

AGENDA
CITY OF DOVER BOARD OF ADJUSTMENT
WEDNESDAY – July 16, 2008 9:00 AM – CITY HALL

ROLL CALL

APPROVAL OF AGENDA

APPROVAL OF MINUTES OF May 21, 2008 MEETING

APPROVAL OF MINUTES OF June 18, 2008 MEETING

NEW BUSINESS

Applicant #V-08-09:

255 College Road, Lands of Delaware State University, DSU Sports Annex: Delaware State University 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 maximum size of signage.

Subject property is zoned IO (Institutional/Office Zone) and the Tax Parcel ID # is ED05-067.00-02-47.00-000. The owner of record is Delaware State University.

ADJOURN

29 Del.C. § 10004(e)(2)

**CITY OF DOVER
BOARD OF ADJUSTMENT
May 21, 2008**

The Regular Meeting of the City of Dover Board of Adjustment was held on Wednesday, May 21, 2008 at 9:00 AM with Chairman Sheth presiding. Members present were Mr. Sheth, Dr. Goate', Colonel Ericson, Mr. Hufnal, and Mr. Senato.

Staff members present were Ms. Cornwell, Mr. Albert and Mr. Primos. Also present were Mr. Conny Malmberg, and Mr. Garth Jones.

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

Mr. Sheth stated that under Old Business, Applicant #V-08-01 - 260 Beiser Blvd., Lands of Delaware Surgical Associates was brought forward by Staff and both Mrs. Townshend and Mr. Rodriguez. They are unable to attend this meeting. What is the pleasure of the Committee?

Mr. Senato moved to table Application #V-08-01 – 260 Beiser Boulevard, Lands of Delaware Surgical Associates until both Mrs. Townshend and Mr. Rodriguez can be present, seconded by Colonel Ericson and the motion was unanimously carried.

APPROVAL OF AGENDA

Mr. Senato 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 APRIL 16, 2008

Mr. Senato stated that on the motion at the last meeting on the lands of Delaware Surgical Associates, it states that "reason that the compliance was not originally made", he thought that he had stated that the contractor had not obtained a permit to erect the sign as part of the motion.

Mr. Senato moved to approve the regular Board of Adjustment meeting minutes of April 16, 2008, as amended, 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-08-05:

1145 & 1169 South State Street, Lands of Wave Enterprises, LLC: Wave Enterprises, LLC has applied to the City of Dover Board of Adjustment requesting a variance from the requirements of Article 3 §24.6 of the *Zoning Ordinance* and its subsequent sections pertaining to required buffering and open space.

Subject property is zoned RGO (General Residence and Office Zone) and IO (Institutional/Office Zone) and the Tax Parcel ID #s are ED05-077.17-05-58.00-000 and ED05-077.17-05-57.00. The owner of record is Wave Enterprises, LLC.

Ms. Cornwell presented the Application.

Representatives: Mr. Conny Malmberg, Attorney on behalf of the applicant; Mr. Garth Jones, Becker Morgan Group, Inc.

Mr. Malmberg presented his case.

Mr. Malmberg stated that the applicant is permitted under the *Zoning Ordinance* to use this for senior housing and Planned Neighborhood Design (PND). The proper question to be considered is given the applicant's legal right to the zoning use of the property, would imposing the forty (40) foot setback given that lawful use be an unreasonable hardship and the answer would be yes.

Responding to Mr. Malmberg, Ms. Cornwell stated that to say it is a lawful use; the PND is a Conditional Use and is not an outright permitted use. It would have to be determined by the Planning Commission to determine if it is an appropriate use for this property. You are not denied all reasonable use because you are asking to use the PND. The former Site Plan that is now expired met the setbacks for a proposed use in that zoning district. You are attempting to choose a different route that needs a Conditional Use and therefore, not an outright permitted use. The variance cannot be granted solely because they want to place senior housing here; it needs to be based on the property. Based on the property, the applicant is not deprived of all reasonable use, and they can put other uses there without a variance.

Colonel Ericson stated that what is being presented is that the setbacks conform to the underlying zoning of the property and the only thing you are asking for, because of the PND overlay, is a forty (40) foot buffer that is required and you are asking relief as a result of this overlay?

Responding to Colonel Ericson, Mr. Malmberg stated that yes it does.

Mr. Garth Brooks presented further information.

Mr. Senato stated that the City came up with the design law with regards to the PND and forty (40) feet and yet the City still has a lot of empty small lots and yes there is a lot of senior citizen activity within the City that is encouraged. What he is troubled with is that the forty (40) foot buffer is a blanket for the whole City and in one sense restricts in all cases past, present, and future senior citizen building within the City because of the PND buffer of forty (40) feet and would provide a hardship for any builder.

