AGENDA
CITY OF DOVER BOARD OF ADJUSTMENT
WEDNESDAY – July 15, 2009 9:00 AM – CITY HALL

ROLL CALL

APPROVAL OF AGENDA

APPROVAL OF MINUTES OF June 17, 2009 MEETING

NEW BUSINESS

Applicant #V-09-05
1404 Forrest Avenue, Kent Eight Plaza: Henry Mast 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.

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.

ADJOURN
29 Del.C. § 10004(e)(2)

CITY OF DOVER
BOARD OF ADJUSTMENT
June 17, 2009

The Regular Meeting of the City of Dover Board of Adjustment was held on Wednesday, June 17, 2009 at 9:00 AM with Chairman Sheth presiding. Members present were, Mr. Sheth, Colonel Ericson, Mr. Senato, Mr. Hufnal and Dr. Goate'.

Staff members present were Mr. Albert, Ms. Cornwell, Ms. Metsch and Mr. Rodriguez. Also present was Mr. Wayne Sharp. Speaking from the public was Mr. Shaun Sokolowski.

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

APPROVAL OF AGENDA

Colonel Ericson 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 MAY 20, 2009

Mr. Senato moved to approve the regular Board of Adjustment meeting minutes of May 20, 2009 as submitted, seconded by Mr. Hufnal 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-09-04

955 South State Street, South Dover Elementary School: The Dover Special School District has applied to the City of Dover Board of Adjustment requesting a variance from the requirements of Article 5 §4.7 of the *Zoning Ordinance* pertaining to the size of signage.

Subject property is zoned IO (Institutional/Office Zone). The Tax Parcel ID # is ED-05-077.13-02-69.00. The owner of record is the Dover Special School District.

Representative: Mr. Wayne Sharp, Becker Morgan Group, Inc.

Ms. Cornwell presented an overview of the application.

Mr. Sharp presented the application and at that time handed out additional drawings of the project.

Colonel Ericson stated that it would seem to him that the applicant should go through the Planning Commission if this is going to be a standard sign for all of the schools and accepted throughout the communities. We are apparently not talking about just this sign it would be all future signage. Responding to Colonel Ericson, Mr. Sharp stated that currently we are

addressing this sign in terms of variance requirements for this location. If any of the other schools were to come in for a sign permit, the size of the sign may vary depending on where they are located and in what zoning district. Some schools may have to come back for variances and some may not. If you are adopting a standard and you recommend proceeding with that standard and that goes forward to the Planning Commission, we could arrange to have that presented.

Also responding to Colonel Ericson, Ms. Cornwell stated that the reason that this sign is before the Board is because it is located adjacent to a residential neighborhood which permits a smaller sign per the *Sign Ordinance Regulations.* In other districts where schools are located they might not be directly adjacent to a residential use or district; like Dover High School where there is commercial zoning located on the sides and are therefore permitted by code a larger sign. Not every sign would have to come before the Board of Adjustment.

Mr. Hufnal questioned if this reader board sign was the same size as Dover High Schools? Responding to Mr. Hufnal, Mr. Sharp stated that it is very similar as the electronic sign is proposed to be the same size; however, the letter sign at South Dover Elementary School is larger.

Dr. Goate' inquired if they had received any inquiries from persons from outside of the district? Responding to Dr. Goate', Mr. Sharp stated that he had not.

Ms. Cornwell stated that as a part of the sign changes that were discussed at last month's meeting, the placement of the sign is something that the Planning Commission would be able to determine; however, sign area is not. Staff believes that they should either come into compliance or provide the reason why they need a variance for square footage.

Colonel Ericson asked Staff to explain the Staff comments and/or recommendations. It was stated that the physical conditions and the size of the lot is cause for the reason that this sign is to be larger. He does not see in this case where that is relevant. Responding to Colonel Ericson, Ms. Cornwell stated that in this area of the City, there are a lot of smaller residential lots located across the street and to the north and south on this side there are also smaller lots. They have a lot of road frontage on State Street with several hundred feet of road frontage. Placing a sixteen (16) square foot sign somewhere in the large open space is going to be difficult to view especially since the building is located so far back from the road.

