they drove by and saw the sign. Two critical points are if the sign is smaller it will adversely affect their business and second, if you look at the size of the facades, putting a much smaller sign on this size façade will make it look out of character.

Colonel Ericson further questioned whether the Diary Queen sign was thirty-two (32) square feet? Responding to Colonel Ericson, Ms. Cornwell stated that this sign is thirty-five (35) square feet making it a legal non-conforming sign as is the Talbots sign. The Talbots sign is seventy (70) square feet; however, it predates the 2001 sign regulation updates making it a legal non-conforming sign. The next sign would have to come into conformance with the regulations as was with the former ERA sign it was a legal non-conforming sign.

Colonel Ericson further stated to summarize this shopping center was constructed prior to the uniformed sign permits. City Council voted on thirty-two (32) square feet as the maximum for square footage for signs. Any new businesses that moved in after that had to conform to the new City Ordinance. Now what the contention is, do we continue meeting the City rules and regulations or do we make exceptions based upon non-conforming signs in the past?

Mrs. Townshend stated that with regards to the applicant's testimony, she feels that the Board is aware that our Code still reads as to the hardship; however, when Staff evaluates the applications we do evaluate them by the new legal precedence. Staff's contention in this matter is that there

is no Exceptional Practical Difficulty. The applicant mentioned that they are not adjacent to residential property and that they should not be held to that standard. She would note that in the signage table non-residential uses that are in non-residential districts and not adjacent to residential uses are still required to conform to the thirty-two (32) square feet if they are on a minor arterial which this is. The idea of conformance to the character of the area, the intent of the sign regulations when they were changed were to, over time, require non-conforming signs to come into compliance, improving the character of the area. To grant a variance because it is in a commercial area, essentially negates the purpose of certain provisions of the Sign Regulations when they were amended in 2001. This was a significant lengthy process that involved members of the business community and other segments of the community to come to somewhat of a consensus on how signage can be improved; however, still meeting the needs of the businesses.

Mrs. Townshend further stated that if they were one hundred percent surrounded by commercial businesses, the standard would still be the thirty-two (32) square feet. They are not asking for a minor increase over that. They are asking for essentially more than double. This does not mean that you cannot see this sign from the road.

Colonel Ericson stated that when he looks at a photograph taken from across the street through several lanes of traffic at the building, the Glamour Nails which meets criteria is easily seen as well as the sign for Bank of America. He feels that if they put up a thirty-two (32) square feet sign over Halpern's business it would also be seen. There is also a larger sign located on the pylon sign so he does not understand the economic hardship that would be present in this case.

Responding to Colonel Ericson, Mr. Paradee stated that there is one critical fact. He would respectfully disagree with Mrs. Townshend about whether or not the ordinance makes sense in this particular instance. The key fact is the façade is four times the size of the other facades out there and we are the same size as Talbot's. All of the other locations that have been required to come into compliance have much smaller facades. In keeping with the character of the neighborhood and the intent of the *Ordinance* they have signs that are commensurate with the size of their locations. What we are suggesting is that we have a façade that is four times the size and there has not been any other cases like this come before you where you have a façade that is so big that it is forced to comply with this *Ordinance* and have such a tiny sign relevant to the size of the façade.

Mr. Geary stated that he believes that this Board is focused on the professional side of their business. Fifty-five (55) percent of our revenue is generated on the retail side as we compete with people like Lenscrafters, Sears, and Boscov's. One of our competitive advantages is to be more convenient in more locations and in order for us to do that, they have to know where we are.

Mrs. Townshend stated that for the new location grand opening, they could apply for a temporary banner that could be up for thirty (30) days when the location opens. If it is a matter of letting them know they are there and that it is a new location, there are ways to do that that does not require a variance or permanent signage.
Dr. Goate' questioned if they really believed that the size of the sign and the façade for what is proposed would not stand out in this area? Responding to Dr. Goate', Mr. Paradee stated that this is their contention that it is not going to stand out because it is going to be dwarfed by the

façade. You may have a sign that is the same size as the other signs in the shopping center; however, they are on much smaller facades. This is an anchor store and it deserves to have an anchor sign.