Colonel Ericson questioned if this would set precedence or if we approve it, can we word the motion so that it would be granted so that it could proceed to the Planning Commission?

Responding to Colonel Ericson, Mr. Primos stated that when you consider a variance, you look at each parcel individually. There are aspects of this lot that are not exactly repeated in every other lot in the City as this is a very narrow lot. The character of the neighborhood is not exactly repeated in every other phase of the City so you could, if you chose to grant the variance, word it

in such a way that it focuses on the unique aspects of this lot and this application.

Dr. Goate' questioned if there had been any conversations with the YMCA? Responding to Dr. Goate', Mr. Malmberg stated that Mr. Jones has had several conversations with the YMCA and they are supportive of the use or at least not opposed to the use. There has also been discussion that the dwellers would have memberships to the YMCA as part of the deal.

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

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

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

Colonel Ericson moved to approve V-08-05 1145 & 1169 South State Street, Lands of Wave Enterprises, LLC in that he recognized the need in the community for over 55 senior housing. The forty (40) foot buffer zone in a residential area of Dover seems like an unreasonably high standard that should be looked at by the Planning Commission and the fact that the space in this area to properly build office space is limited. Also, because the economic situation has changed and the fact that this property is so small, it would be in our best interest for the community to approve this application and then take it to the Planning Commission where they can make a decision, seconded by Mr. Hufnal and the motion was unanimously carried.

NOTE: Dr. Goate' advised that he is a member of the Board of Directors for the YMCA; however, it did not appear to be in conflict with this application.

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

Meeting adjourned at 10:05 AM

Sincerely,

Diane Metsch
Secretary

CITY OF DOVER
BOARD OF ADJUSTMENT
June 18, 2008

The Regular Meeting of the City of Dover Board of Adjustment was held on Wednesday, June 18, 2008 at 9:00 AM with Chairman Sheth presiding. Members present were Mr. Sheth, Dr. Goate', and Mr. Senato. Colonel Ericson and Mr. Hufnal were absent.

Staff members present were Mrs. Townshend, Ms. Cornwell, Mr. Albert and Mr. Rodriguez. Also present were Mr. William Hill, Mrs. Minnie Hill, Mr. Merrill Trader, Mrs. Mary Trader, and Mr. Glenn Bennett.

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

APPROVAL OF AGENDA

Mr. Senato moved to approve the agenda 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.

OLD BUSINESS

Applicant #V-08-01:

260 Beiser Blvd., Lands of Delaware Surgical Associates: Staff is requesting to the City of Dover Board of Adjustment that they reconsider the application filed by Delaware Surgical Associates regarding a variance request from the requirements of Article 5 §4.7 of the *Zoning Ordinance* pertaining to the setbacks of signage.

Subject property is zoned IPM (Industrial Park/Manufacturing Zone) and the Tax Parcel ID # is ED05-076.15-01-03.03-000. The owner of record is Delaware Surgical Associates.

Representative: Brought forward by Staff along with applicant.

At this time, the applicant was not present; therefore, the application was moved to the end of the agenda and would be heard last. (This application is being brought forward by Staff and if the applicant is still not present, the application will be heard)

NEW BUSINESS

Applicant #V-08-06:

30 Bertrand Drive, Lands of William & Minnie Hill: William & Minnie Hill have applied to the City of Dover Board of Adjustment requesting a variance from the requirements of Article 4 §4.2 of the *Zoning Ordinance* and pertaining to the rear-yard setback.

Subject property is zoned RG-1 (General Residence Zone) and the Tax Parcel ID # is ED05-076.11-01-17.00. The owners of record are William & Minnie Hill.

Representatives: Mr. & Mrs. William and Minnie Hill, Owner.

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

Mrs. Townshend stated that the legal notice was published in the Delaware State Newspaper on June 8, 2008 and the public was notified in accordance with the regulations.

Mr. Hill presented his case.

Mr. Sheth questioned if a compromised could be reach on the size as this site has had a previous variance approved. Responding to Mr. Sheth, Mrs. Townshend stated that they could match the existing enclosed porch that was the previous variance case. A setback line was established and they could continue that line across rather than intruding further into the rear yard setback.

There was a small clarification discussion held among one member and the applicant. There were no further questions from any other Board members.

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

Mr. Sheth questioned if there was any correspondence received for this application and there were none. Ms. Cornwell stated that there were a few phone calls; however, none with any objections.

Dr. Goate' moved to approve Application #V-08-06 30 Bertrand Drive, Lands of William and Minnie Hill with the recommendation that is determined by Staff as a reasonable expansion of this home and to use the line established by the previous addition of 14'x24', seconded by Mr. Senato and the motion was unanimously carried.