Also responding to Colonel Ericson, Mr. Sharp stated that the building is set back so far that you pretty much do not see the building so the sign is very important to announce the building and entrance. We want to make sure the text is large enough for exposure to the building as you approach it. We are further back on the street than most of the signs along this roadway, because we have more setback and the further you get away from the street, in terms of the safe viewing for the lettering size, we want to make sure that we have the letter size large enough so that you don't have to try and read once you are upon it.

Mr. Senato questioned if the sign was going to be more of an informational sign similar to Dover High School's? Responding to Mr. Senato, Mr. Sharp stated that it will be a combination. It will have the school name on it on the top and the rest of it will be an informational sign for announcements for the school district.

Mr. Senato stated that the difference between the sign for South Dover Elementary and Dover High School is that during the day at Dover High School, traffic can be backed up and the reading of that sign is in a stopped position whereas with South State Street, traffic is at a continual run and this is a concern for him for safety reasons. Responding to Mr. Senato, Mr. Sharp stated that again, this is why we are having larger text so people can easily read it.

Colonel Ericson questioned if the sign would have flashing letters which would be a safety concern for the children in this area? Responding to Colonel Ericson, Ms. Cornwell stated that the sign can only change once every thirty (30) seconds. It cannot flash, have any animation, or slide in. If it slides in, when the message changes, it has to occur in less than five (5) seconds and then stay still for thirty (30) seconds before it can then change again. It is usually stable for most of the day because usually they are advertising some type of meeting or school event.

Mr. Hufnal stated that this type of sign is basically the sign of the future because he knows of two organizations that have signs that are permanent signs and they have considered going to a changeable index rather than to physically go out and change it. You are going to try and keep this sign consistent with future signage that the school district does? Responding to Mr. Hufnal, Mr. Sharp stated that the intention is to at least keep the signage piece consistent; however, the support around it and the change of the design itself would depend on the school itself.

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

Mr. Sheth questioned if there was any correspondence received for this application and there was.

Ms. Cornwell stated that a letter was received concerning signage at South Dover Elementary School Applicant #V-09-04 "I am unable to attend the public meeting on Wednesday, June 17, 2009 so I am writing this letter as my input as a notified property owner within 200 feet of the property, please make this a part of the record. I am against any sign whatever the size that is lighted from within and changes message on State Street in the heart of Dover. I do not believe that an elementary school needs such an aggressive sign. Sincerely, Rose Bryan."

Mr. Sheth opened a public hearing.

Mr. Shaun Sokolowski – Business Manager for Capital School District – Stated that no one has made any comments regarding the sign variance or any comments regarding the existing sign located at Dover High School. We hope you will obviously approve the sign as we do have important messages that we need to get out to the public. We are a public entity so we will have public meetings in the school. It is very important to get our messages across to the public when it is necessary on whether the school will be closed, PTA meetings, or if there is a board meeting.

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

Colonel Ericson stated that he could understand why the person who sent in the letter would be concerned with having this type of sign in a residential area. Responding to Colonel Ericson,

Ms. Cornwell stated that this type of sign is permitted by right. They are permitted to have a changeable copy sign; however, the entire sign just needs to be smaller and what they are asking for is an additional eight (8) square feet. The primary and secondary letter height of signs, there is a code requirement that they are trying to meet if not exceed.

Dr. Goate' moved to approve application V-09-04; 955 South State Street, South Dover Elementary School proposed signage based upon presentation by Staff and the Engineering Company and is supported strongly by the question of the people, Staff, and parents, seconded by Mr. Hufnal and the motion was unanimously carried.

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

Meeting adjourned at 9:38 AM

Sincerely,

Diane Metsch
Secretary

City of Dover

Board of Adjustment

July 15, 2009

V-09-05

Location:	1404 Forrest Avenue
Applicant/Owner:	Stoltzfus-Mast Partnership
Application Date:	June 12, 2009
Present Zoning:	SC-1 (Neighborhood Shopping Center Zone) COZ-1 (Corridor Overlay Zone)
Present Use:	Shopping Center
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 All Signs	1	1
Square Footage Permitted	32 SF	unknown

The applicant has stated that "what we are proposing is the same size of lettering as the sign that was previously on the same marquis at the same location. We are simply replacing one sign with another of the same size, and therefore, we are not changing or increasing anything. We are simply asking for the same signage and lettering that existing previously. All (except one) of the other signs in the shopping center are the same size (and always have been) requiring Halpern Eye Associates to use smaller lettering for out sign causes an undue hardship by imposing a distinct competitive disadvantage"

Adjacent Land Uses
The adjacent properties are a mixture of commercial and residential uses. The property to the west is zoned C-2A (Limited Central Commercial Zone) and subject to the COZ-1 (Corridor Overlay Zone). The property to the east is zoned C-3 (Service Commercial Zone) and subject to the COZ-1 (Corridor Overlay Zone). The properties to the north across Forrest Avenue are

zoned C-2A (Limited Central Commercial Zone) and SC-2 (Community Shopping Center Zone) and subject to the COZ-1 (Corridor Overlay Zone). The property to the northwest across Forrest Avenue is zoned RG-2 (General Residence Zone) and subject to the COZ-1 (Corridor Overlay Zone). The properties to the south are zoned R-8 (One Family Residence Zone) and CPO (Commercial Professional Office 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 Residential District or uses	Minor Arterial	Wall Sign	1 per frontage	32 SF	30 ft	Less than 15%	N/A
		Monument Sign	1 per entrance	32 SF	10 ft.	N/A	10 ft.

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 Halpern Eye Associates space is one of the anchors for this plaza and therefore has a large marquis area. Consequently, a significantly smaller sign than what we are proposing would be out of balance with the signage of the opposite anchor (Talbots) thereby visually detracting from the shopping plaza and the neighborhood.

2. Applicant's responsibility for conditions:
   No.

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

4. Character of the neighborhood:
   Yes! This section of Forrest Avenue/Route 8 is all commercial, and as stated before, all (except one) of the other signs in the shopping center are the same size (and always have been). In fact, to require a significantly smaller sign would be out of character for the neighborhood and would look out of proportion for the marquis size.

Staff comments and recommendations:

1. Physical Conditions:
   No. The site is located within an existing shopping center that meets the criteria of the *Zoning Ordinance*.

2. Applicant's responsibility for conditions:
   No. The site is an existing site in which the new tenant is occupying an existing tenant space. The former wall sign that has been removed was considered legal non-conforming with regards to sign area.

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. A sign meeting the Sign Regulations would still be visible to the traffic along Forrest Avenue. Most of the other tenants in the shopping center have signs that meet the Sign Regulations.

4. Character of the neighborhood:
   Approval of the variance would negatively impact the long term character of the area; 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. Most of the other signs in the shopping center do meet the Sign Regulations.

Recommendation:
Staff recommends denial of the variance as follows:

The reasons for these recommendations are 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 scale of the site compared to the size of the sign the permitted sign would be in scale with the site. A permitted 32 SF sign would fit.
- The proposed sign would be in keeping with the character of the area.
- There are a number of signs that have a sign area of 32 SF or less.
- The Great Clips sign shown as a part of the exhibit is 29 SF in sign area. The Talbots and the Dairy Queen signs are considered legal non-conforming. The other signs shown are legal signs meeting the sign regulations.
- Some of the other signs 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.
- Staff notes that several of the tenants have signs that conform to the existing sign regulations.
- The tenant may have the potential to have additional signage on the pylon sign for the shopping center. The ability to have signage on the pylon sign would be determined by the lease for the tenant space.
- If the variance is granted, when the other signs over time come into compliance with the Sign Regulations this sign would not be in keeping with the character of other signs in the neighborhood.
- 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.

Case Number: V-09-05

Application Fee: $200.00 Residential Use
*$300.00 Non-Residential Use
$200.00 Appeals

CITY OF DOVER, DELAWARE
ZONING BOARD OF ADJUSTMENTS

APPLICATION FOR ZONING VARIANCE

PART I-A

The undersigned does hereby submit to the City of Dover Zoning Board of Adjustment a request for variance from certain provisions of the Zoning Ordinance of the City of Dover as described below:

Location of Subject Property: 1404 Forest ~~Ave~~ Suite 1
Dover DE 19904

Address of Subject Property: Kent Eight Plaza
West of Dover

Name, Address & Phone Number of Owner of Record: Henry Mast
Stuffitis-Mast Partnership
200 Weston Drive, Dover, DE 19904
302-736-0924

Property Zoning:

SUPPORTING INFORMATION (Required at Submission)

Attached are seven (7) copies of the required Site Plan/Survey Drawing of the subject property which illustrates this variance request as prepared by Phillips Sign Co.
20878 Sussex Highway, Seaford DE 19973 302-629-3550

Briefly explain what your proposal involves and the reason for filing this variance request:
please see attached

Please list additional information in support of the Application (Optional):
please see attached

09-1000005

Addendum

Application For Zoning Variance

Answers to selected Application Questions

Part I:

Question: Briefly explain what your proposal involves and the reason for filing this variance?

Answer: What we are proposing is the same size of lettering as the sign that was previously on the same marquis at the same location. We are simply replacing one sign with another of the same size, and therefore, we are not changing or increasing anything. We are simply asking for the same size signage and lettering that existed previously.

Question: Please list additional information in support of the application?

Answer: All (except one) of the other signs in the shopping center are the same size (and always have been). Requiring Halpern Eye Associates to use smaller lettering for our sign causes an undue hardship by imposing a distinct competitive disadvantage.

Part II:

Question IIA: Are there physical conditions (size, shape, location) peculiar to the land or building that would justify a variance?

Answer: Yes. The Halpern Eye Associates space is one of the anchors for this plaza and therefore has a large marquis area. Consequently, a significantly smaller sign than what we are proposing would be out of balance with the signage of the opposite anchor (Talbots) thereby visually detracting from the shopping plaza and the neighborhood.

Question IID: Would the requested variance be in keeping with the character of the neighborhood?

Answer: Yes! This section of Forrest Avenue/Route 8 is all commercial, and as stated before, all (except one) of the other signs in the shopping center are the same size (and always have been). In fact, to require a significantly smaller sign would be out of character for the neighborhood and would look out of proportion for the marquis size.

PREVIOUS VARIANCE APPLICATIONS

Do you know of any previous variance request or approvals on the subject property? If so, please indicate the name of the owner of the property at the time, the year and the variance application number if possible. NO

PART I-B (to be completed by Planning Staff)

Variance is Requested from the Following Sections of the Zoning Ordinace:
(Indicate Article, Section, Item & Page of Zoning Code Requirement for which Variance is Requested)

Article 5
Section 4.7

PART II:

Exceptional Practical Difficulty/Hardship Test (Please complete the following):

II-A) Are there physical conditions (size, shape, location) peculiar to the land or building that would justify a variance? Yes/No (Circle One) If Yes, please explain:
please see attached

II-B) Is the applicant or owner responsible for the physical conditions listed above? Yes/No (Circle One) If Yes, please explain: NO

II-C) Do the zoning requirements for which a variance is sought otherwise deprive the applicant of all reasonable use of the subject property? Yes/No (Circle One) If Yes, please explain: NO

II-D) Would the requested variance be in keeping with the character of the neighborhood? Yes/No (Circle One) If Yes, please explain your position: please see attached

PART III-A

OWNER'S CERTIFICATE

I, _____, hereby certify that I am the owner of the property which is the subject of this variance request, that this Application Form and the attached Site Plan/Survey Drawing which describe this variance request have been prepared under my direction, and that the information provided herewith is complete and accurate to the best of my knowledge and belief.

Date 6/12/09 Signature Kathleen P. Gray, Tenant


REAL ESTATE

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City of Dover

Board of Adjustment

July 15, 2009

V-09-06 Lands of Perza at 545 South State Street

Location:	545 South State Street
Applicant/Owner:	Adam and Kasey Perza.
Application Date:	June 22, 2009
Present Zoning:	R-8 (One Family Residence Zone) H (Historic District)
Present Use:	Residence
Reviewed By:	Michael J. Albert, AICP

Project Description:

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

Adjacent Land Uses

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

Code Citations

Section 4.1. [One-family residence zones.]

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

TABLE INSET:

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

(Ord. of 12-14-1992)

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:
   - Please reference the attached document for the Applicant's answers.

2. Applicant's responsibility for conditions:
   - Please reference the attached document for the Applicant's answers.

3. Deprivation of all reasonable use of the property:
   - Please reference the attached document for the Applicant's answers.

4. Character of the neighborhood:
   - Please reference the attached document for the Applicant's answers.

Staff comments and recommendations:

1. Physical Conditions:
   - The property is 5,877 S.F. in size. It is below the minimum lot size prescribed for the R-8 zoning. The prescribed size in square feet of a R-8 zoned property is 8,000 S.F.

The property is approximately 91 feet deep. It is below the minimum prescribed lot depth of 100 feet. The property is also below the minimum prescribed lot width of 70 feet.

2. Applicant's responsibility for conditions:
   - No. The Applicant is not responsible for the size or shape of the lot.

3. Deprivation of all reasonable use of the property:
   - No. 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 an addition.
   - The Applicant is advised that the proposed addition, should a variance be granted, will be subject to Architectural Review Certification by the City Planner via the building permit process, as it is located within the H (Historic) zone.

Recommendation:

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

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

City of Dover
Board of Adjustment
Application for Variance from Rear Yard Setback and Lot Coverage
545 South State Street
Dover, Delaware

Part I-A
The undersigned does hereby submit to the City of Dover Zoning Board of Adjustment a request for variance from certain provisions of the Zoning Ordinance of the City of Dover as described below:

Location of subject property:
Tax parcel no.: ED-05-077.09-05-71.01-000

Address of subject property:
545 South State Street
Dover, DE 19901-3528

Name, address and phone number of owner of record:
Adam M. Perza and Kasey Z. Perza
545 South State Street
Dover, DE 19901-3528
302-382-0445

Property zoning: R8

Variance sought:
1. Variance of 30-foot rear yard setback (R8 zoning)
2. Variance of 35% lot coverage (R8 zoning)

Exhibits:
1. Kent County Tax Parcel Map 77.09 (Elm Terrace)
2. Proposed Site Plan (Jackson Architects A.I.A.)

Part I-A (continued)

Supporting Information

Attached are seven (7) copies of the Site Plan/Survey Drawing of the subject property as prepared by Jackson Architects A.I.A. of Dover.

Briefly explain what your proposal involves and the reason for the filing of this variance request:

City of Dover R8 zoning defines (1) a 30-foot rear yard setback, and (2) that the maximum lot coverage not to exceed 35% on an 8,000 square foot lot.

The proposed variance would permit the owners of the property to construct an addition onto the rear of the existing residence.

A variance of the rear yard setback is sought to permit construction of an addition to the rear of an existing home up to 20-feet beyond the defined rear yard setback of 30-feet from a property line shared with 12 Elm Terrace.

A variance of the lot coverage requirement is sought to permit construction of an addition to an existing home to result in a post-construction lot coverage of up to 38.7%.

Previous variance applications
Do you know of any previous variance requests or approvals on the subject property?

None.

Part I-B (to be completed by Planning Staff)

Variance is requested from the following sections of the zoning ordinance (Indicate Article, Section, Item & Page of Zoning Code requirement for which variance is requested):

Part II

The Applicant seeks an area variance of the rear yard setback requirement of 30-feet. When reviewing an area variance request, the Board of Adjustment must look to "whether a literal interpretation of the zoning law results in exceptional practical difficulties of ownership." *Wawa, Inc. v. New Castle County Bd. of Adjustments*, 2005 WL 399324, at *9 (Del. Super. 2005).

In applying the area variance, the Board considers the following factors under the area variance:

1. Nature of the zone
2. Character of the immediate vicinity
3. Effect on neighborhood if granted
4. Effect on applicant if denied

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

			For Dwellings In:
			R-8
Minimum required:			
	Lot area (sq. ft.)		8,000
	Lot width (ft.)		70
	Lot depth (ft.)		100
	Front yard (ft.)		25
	Minimum side yard (ft.)		10
	Total both side yards (ft.)		20
	Rear yard (ft.)		30
	Livable floor area/DU (sq. ft.) 1,200		
	Off-street parking spaces/dwelling units		2
Maximum permitted:			
	Building height		
		Stories	21/2
		Feet	35
	Lot coverage		35%

(Ord. of 12-14-1992)

Part II-A (Nature of the zone)

The residence of 545 South State Street is part of the Elm Terrace residential community at the southern edge of Dover's history district. 545 South State Street was subdivided from its parent lot at 12 Elm Terrace in 2003 and a private residence constructed thereon in 2004 which was subsequently conveyed to the applicant. The lot is approximately 5,000 square feet in area, 1/8 of an acre, making it one of the smallest parcels in the community and little more than half of the minimum lot size required by the R8 zoning code.

The zone on the east side of State Street is residential in nature. Properties to the south of 545 South State Street and on the west side of State Street are owned by Bayhealth Medical Center and include the former Kent General Hospital which is currently under renovation and expansion.

The Elm Terrace community remains exclusively residential in character whereas the former residences located to the immediate south of 545 South State Street have been rezoned by the City for mixed commercial occupancy.

Granting of this variance would have no detrimental impact on the residential nature of the community. Granting of the variance would strengthen the residential nature of the community by stabilizing the permanent residential nature of one of the residences.

Denial of the application would confine current and future owners of 545 South State Street to the existing 1,400 square feet of living area and open the door to the possibility that property could evolve into a rental property, which would not be preferred by the Elm Terrace community.

Part II-B (Character of the vicinity)

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

Many of the homes in the Elm Terrace and State State Street residential community include structural additions to the primary residences made through the years. The existence of separate outbuildings such as sheds and garages on these properties located within the rear and side yard setbacks are also common. 545 South State Street is one of the few properties in the community which completely conforms to modern zoning code. Residences to the immediate north of 545 South State Street do not conform to the rear yard setback.

The proposed variance would not alter the residential or aesthetic character of the community. Additions including rooms, porches, and garages, are common within this older community. As the proposed addition is in the extreme rear of the residence, it is unlikely to attract attention from the public. Additionally the properties to the west, east, and south are not occupied by private residents and do not have any physical structure constructed thereon which the setback is designed to safeguard from encroachment.

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

Part II-C (Effect on neighborhood if granted)

Additions to private residences are not uncommon in the Elm Terrace community. Because of the smaller nature of the homes, additional outbuildings such as garages and sheds are also common. Such outbuildings are frequently located in present day setbacks.

Since many of the lots within the Elm Terrace community are smaller than the 8,000 square foot minimum lot size standard defined by the R8 zoning classification, modifications to any residence and/or the addition of any supplemental storage building on such a parcel would create a non-conformity with the current R8 zoning code.

Although the current owners of 545 South State Street did not create the hardship for which the variances are sought, the proposed variance would be minimal as to the lot coverage (38.7%). The property bordering 545 South State Street to the east (12 Elm Terrace) would have the greatest interest in preserving the rear yard setback, but the owners of that property support this application.

Granting the setback would be beneficial to the community because it would further stabilize the residential nature of the community. Limiting the living space square footage of the residence in its current size could cause the property to potentially become a revolving door of successive owners who are forced to sell the home in order to secure larger living quarters. A more detrimental impact could be that the property would become attractive to landlords seeking to rent the home, a result which would not likely be preferred in a stable residential community.

The residential character of the South State Street community has shrunken in size with the acquisition of residential properties to the south of the Elm Terrace neighborhood and their subsequent conversation to community use.

Part II-D (Consequence of denying variance on applicant)

Denial of the variance application could result in the current owner having to relocate. The current owners have a growing family and need additional living and storage space. Both objectives would be accomplished by permitting the variance and would allow the current owners to remain city residents in this location indefinitely.

The current owners have retained a professional architect familiar with downtown Dover in order to ensure that the appearance of any addition to the home compliments the surrounding community and is completed with the highest standard of quality.

Property owners:

Adam M. Perza

Kasey Z. Perza

City of Dover
Board of Adjustment
Application for Variance from Rear Yard Setback and Lot Coverage
545 South State Street
Dover, Delaware

INDEX OF EXHIBITS

1. Kent County Tax Parcel map 77.09 (Elm Terrace)
2. Proposed Site Plan (Jackson Architects A.I.A)



Exhibit 1:
Kent County Tax Parcel Map 77.09

ASSESSED ACREAGE	20.3A
PLANIMETERED ACREAGE	20.3Ap
DEED DIMENSION	150'
SCALED DIMENSION	150'
U. S. NUMBERED HWY.	
STATE NUMBERED HWY.	13
STATE HWY. REFERENCE NO.	236

CEMETERY

NOTE: THIS MAP IS PREPARED FOR PROPERTY LOCATION AND ASSESSMENT, AND IS NOT FOR ENGINEERING USE.

76.08	77.05	77.06
76.12		77.10
	77.13	77.14

SHEET INDEX