Colonel Ericson stated that in looking at the Glamour Nails sign, he superimposed it into this façade. It is certainly large enough so that he can read what store is there from the street visually he does not see any difference. Responding to Colonel Ericson, Mr. Paradee stated that they do not dispute that you will not be able to read it; however, it will be out of proportion to the façade and more difficult to read then it should be.

Mr. Sheth questioned whether Mr. Rodriguez, City Attorney was comfortable with providing suggestions or do you need time to study these five cases? Responding to Mr. Sheth, Mr. Rodriguez stated that he was comfortable and feels that Mr. Paradee has certainly outlined the law; however, the Board is well aware of the law and has decided many cases that do not deal with hardship requirements; however, deal with Exceptional Practical Difficulties and has been outlined by Staff and your submittals.

Mrs. Townshend stated that Mr. Paradee talks about the issue of the facades and the architecture of this particular shopping center. Article 5, Section 4.8 addresses Unified Campuses and Complexes and allows for an applicant of a shopping center to submit a plan to the Planning Commission to allow for signage that specifically addresses that shopping center. This would allow the Planning Commission flexibility on some of the square footage issues. She is concerned with granting a precedent to replace non-conforming signage with non-conforming signage when the code is clear on what we are suppose to do. If the property owners would apply to the Planning Commission for the Unified Comprehensive Signage Plan we could set the square footage through that, which is appropriate for this property without necessarily causing an issue where a precedent may be set by approving non-conforming signs.

Mr. Paradee stated that they would be willing to talk to Mr. Mast, Property Owner, regarding pursuing a Unified Sign Plan. For the record he would submit that if Talbot's leaves and someone else goes in there, they also should have a sign that is commensurate with the size of their façade and therefore, he is not too concerned about a precedent. There are larger facades and smaller facades at this site and requiring all of them to have the same size sign does not seem to make sense.

A discussion was held on whether to table the application. Mr. Paradee stated that tabling the application would give them time to meet with Staff to consider whether a Unified Sign Plan would work; however, they do have a grand opening scheduled for August 19, 2009 which puts a time crunch on them.

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

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

Colonel Ericson moved to table Applicant V-09-05; 1404 Forrest Avenue, Kent Eight Plaza: Henry Mast, seconded by Dr. Goate' and the motion was unanimously granted with a 3-0 vote with Mr. Senato and Mr. Hufnal absent.

Mrs. Townshend stated that the pylon sign is also legal non-conforming so if significant changes were made to the shopping center, the pylon sign could also be required to be removed. The Unified Sign Plan could allow the Planning Commission to keep it all.

Dr. Goate' moved to adjourn the meeting, seconded by Colonel Ericson and the motion was unanimously carried.

Meeting adjourned at 10:23 AM

Sincerely,

Diane Metsch
Secretary

City of Dover

Board of Adjustment

September 16, 2009

V-09-07 Lands of Luther Towers I at 430 Kings Highway

Location:	430 Kings Highway
Applicant/Owner:	Lutheran Senior Services of Dover
Application Date:	August 17, 2009
Present Zoning:	RG-5 (General Residence Zone for Mid-Rise Apartments)
Present Use:	Senior Citizen Apartments
Reviewed By:	Michael J. Albert, AICP

Project Description:

The applicant is seeking a variance from Article 5 §11.13 of the *Zoning Ordinance* pertaining to construction exceeding 200 S.F. within 75 feet of a shore line. The applicant seeks to construct a sidewalk/pathway along Silver Lake within the 75 foot buffer area. The requested variance would allow for a 1600 S.F. of hot mix walkway for access by residents. The property is located at 430 Kings Highway.

Adjacent Land Uses

The lands to the southwest are zoned R-20 (One Family Residence Zone). The other surrounding lands are all similarly zoned RG-5. The property abuts one parcel that is zoned C-4.

Code Citations

Article 5, Section 11.13. [Water bodies and wetlands.]

11.13*Water bodies and wetlands.* Lakes, ponds, rivers, and streams and wetlands shall be left as permanent open space. No development, filling, piping or diverting shall be permitted, except for required roads, to be approved by the Delaware Department of Transportation and the Delaware Department of Natural Resources and Environmental Control.
No structures, except stairs and ramps, fences, open decks, patios or docks with a combined

area of 200 square feet or less are permitted to be constructed within 75 feet of the shore line of any permanent fresh water lake over one-fourth acre in size or within 100 feet of the mean high tide line for tidal and wetlands. No structures are permitted within 50 feet of the centerline of permanent or intermittent streams or within 25 feet beyond the limits of the floodplain, whichever is greater. Within these same areas, the clearing or removal of natural ground cover or vegetation, including the cultivation of the soil for agricultural purposes, is prohibited.

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:
   - The construction will permit equal access by mobility impaired residents to the new meditation garden planned for Luther Towers.

2. Applicant's responsibility for conditions:
   - No.

3. Deprivation of all reasonable use of the property:
   - No. Without the variance, mobility limited residents will not be able to enjoy full use of the garden.

4. Character of the neighborhood:
   - Variance will improve the aesthetic view and improve water quality of the surface water runoff to the lake. Due to the improvement native vegetation will be planted along the shoreline.

Staff comments and recommendations:

1. Physical Conditions:
   - The property does not have physical conditions which impede or restrict reasonable access to or use of the property. The property abuts Silver Lake and is thereby held to the buffer standards prescribed under Dover's *Zoning Ordinance;* however this buffer is not a physical condition of land, but rather a tool to regulate land use near the lake.

2. Applicant's responsibility for conditions:
   - The Applicant is responsible for the size or shape the walking path.

3. Deprivation of all reasonable use of the property:
   - The Applicant will not be deprived of all reasonable use of the property should the variance be denied.

4. Character of the neighborhood:
   - The requested variance would not be out of character with the surrounding neighborhood in regards to the construction and placement of a walking path.
   - An existing walking path within the current buffer is already present on the property.
   - In addition, the plantings proposed in conjunction with the path will be of benefit to the water quality of Silver Lake, which is the purpose of the buffer.

Recommendation:

Staff recommends approval of the variance. The reasons for this recommendation are specific to the character of the neighborhood and existing conditions of the property:

- While the proposed sidewalk/walkway will add to an overall increase in impervious cover for the property, Staff finds that there is compelling reason for granting the variance as the proposed construction activities add to an overall increase in planting and buffer materials for Silver Lake. This addresses issues of run-off and water quality.
- The variance as proposed would have no effect on the existing neighborhood character.
- An existing sidewalk system exists on-site that is partially within the 75-foot buffer area.

City of Dover

Board of Adjustment

September 16, 2009

V-09-08

Location:	879 North DuPont Highway
Applicant/Owner:	McDonald's Real Estate Company
Application Date:	August 14, 2009
Present Zoning:	C-4 (Highway Commercial Zone)
Present Use:	McDonald's
Reviewed By:	Janelle M. Cornwell, AICP

Project Description:
The applicant is requesting a variance from the *Zoning Ordinance*, Article 5, Section 4.10 Non-Conforming Signs. Specifically, they are requesting a variance from the square footage permitted.