Applicant #V-08-07:

20 Sherwood Court, Lands of Merrill & Mary Trader: Merrill & Mary Trader have 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 and side-yard setbacks.

Subject property is zoned R-8 (One Family Residence Zone) and the Tax Parcel ID # is ED05-076.20-01-16.00. The owners of record are Merrill & Mary Trader.

Representatives: Mr. & Mrs. Merrill & Mary Trader.

Mrs. Townshend stated that the legal notice was published in the Delaware State Newspaper on June 8, 2008 and the public was notified in accordance with the regulations.

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

Mr. Trader presented his case.

There were no questions raised from any Board members.

Mr. Sheth questioned if there was any correspondence received for this application and there was one phone call inquiring about the case and they had no objection.

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

Mr. Senato moved to approve Application V-08-07 20 Sherwood Court, Lands of Merrill & Mary Trader, seconded by Dr. Goate' and the motion was unanimously carried.

Applicant #V-08-08:

555 Bay Road, Kent County Levy Court: Kent County Levy Court has applied to the City of Dover Board of Adjustment requesting a variance from the requirements of Article 4 §4.15 of the *Zoning Ordinance* pertaining to the height restrictions on buildings.

Subject property is zoned C-4 (Highway Commercial Zone) is partially located in the AEOZ (Airport Environs Overlay Zone) Noise Zone 'A' and the Tax Parcel ID # is ED05-077.00-01-19.01-000. The owner of record is Kent County Levy Court.

Representative: Mr. Glenn Bennett, Kent County, Engineering Project Manager.

Mr. Albert presented the application.

Mrs. Townshend stated that the legal notice was published in the Delaware State Newspaper on June 8, 2008 and the public was notified in accordance with the regulations.

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

Mr. Bennett presented his case.

Mr. Bennett presented a letter to the Board members at this time that was received from the Superintendent of the Capital School District expressing the districts position. They have no objection to this tower.

There were no questions raised from any Board members.

Mr. Sheth questioned if there was any correspondence received for this application. Mrs. Townshend stated that the letter received from the Capital School District addressed to her from Michael D. Thomas, Superintendant of schools in support of the application.

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

Mr. Senato moved to approve Application V-08-08 555 Bay Road, Kent County Levy Court, seconded by Dr. Goate' and the motion was unanimously carried.

Applicant #V-08-01:

260 Beiser Blvd., Lands of Delaware Surgical Associates: Staff is requesting to the City of Dover Board of Adjustment that they reconsider the application filed by Delaware Surgical Associates regarding a variance request from the requirements of Article 5 §4.7 of the *Zoning Ordinance* pertaining to the setbacks of signage.

Subject property is zoned IPM (Industrial Park/Manufacturing Zone) and the Tax Parcel ID # is ED05-076.15-01-03.03-000. The owner of record is Delaware Surgical Associates.

Representative: Brought forward by Staff

Mr. Senato moved to lift Application V-08-01 from the table, seconded by Dr. Goate' and the motion was unanimously carried.

Mrs. Townshend presented the changes brought forth in this application. There are a number of options to take with this application from this point forward. One, stand by the denial that was previously issued. Second, grant the variance. Third, require that they build a smaller monument sign and grant a portion of the variance. A number of the other signs located on Beiser Boulevard; few of them complied with the Sign Ordinance. Staff will make contact with all of them to inform them that their signs do not meet setback requirements and that a variance will be necessary.

Mrs. Townshend further stated that she would recommend getting all of the applicants to come before the Board of Adjustment at the same time so that no special treatment is given to anyone. She would also recommend that they have until the August deadline for submission for the September Board of Adjustment meeting.

Dr. Goate' moved to table Application V-08-01 260 Beiser Boulevard, Lands of Delaware Surgical Associates, to be brought back before this Board along with all others for the September 2008 Board of Adjustment meeting, seconded by Mr. Senato and the motion was unanimously carried.

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

Meeting adjourned at 9:44 AM

Sincerely,

Diane Metsch
Secretary

City of Dover
Board of Adjustment

July 16, 2008

V-08-09 Delaware State University Sports Annex

Location: 255 College Road
North side of College Road just east of the railroad corridor

Applicant/Owner: Delaware State University
1200 North DuPont Highway
Dover, DE 19901

Application Date: June 13, 2008

Present Zoning: IO (Institutional/Office Zone)

Present Use: Delaware State University Sports Annex

Reviewed By: Janelle Cornwell

Project Description:

The applicant is requesting a variance from the sign area on a Minor Arterial as a Non-Residential Use in a Non-Residential District as required in the Supplementary Sign Regulations (Article 5§ 4.7). Specifically the applicant is requesting a variance from the permitted 32 S.F. to 40 S.F. The sign was installed without a permit and does not meet the Sign Regulations as they pertain to the sign area of a wall sign. The sign exceeds the permitted sign area by eight (8) square feet.