The applicant has stated that "McDonalds and the local franchise owner, Robert Cocozoli, are updating the 33-year-old existing McDonald's restaurant across for Delaware Agricultural Museum). The update consists of a demolition of the existing structure and replacement with a new Arcade style prototype planned to be built at locations across the country. The signs on the new building all conform with the City of Dover sign ordinance. There is no plan to modify the existing pylon sign. The existing pylon sign is legal non-conforming. The planning staff interprets the sign ordinance as requiring bringing all signs including the pylon sign into compliance with current ordinances or obtain a variance. It is not possible to bring the existing sign into compliance with current ordinances. Presently the current ordinance requires 150 feet spacing between pylon signs (exclusion zone). In the years since the McDonald's sign was built the city has approved signs at Bubba's and Shucker's such that to comply with the current ordinances, the Applicant would have to eliminate its pylon sign altogether since the adjacent signs approved by the city eliminate any frontage on the McDonald's property to build a conforming pylon sign. The Shucker's sign is 64 feet from the pre-existing McDonald's sings and the Bubba's sign is 193.9 feet from the pre-existing McDonald's signs. The existing sign is a few feet closer to the highway right of way than permitted under the current ordinances (26.9 feet rather than the 31 feet permitted) and is larger than would be permitted."

"The applicant is seeking waivers to permit the existing sign remain exactly as and where it currently exists. The Applicant is not seeking to modify any portion of the "structure" of the pylon nor its signage."

Adjacent Land Uses

The adjacent properties are a mixture of commercial and institutional uses. The properties to the west across North DuPont Highway are IO (Institutional and Office Zone) and SC-2 (Community Shopping Center Zone). The properties to the east are zoned SC-2 (Community Shopping Center Zone) and RC (Recreational and Commercial Zone). The properties to the north and south are zoned C-4 (Highway Commercial Zone).

Code Citations

4.10 *Nonconforming 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.

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:
   The property which is the subject of this petition is 193.9 feet wide. Pylon signs were permitted to Bubba's on one side of the property and Shucker's on the other side of the property subsequent to the permitting of the McDonald's sign (which was fully conforming when permitted) to create an exclusionary zone that would eliminate the ability for the Applicant to replace a conforming pylon sign along the frontage of its property.

2. Applicant's responsibility for conditions:

No. The hardship imposed upon the Applicant is due to signs on adjacent properties permitted by the City of Dover subsequent to the existence of the conforming sign on the Applicant.

3. Deprivation of all reasonable use of the property:
   Yes. The variance which is sought is for the use of the pylon sign. Should the variance not be granted, the Applicant will completely lose use of the pylon sign. Additionally, the new building is set back further than the existing building reducing its visibility. The pylon sign is an important component in keeping the business competitive in a row of restaurants. As set forth in the Kwick-Check Realty, Inc case:

   > The inability to improve one's business or stay competitive as a result of area limitations may be a legitimate exceptional practical difficulty that would justify grant of variance. Such practical difficulty is present when the requested dimensional change is minimal and harm the applicant if variance is denied will be greater than probable effect on neighborhood properties if variance is granted.

4. Character of the neighborhood:
   Yes. The property is zoned highway commercial. The adjacent properties are all restaurants with pylon signs. The Applicant's sign is a currently existing sign that has been in existence for approximately 33 years. The primary need for a variance is because adjacent signs have been permitted rendering the Applicant's non-conforming.

Staff comments and recommendations:

1. Physical Conditions:
   Yes. The site is located near two (2) other legal non-conforming pylon signs. The property meets the requirements of the lot width; however, the lot width does not provide enough room to legal place a pylon sign on the site. The Sign Regulations address the issue of the exclusion zone causing some properties the inability to have a pylon sign. The regulations state that if a pylon sign is not permitted due to the exclusion zone than an additional wall sign is permitted.

   The other pylon sign that is within the 150 foot exclusion zone was installed prior to the changes to the sign regulations in 2001. There is no place to move the pylon sign on the site where it could meet the exclusion zone. The pylon sign meets the exclusion zone to the south; however, it does not meet the exclusion zone to the north.

2. Applicant's responsibility for conditions:
   No. The site is an existing site. The other pylon signs that cause this sign to be in violation of the exclusion zone were permitted legally prior to the creation of the exclusion zone.

3. Deprivation of all reasonable use of the property:
   Yes. Although the Sign Regulations provide for additional wall signage if the exclusion zone could not be met, requiring the existing pylon sign to be removed would be

detrimental to the business as it would be the only business within 900 feet north and south on that side of North DuPont Highway without a pylon sign.

4. Character of the neighborhood:
   Approval of the variance would not negatively impact the long term character of the area; staff believes that existing pylon sign would be compatible with other signs in the area. The pylon sign would be in keeping with all of the other legal non-conforming pylon signs in the area.

Recommendation:
Staff recommends approval of the variance.

The reasons for these recommendations are as follows:

- The physical attributes of the property, including size, shape, create an exceptional practical difficulty in providing signage for the site.
- The site would be placed at an unfair advantage as compared to the other businesses in the area and deprived of reasonable use of the property.
- The sign as compared to other signs in the area would be in keeping with the character of the neighborhood and would be in scale with the site.
- McDonald's pylon sign predated the other pylon signs in the area. Denial of the variance for the pylon sign could penalize them for improving their business.

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.

City of Dover

Board of Adjustment

September 16, 2009

V-09-09

Location:	11 North DuPont Highway
Applicant/Owner:	Dover Airport Plaza, LLC
Application Date:	August 14, 2009
Present Zoning:	C-4 (Highway Commercial Zone)
Present Use:	CVS Pharmacy (under construction)
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
Number of Signs on E. Division St.	1	1
Square Footage Permitted	32 SF	98 SF

The applicant has stated that the variance is "to allow for second sign facing north on Little Creek Road to be the same size as first sign facing north on DuPont Hwy. Store has corner door with both elevations designed the same. This will provide balance to the overall building and allow for equal advertising along both highly traveled roads. "

Adjacent Land Uses
The adjacent properties are a mixture of commercial, industrial and residential uses. The properties to the west across North DuPont Highway are IPM (Industrial Manufacturing Park Zone) and R-8 (One Family Residence Zone). The properties to the east across the alley are zoned R-7 (One Family Residence Zone) and RG-2 (General Residence Zone). The properties to the north across Spring Garden Avenue are zoned C-4 (Highway Commercial Zone) and RG-1 (General Residence Zone). The properties to the south across East Division Street are zoned SC-2 (Shopping Center Zone) and R-8 (One Family 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.

Use	Road Type	Sign Type	Number Permitted	Max Size	Max Height	% of Wall	Setback (R.O.W.)
Non-Residential uses adjacent to Non-Residential District or uses	Minor Arterial	Wall Sign	1 per frontage	32 SF	30 ft	Less than 15%	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:
   Due to the unique angle of the south elevation facing north on Little Creek Road, the larger size sign will allow for needed visibility for possible customers.

2. Applicant's responsibility for conditions:
   No.

3. Deprivation of all reasonable use of the property:
   Yes. It deprives the CVS/pharmacy store of needed advertising and visibility from traffic traveling along north Little Creek Road and the surrounding shopping center.

4. Character of the neighborhood:
   Yes. The increased size of the sign on the south elevation facing North Little Creek Road faces Edgehill Shopping Center with same type signage as per our request.

Staff comments and recommendations:

1. Physical Conditions:
   No. The building is being built in compliance with the *Zoning Ordinance*. The south elevation faces East Division Street.

2. Applicant's responsibility for conditions:
   The applicant is building the new building in compliance with the *Zoning Ordinance*.

3. Deprivation of all reasonable use of the property:
   No. Denial of the variance would not deprive the applicant of all reasonable use of his property. This site is permitted three (3) wall signs, two (2) monument signs and one (1) pylon sign. The amount of signage permitted exceeds the amount permitted to most of the other sites in the area. This site has three road frontages which allow for this large amount of signage. The applicant would still be permitted a 32 SF wall sign on this side of the building.

4. Character of the neighborhood:
   Approval of the variance would not negatively impact the long term character of the area; however, staff believes that a 32 SF sign would be compatible with other signs in the area. The proposed sign would be out of place when the legal non-conforming signs eventually come into compliance with the Sign Regulations. The proposed sign would be the largest sign in the shopping center and would not be in keeping the character of the other signs. Edgehill shopping center is an existing shopping center and a number of the signs within the shopping center are considered legal non-conforming.

Recommendation:

Staff recommends denial of the variance for reasons as follows:

- The physical attributes of the property, including size, shape, do not create an exceptional practical difficulty in providing signage for the site that is legible from the right-of-way.
- The site is permitted more signage than most of the business and sites in the area as this site has three sides that front on roads. Most sites have one frontage and are only permitted one wall sign. This site has three (3) frontages that allow three (3) wall signs.
- Some of the other signs in the Edgehill Shopping Center that the applicant has mentioned are considered legal non-conforming signs. When there is a change of use, renovation of more than 75% of the exterior, an addition of more than 20% of the floor area or other item as identified in Article 5 Section 4.10 of the *Zoning Ordinance*, those sign shall come onto compliance with the existing sign regulations. The purpose of the section of the Sign Regulations is to achieve compliance over time.
- A number of the signs in the Edgehill Shopping Center are permitted as the shopping center is located on a principal arterial, which has no maximum sign area.
- Approval of this request could set a precedent for other 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.

City of Dover

Board of Adjustment

September 16, 2009

V-09-10

Location:	561 North DuPont Highway
Applicant/Owner:	Mohammad Zubair
Application Date:	August 14, 2009
Present Zoning:	C-4 (Highway Commercial Zone)
Present Use:	Hotel (under construction)
Reviewed By:	Janelle M. Cornwell, AICP

Project Description:
The applicant is requesting a variance from the *Zoning Ordinance*, Article 5, Section 4.3 Sign Definitions and 4.7 Permitted Signs. Specifically, they are requesting a variance from the height permitted and depth of the pylon sign.

	Permitted by Code	Request
Height Permitted	30 SF	40+/- SF

The applicant has stated that "wall sign will be no higher than existing Hotel wall signs along N. DuPont Highway. Country Inn and Suites, Red Roof Inn, Fairfield Inn"

Adjacent Land Uses
The adjacent properties are a mixture of commercial and residential uses. The properties to the west across North DuPont Highway are C-4 (Highway Commercial Zone). The properties to the east across are zoned R-8 (One Family Residence Zone). The properties to the north are zoned C-4 (Highway Commercial Zone) and R-20 (One Family Residence Zone). The property to the south is zoned C-4 (Highway Commercial Zone).

Code Citations
4.3 Sign definitions.
Sign area: Sign area is determined by calculating the area of an imaginary rectangle, circle or triangle which fully encloses the sign face, including background and logos, but not including supports or braces.

For sign structures limited to two sign faces of identical dimensions oriented parallel to one another and not more than 24 inches apart, sign area shall be determined by calculating the area of one of the sign faces. For all other multi-faced signs, the sign area shall be determined by calculating the sum of all sign faces in aggregate.

4.7 *Permitted signs.* Signs are permitted in all zones in accordance with the following table, which is a list of permitted sign types by use, proximity to residential uses and road classification.

Use	Road Type	Sign Type	Number Permitted	Max Size	Max Height	% of Wall	Setback (R.O.W.)
Non-Residential uses adjacent to Non-Residential District or uses	Principal Arterial	Wall Sign	1 per frontage	No max	30 ft	Less than 15%	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:
   Wall Sign
   Yes. Existing windows and sign band on south side of hotel prohibit any signs lower than 40-50 feet overall. West side of building is too close to DuPont Hwy. for any wall sign to be effective from both north and south bound lanes.

   Pylon Sign
   No.

2. Applicant's responsibility for conditions:
   Wall Sign
   No.

   Pylon Sign
   No.

3. Deprivation of all reasonable use of the property:
   Wall Sign
   Yes. Without a 40-50 feet overall height sign on the south wall of the building, the hotel is not able to maintain the same visibility and name recognition as other competing hotels along DuPont Hwy.

   Pylon Sign
   No.

4. Character of the neighborhood:
   Wall Sign
   Yes. Requested wall sign is similar in height from ground, if not lower, than wall signs along DuPont Hwy at Country Inn and Suites, Red Roof Inn and Fairfield Inn.

   Pylon Sign
   Other hotels in proximity to Holiday Inn have pylon signs which are 36 inches wide. The Sheraton, Comfort Inn and Super Lodge (Capitol City Lodge).

Staff comments and recommendations:

1. Physical Conditions:
   Wall Sign
   No. The site has ample room on the front of the building over the portico to allow for a wall sign that does not require a variance. The proposed sign on the side of the building would not be very visible. The sign would be 500 ft from the right-of-way. Even if the

variance was granted for the sign to be located at a maximum height of 41 ft as shown on the plan the sign would be difficult to view from the right-of-way.

Pylon Sign
No. The pylon sign is being placed in the same location as the existing pylon sign. The proposed pylon sign will have a depth of three feet instead of the permitted two feet.

2. Applicant's responsibility for conditions:
   Wall Sign
   Yes. The applicant is proposing to place the permitted wall sign on a side of the building that requires a variance. There is another location on the building that the sign would be permitted without requiring a variance. The applicant is choosing to place the wall sign on the side of the building that requires a variance.

   Pylon Sign
   No. The sign is the standard sign for the hotel chain.

3. Deprivation of all reasonable use of the property:
   Wall Sign
   No. The applicant is permitted a pylon sign and a monument sign. The pylon sign would be visible from others indicating the location of the hotel. There is also another location that the wall sign could be placed without a variance.

   Pylon Sign
   The site would still be able to have a pylon sign. The site is also permitted a 63 SF monument sign, which they are not proposing.

4. Character of the neighborhood:
   Wall Sign
   No. While other wall signs for hotels in the area were granted variances for height, this sign would not be in keeping with the character of the neighborhood as this sign would not improve visibility from the right-of-way. This sign is proposed to be placed on the south side of the building over 500 feet from the right-of-way. The other variances granted for a wall sign to exceed the height requirement have faced a road or were located on the front of the building. This sign also has the ability to be placed in such a way that there is no need for a variance.

   Pylon Sign
   The other signs mentioned in the application are considered legal non-conforming signs. The rest of the signs located in the area conform to the existing sign area definition by having a depth of no more than 24 inches. There is a proposed text amendment to the Sign Regulations of the *Zoning Ordinance* to change the depth of freestanding signs along a Principal Arterial to increase from 24 inches to 36 inches.

Recommendation:
Staff recommends denial of the variance of the wall sign.
The reasons for these recommendations are as follows:

Wall Sign

- The physical attributes of the property, including size, shape, do not create an exceptional practical difficulty in providing signage for the site that is legible from the right-of-way.
- There is the ability to place a sign on the building with no maximum sign area over the main entrance. The main entrance to the building is the one story building in front that has a lower roof.
- Staff does not believe that the sign placed on the south elevation of the building will be easily visible even at the requested height. The sign will be over 500 feet from the right-of-way.
- This could set a precedent for other 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.

Staff recommends approval of the variance of the pylon sign.

Pylon Sign

- There is a proposed text amendment to the Sign Regulation in the *Zoning Ordinance* to allow for freestanding signs on Principal Arterials to have a maximum distance between sign faces of no more than 36 inches. This would make the proposed sign in compliance with the sign regulations. The text amendment to change the depth of a freestanding sign on principal arterials will still have to go before the Planning Commission and City Council for their review and the amendment is subject to changes.
- There is no argument for the need of the three foot (in depth) pylon sign.
- The other pylon signs mentioned are legal non-conforming and would be required to come into compliance with the sign regulations.
- The proposed pylon sign will be located in the same site as the existing pylon sign.
- 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.