The applicant is requesting the variance because the square footage of sign is currently 40 SF the allowable area is 32 SF. The applicant has indicated the following: that the sign is difficult to read because it is 110 feet back from the road when viewed by motorists; the adjacent lot is covered in vegetation reducing the visibility traveling west; the public is better served with a bigger sign; it would save the taxpayers' money for the cost of removing the existing sign, and making a new 32 SF sign; and repairing the holes in the walls after we take down the old sign is another burden.

Adjacent Land Uses

The property is located in an area of College Road that is a mixture of commercial and residential uses. The land to the south and directly across College Road is zoned R-20 (One Family Residence Zone). The land to the north of the property is zoned M (Manufacturing Zone). The land to the west of the property across the railroad corridor is zoned CP-O (Commercial Professional Office Zone). The property to the east of the property is located within Kent County and is zoned IG (General Industrial). Staff views the sign as Non-Residential use adjacent to a Non-Residential District and not a Non-Residential uses adjacent to a Residential District or Use as the Residential District is across College Road the uses are a cemetery and a parcel owned by the City of Dover and is the location of city public utilities.

Code Citation

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

The following table indicates the permitted signs in the City of Dover for properties located on Minor Arterials.

Use	Road Type	Sign Type	Max Size	Max Height	% of Wall	Setback (R.O.W.)
Non-Residential uses in non-Residential districts	Minor Arterial	Wall Sign	32 SF	30 ft.	Less than 15 %	N/A
		Monument Sign	32 SF	7 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 lot next door is wooded so you cannot see the sign till you pass it when traveling west on College Road.
2. Applicant's responsibility for conditions:
 - No.
3. Deprivation of all reasonable use of the property:
 - No.
4. Character of the neighborhood:
 - Yes. The neighborhood is not hurt by the sign being 8 SF larger. People can see it better being a little bigger.

Staff comments and recommendations:

1. Physical Conditions:
 - No, the owner is permitted one (1) wall sign at 32 S.F. as the site has one (1) road frontage.
2. Applicant's responsibility for conditions:
 - Yes. The applicant installed the sign without a permit.

- No. The location of the building existed prior to the purchase of the site by the current owner.
3. Deprivation of all reasonable use of the property:
- No, the applicant would have the same signage as the other businesses throughout the City of Dover on a Minor Arterial.
4. Character of the neighborhood:
- No, the other sites in the immediate area have the permitted signage per the code.

Recommendation:

Staff recommends denial of the following for the variance. The reasons for this recommendation are:

- 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 recognizes the potential difficulties of the visibility of the wall sign from the road; however there was no clear indication in the application how the increased size of the sign would benefit the applicant or how a 32 SF sign would hinder the use of the building.

If the variance for the sign is approved, staff notes that a sign permit shall be applied for and the fee for the permit will be doubled as the sign was installed without a permit.

Case Number: _____

Application Fees: \$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: DSU SPORTS ANNEX

Address of Subject Property: 255 COLLEGERD.

DOVER DE 19901

Name, Address & Phone Number of Owner of Record: DEL. STATE UNIV.
1200 N. DUPONT HWY
DOVER, DE 19901

Property Zoning: ~~INDUS~~ Institutional-office

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 DEL. STATE UNIV.

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

SQUARE FOOTAGE OF SIGN IS CURRENTLY 40 sq. ft.
ALLOWABLE AREA IS 32 ft² Sign is difficult to read because it is 110' from ROAD when viewed by motorists, adjacent lot is covered in vegetation reducing visibility from East traveling West. The public is better served with a bigger sign.

Please list additional information in support of the Application (Optional): + Save taxpayers \$ the cost of removing existing sign & making a new 32ft² sign.
repairing the holes in the walls after we take down old sign is another burden.

1300000L-20

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.

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)

Blank lines for zoning ordinance details.

PART II:

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:

letter heights could be 1.

The lot next door is wooded so you can see the sign till you pass it when traveling west on college rd.

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

Blank lines for explanation of hardship test results.

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: _____

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: _____

The neighborhood is not hurt
by the sign being 8' x 7' larger.
People can see it better being a little bigger.

=====
PART III-A
=====

7er
OWNER'S CERTIFICATE

I, Richard C. Carucant, 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 6/13/08 Signature R. C. Carucant

=====
=====

PAGE 4

PART III-B

CITY PLANNER'S REVIEW

The City Planner has reviewed this application to determine if the requested variance would be in harmony with the orderly and desirable development of the City and has found the following:
