

**CITY OF DOVER BOARD OF ADJUSTMENT  
AGENDA  
Wednesday, July 18, 2018 at 9:00 AM**

**City Hall, Council Chambers  
15 Lookerman Plaza, Dover, Delaware**

ROLL CALL

APPROVAL OF AGENDA

APPROVAL OF MINUTES of June 20, 2018 Meeting

COMMUNICATIONS & REPORTS

1. Reminder: The next Board of Adjustment regular meeting is scheduled for August 15, 2018 at 9:00am in the City Council Chambers.

**NEW BUSINESS**

**Applicant #V-18-04**

550 Bay Road. Bay Road One, LLC has requested a variance from the requirements of the *Zoning Ordinance*, Article 4 §4.15 pertaining to the minimum lot width of parcels in the C-4 (Highway Commercial) Zone. Specifically, the applicant proposes to subdivide the parcels with an overall lot width of 335 feet into three (3) lots of 54.34 feet, 130.24 feet, and 150.34 feet width, as measured at the street frontage of Bay Road (and 54.34 feet, 132.05 feet, and 148.62 feet as measured at the setback line). Subject property is zoned C-4 (Highway Commercial Zone). Tax Parcels are ED-05-077.00-01-10.01-000 and ED-05-077.00-01-11.00-000. The owner of record is Bay Road One LLC.

**Applicant #V-18-05**

1424 Forrest Avenue. Jonathan M. Baske on behalf of McDonald's has requested a variance from the requirements of the *Zoning Ordinance*, Article 5 §4.7 pertaining to the maximum number and size of permitted signs. Specifically, the applicant seeks to permit a total of four (4) wall signs in lieu of the allowed quantity of (2), and to permit a wall sign at 32.8 SF in lieu of the maximum 32 SF permitted. Subject property is zoned C-2A (Limited Central Commercial Zone) and subject to the COZ-1 (Corridor Overlay Zone). Tax Parcel is ED-05-076.10-02-53.00-000. The owner of record is McDonalds Real Estate Company.

ADJOURN

29 Del. C. § 10004(e)(2)

THE AGENDA ITEMS MAY NOT BE CONSIDERED IN SEQUENCE. THIS AGENDA IS SUBJECT TO CHANGE TO INCLUDE THE ADDITION OR THE DELETION OF ITEMS, INCLUDING EXECUTIVE SESSIONS.

**CITY OF DOVER**  
**BOARD OF ADJUSTMENT MINUTES**  
**June 20, 2018**

A Regular Meeting of the City of Dover Board of Adjustment was held on Wednesday, June 20, 2018 at 9:00 A.M. with Chairman Sheth presiding. Members present were Chairman Sheth, Mr. Keller, Mr. Hufnal, Colonel Ericson and Mr. Senato.

Staff members present were Mrs. Purnell, Mr. Diaz, Mr. Swierczek, Mr. Hugg, Mr. Coburn, Mr. Osika and Deputy City Solicitor Mr. Pepper.

**APPROVAL OF AGENDA**

*Mr. Hufnal moved to approve agenda as submitted. The motion was seconded by Mr. Senato and unanimously carried 5-0.*

**APPROVAL OF THE REGULAR BOARD OF ADJUSTMENT MEETING MINUTES OF APRIL 18, 2018**

*Mr. Keller moved to approve the meeting minutes of April 18, 2018. There were no corrections. The motion was seconded by Mr. Hufnal and unanimously carried 5-0.*

**OPENING REMARKS CONCERNING APPLICATIONS**

Mr. Dave Hugg, Planning Director stated that the meeting today will be conducted in accordance with the motion of the Agenda. There is one (1) application on the agenda under New Business. The Application file will be read, and the floor will be opened for questions of the applicant by the Board and for public testimony. If the Board needs to consult the City Solicitor, they will recess to discuss legal matters. If the applicant must leave, they can contact the Planning Office at 736-7196 to learn of the Board's decision. A formal notice of the decision will be mailed to the applicants. Approved variances expire after one year if the approved project has not commenced.

All public notice for the new applications on this agenda was completed in accordance with Code requirements. The meeting agenda was posted in accordance with Freedom of Information Act requirements.

**NEW BUSINESS**

**Applicant #V-18-03.**

500 West Loockerman Street. Robert Duncan has requested a variance from the requirements of the *Zoning Ordinance*, Article 3 §10.1 pertaining to permitted uses in the IO (Institutional and Office Zone). Specifically, the applicant seeks to continue the use of a part of the basement as an apartment for an in-residence caretaker. The site is located on the western end of Loockerman Street, west of Jerusalem Way, and north of North Street. It is 2.18 acres +/- in size and zoned IO (Institutional and Office Zone) and subject to the H (Historic District Zone). Tax Parcel: ED-05-076.12-04-11.00-000. The owner of record is Robert Duncan.

Exhibits for the Record: Staff Report, zoning exhibit, and statement and plans submitted by the applicant. Legal Notice was published in the Delaware State News on June 10, 2018. The public was notified in accordance with regulations.

Mr. Diaz gave a summary presentation of the Variance Application Request.

Colonel Ericson questioned the procedure for maintaining documents. Mr. Diaz replied that the procedure for maintaining the documents have changed over time (the standards for what is kept in the records). At this point, whenever there is a Building Permit application once the Permit is issued and paid for, then Staff will first scan the entire Permit application including what the applicant submitted and our own documentation for it that will go into the electronic records. The paper copy of the Permit is then discarded because we do not have room for all the Permits in the office. It used to be that the documentation that staff produced in addition to the application was less extensive than it is now. For every Permit, Staff will write a description of what exactly is being permitted. There is a summary in addition to the construction document that the applicant submits. For more recent applications, it is our go-to for finding out what exactly was forbidden in an application. The older Building Permits do not have that information.

Colonel Ericson stated that it is very critical for documents that they should be maintained. When he worked at DMV (Division of Motor Vehicles) every document received was scanned into the computer for future access.

Colonel Ericson questioned what information was on the Permit document concerning the zoning area as to what can and cannot be done in this zoning area (related to whether something is allowed or not). Mr. Diaz replied that currently when they approve a Permit, the office will write in the summary documentation whether the use is permitted under the zoning in addition to whether it meets supplementary regulations, trash, parking, etc.

Colonel Ericson questioned would the Permit specifically indicate that you could not put apartments or caretaker units. Mr. Diaz replied no. The documentation would not list everything you could not do. It would only state what is proposed and that it can be done.

Colonel Ericson questioned whether the owner and attorney received copies of the documents. Mr. Diaz replied at the time that the original Permit was approved, yes, they would have been given a copy of the approved Permit which at the time did not include any Staff comments beyond the approval.

Colonel Ericson noted and asked that when you normally issue a Permit (when the building had the railroad office) would it have been considered an office. Mr. Diaz replied yes, it was considered an office with breakroom type functions. If you look at Exhibit B in the packet, it is a map of the unit that was given to the City by the applicant. He could not state specifically that this is what was approved with the Permit because the office no longer has that documentation or what the unit currently looks like now.

Colonel Ericson stated as he referred to Exhibit B that it states office suite. He questioned that it

would not be allowed to go to a full-time residence if it is designated as an office. Mr. Diaz replied that is correct.

Mr. Diaz stated that there was one item of correspondence which is a letter from the GSA (General Services Administration) representing the FBI as one tenant of the building. They are opposed to the granting of the variance. They did not provide much detail in the letter as to the reason why they oppose other than (the statement): “As a leasing agency we do not place tenants in buildings where a residential unit would impact the tenant agency. In this case, the residence would negatively impact the tenant, FBI.”

Mr. Hufnal asked if this was the only negative correspondence received. Mr. Diaz replied yes, this is the only correspondence received positive or negative.

*Chairman Sheth questioned if there was any member present who had a conflict of interest and there was none.*

**Representative:** Mrs. Linda Duncan, Owner

Mrs. Duncan was sworn in by Mr. Pepper.

Mrs. Duncan testified that they were very surprised. They have had so many inspections over the 14 years. Raymond Williams has been there quite a few years. This kind of took us by surprise. First, the Board saw the Jackson Architects drawing and nothing has been changed for Raymond to live there. Raymond asked if he could live there and they were delighted. Not very many people would want to live in a place that does not have any windows and is in an office building. Again, they were very delighted when he said he would because there are many times with the number of offices in the building and the number of people coming in and out of the building (although they are locked at 5pm) how many people have keys. With the Outlook being on the 5<sup>th</sup> floor and the number of events there, many things could go wrong when you have that. Very often, because Raymond lives there, he has been able to call us to let them know that a door has been left opened, parking lot lights have been left on or the parking lot lights are not on. He is there to take care of everything and they cannot mention enough how grateful they are for Raymond. Although at times he may have a little temper issue and so forth, but to have someone, that is his life. Raymond has been very upset. He knew about coming to the City before they did regarding this issue. Raymond was so upset thinking about having to leave.

Mrs. Duncan stated that she would like to answer any questions that the Board may have. What she is saying is what harm is there to have Raymond live there? It is like 24/7. Raymond does not drive. There is no car in the parking lot; he walks everywhere.

Chairman Sheth stated that there are a lot of inspections. By the good grace of the City, it was disclosed that it was being used as an apartment. The Board is not looking at whether Raymond is a good or bad guy. They are following the Ordinance and the City requirements; this is how they make their decision.

Colonel Ericson asked Mrs. Duncan if she was Mr. Robert Duncan’s wife. Mrs. Duncan replied

yes.

Colonel Ericson asked Mrs. Duncan if she was aware that Mr. Duncan had been before the Board in the past. Mrs. Duncan replied that she was aware that he has been before a lot of Boards. She was not aware if he had been before the Board of Adjustment for this apartment. Colonel Ericson replied negative, it was completely unrelated to this project, except it talks about precedent and that is his concern. The first time, many years ago Mr. Duncan came before the Board and asked for an extension of 2-feet on his garage; it was granted. A couple of years later his next-door neighborhood came to the Board and requested 20-foot increase on his garage. The Board was inclined to say no because it went into the offset area. The applicant stated to the Board that they had given the same variance to his neighbor Mr. Duncan and he was requesting the same. The Board went out to do the measurements, and as he recalls it was 20-feet. It showed that no matter what the Board approved, it was not what Mr. Duncan was going to do. Colonel Ericson stated that he is very skeptical that if this variance was granted what Mr. Duncan might come up with. If a precedent is set, Mr. Duncan might take some of the empty offices in the building for regular apartments. The Board does not want to see this expanded.

Mrs. Duncan stated that she could not state that this has ever come up that the empty offices would be turned into apartments.

Colonel Ericson commented that office space was changed into a living quarter for someone without permission.

Mrs. Duncan stated that it was living quarters previously. It was totally an apartment previously and there were people there 24/7.

Colonel Ericson stated that according to the Exhibit B it was approved for an office suite. To his understanding the Norfolk Southern Railroad Company was using the office suite as an office that included two (2) beds.

Mrs. Duncan stated that the office suite also included a kitchen and bathroom.

Colonel Ericson questioned whether the applicant had the Building Permit or Certificate of Occupancy. Mrs. Duncan replied no, she only had the plans from Jackson Architects. They have not been in the office since they moved from their home. They do not have a lot of paperwork.

Colonel Ericson mentioned that it seems as if Mr. Duncan disregards the rules from time to time. On the paperwork that was submitted, it shows office suite. Now, you are telling the Board it is an apartment. He did not see any indication where that would be an apartment.

Mrs. Duncan stated that it would not be an apartment for Colonel Ericson or her, but it serves for Raymond. It is what it is. Colonel Ericson replied only because you did not follow the rules. Is that correct? Mrs. Duncan replied okay.

Colonel Ericson stated that there are other buildings in that IO Zone that if the Board should rule in Mrs. Duncan's favor, then others would want the same (caretakers, living quarters, etc.). The

City has met and came up with a plan that has never been violated, at least that he was aware of, where you can put apartments in an IO Zone facility. If the Board changes that and state that you can, then others will want the same privilege.

Chairman Sheth stated that the application for that space has always been office. The question is a fee was never paid as an apartment. If Mr. Duncan had applied for a permit as an apartment, he would have been informed at that time that it could not be an apartment. This is the reason this has been going on for the last 14 years.

Colonel Ericson stated that the Board tends to follow what the City Code states. The Planning Commission, City Council, and Mayor all agree, so the Board try to keep to the decision unless there is definitely a reason to change it. They do run across this occasionally.

Colonel Ericson went through each item:

He mentioned that the first thing to grant a Use Variance: The Board shall determine that the following criteria exist and document them in their findings of fact: (a) That there are physical conditions 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.

It seems to him that this is something Mr. Duncan did without permission. This is a self-inflicting wound.

Mrs. Duncan stated that she did not know what Colonel Ericson wanted her to say to that. Obviously, they were wrong for not applying for Raymond to live there, but nothing has been changed. Nothing has been changed at all inside that office. She does not see any harm it has done. Ultimately, it is up to the Board what they decide. She just thinks that it is great especially in that section of town that they have someone watching the building. Before we had anyone there in the interim between Norfolk Southern Railroad Company leaving and Raymond living there, they had homeless people using the restroom. When people would come in the morning to use the restroom it smelled; there would be homeless people still in the restroom. There are often people still in the building staggering around because the doors are open for events sometimes until midnight or 1 a.m. in the morning. It is just rare to have someone that wants to live there. Again, it is the Board's decision as they have not made any changes. It is not any more beautiful. There's not a blade of grass; there are no windows.

**Representative:** Mrs. Erin Barrett, Daughter of the Owner

Mrs. Barrett was sworn in by Mr. Pepper.

Mrs. Barrett testified that Raymond who now lives in the building started working for State to State Janitorial Supply. He worked for them prior to the Duncan Center opening. She and Raymond were the first to work in the Duncan Center prior to Social Security taking their lease. Raymond has worked there for 14 years. The dynamic around that area has dramatically changed within the last 14 years. Norfolk Southern Railroad Company came to them in 2005 and they wanted a type of crash pad. They were working on the railroad from the old railroad station and they needed a crash pad for the guys who worked at night. They asked for a shower. Mr. Duncan

applied for a permit and received a Certificate of Occupancy afterwards. As Mr. Duncan normally does, he put in the smallest hot water heater you could imagine. You can take about a 30 second shower in this office suite/crash pad that Norfolk Southern Railroad Company used. He also put in a small kitchenette that was requested in the suite. It was built; she listened to Mr. Diaz mention whether what was turned in was the actual drawing that was submitted by Mr. Duncan. She whole heartily agrees with what was mentioned earlier regarding what Mr. Duncan has done in the past. But this was built specifically as the drawing states, it was submitted and dated 2005 from Jackson Architect. Norfolk Southern Railroad Company requested a small office suite, two (2) sofas, back bedroom that stored cots, shower, and small utility sink. Due to the lack of business they ended their lease at the end and the Duncan Center had this vacant space that just sat there. When the need came, the most obvious use was an apartment because absolutely nothing was changed, not even the paint on the walls. When you mention reasonable use of the land and it cannot be used for something else, she agrees that the Duncan Center can be used as office space, but that specific land has no other use except for a crash pad type of use. To her with Raymond being there is the most obvious change. She understands that it is not zoned properly and that is the reason they are present today to request that variance so that they can have the office suite apartment in the building. She understands that it has never been granted before, but she assures you that it is needed now. There are homeless people that sleep in the stairwells and there is one that sleeps in the State Building that is west of the Duncan Center every night. She is married to a City of Dover police officer and there was a domestic because she could not remove someone who put a tent on the Duncan Center property right outside of the locked exit door. There was a tent inside a tent. When you peeped inside there were book shelves inside the tent. It took her a full week to remove the tent from the property. We just thought with people walking in and out of the building, that they had to walk by and see the tent. Again, she understands that it has never been done before, but they are strongly asking that the Board would make this exception because it does keep the illusion of being safer in the building by keeping people out after hours.

Colonel Ericson stated he did not want to get into Raymond work schedule. Expecting one person to be available seven days, twenty-four hours a day for security; he is not going to cut it and he cannot possibly cut it.

Mrs. Duncan replied that Raymond is not the only person. Raymond works from 6 a.m. until noon. There is another person that comes in til 5 p.m. and locks up. Raymond is not constantly walking the building. He is living there so he is aware that lights are left on. He does not have a lot other than horseshoes. He does not have a lot to do; this is his mission in life.

Chairman Sheth stated that the Board strictly makes the meaning interpretation of the Ordinance. The Board does not disagree with what you are saying and whether it is good or bad. The problem is, the Board cannot be subjective to what is being said. Each Board members tries to make an interpretation. If it was done at the same time that it was stated, it probably would have been granted at that time, but the Board does not know that. The question is, how do you apply for the variance to convert to apartments and then the Board tries to make an interpretation of what they can and cannot do. The requirement is great, and everything is good, but the problem is when the Board is not sure they refer to the City Solicitor for his opinion. On top of that, the FBI Agents have written a letter and it cannot be ignored. The Board will not ignore it because

they are strictly making interpretation. There is a Code Enforcement Officer and Fire Marshal present today who also follow ordinances every day. There are so many offices and houses that have basements whether it is downtown or anywhere. This is really the big issue, not what you are saying. The question is whether the Duncan Center can have an apartment or not within the limitation of the Code and ordinances. The Board may request that the City change the ordinances, so we will not have to go through this. This is up to the City Council.

Mrs. Duncan stated that she just glanced at the letter, she was not sure it said FBI, she thought it just said GSA. She asked if it stated FBI? Colonel Ericson replied yes.

**Next Criterion:**

“(b) That 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.” Colonel Ericson asked the applicant what their position on that was. Mrs. Barrett replied that it will be vacant. The building is not currently at full capacity. When you mention specific land, she is thinking that space. The space that is being rented currently as an apartment. Colonel Ericson replied that the Board is looking at the whole building. The whole building has a lot of tenants. The Board is not just looking at one room. The room could be used as storage and security room. There are other uses for the space. Mrs. Duncan replied they have plenty of space right now. She is not sure if the Board is aware of the rental situation in Dover at the current time, but it is not good. They have too much space and they do not need any more storage, they have plenty of empty rooms.

Chairman Sheth stated that there used to be a lunch and/or conference meeting room in the basement for a committee.

**Next Criterion:**

“(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 therefrom, will not be injurious to the neighborhood, will not change the character thereof and will not be otherwise detrimental to the public welfare.” Colonel Ericson stated that it would be because they have never had living quarters in this IO Zone area. This would be a new one and would set a precedent that they probably could not live with in the future. Mrs. Duncan replied that she is getting pretty old and she realizes that life evolves, and change has to happen. She sees a lot of changes that need to happen in this town. Maybe there will be more apartments coming up in that area and maybe more buildings will need to be turned into living places. She is not an expert, but she just states that life evolves and changes. You cannot just keep rigid rules and sometimes you just have to be a little more flexible. Chairman Sheth and Colonel Ericson agreed. Colonel Ericson also replied that there are changes all the time, but the way they do changes are through regulations and ordinances, so they will reflect what the community wants at that time. That is the proper way to do it. A variance is not the way to go. Chairman Sheth replied that the Mrs. Duncan’s argument is absolutely true, but it would need to be presented before the front of the City Council meeting, not in front of the Board of Adjustment. The Board of Adjustment follows guidelines by the City Solicitor and the recommendations from the Planning Director, as well as the Board’s own



interpretation.

Chairman Sheth mentioned again that the Board does not disagree with what is being said, but the Board of Adjustment is not the Board to change it.

Mr. Senato mentioned that looking at the plan when the Norfolk Southern Railroad Company moved out and Mr. Raymond moved in he did not see an apartment or any bedding. The Certificate of Occupancy is not available or cannot be found. The City also states that there was a Certificate of Occupancy issued, but the Board does not have a copy due to time passed he presumed. There is also a letter he received this morning and he did not know whether or not the GSA who opposed this variance has any other comments to make at this meeting because they are not present. He would suggest or in his mind feel they should have a verbal conversation at this meeting as to whether they are for or against this variance other than just the letter. He is sure they have other comments. He would suggest perhaps they appear before the Board of Adjustment at another meeting. Also, when you talk about vacancies and homelessness, the City has a bad problem. In less than a year homelessness increased from 100 to nearly 350. Every building public, private and including the library has homeless persons floating around. He even has homeless persons camping across the river from where he lives in the winter. If there is security needed by any corporate entity, then that would need to be done through the hiring of security in his mind. You are in violation; the variance that is being requested is to turn this space into an apartment. He feels in his mind, if in fact this variance is granted then a precedent will be set in this City. One of which we would be opening a Pandora's Box. Because if he was a businessman and owned property in that area or another and had the same problems then he would say wait a minute, I want to put an apartment in my building. The point that Colonel Ericson made and his remarks he concurs with, except that there was a violation. As far as using this as an apartment, he does not see anything shown that lets him know someone is living there other than the fact that it is an office work area space. In conclusion, he would strongly suggest that if there is any opposition by the GSA service that they be given a chance under oath at a meeting to present their point of view.

Mr. Keller stated that his understanding with the Certificate of Occupancy is that upon the original completion of construction of that office building there would have been a Certificate of Occupancy issued. Mr. Keller asked if this was correct. Mr. Diaz and Mr. Hugg replied yes.

Mr. Keller stated that at the time all the proposed uses would have been in accordance with the IO Zone and the appropriate zoning at that time to his understanding. With the Exhibit B, the office suite would certainly have been an allowable IO Zone property usage. It is not uncommon for business locations or office buildings to have a crew station if you will, gathering room, conference room typically referred to as such. Exhibit B still simply represents just that a suitable office suite conference room. It looks like a large table, a 12x12 office area with an associated bathroom that is not uncommon. To him this does not represent the suitable living quarters for human beings to occupy such as an apartment complex.

Mr. Keller stated that a shortcoming of seeking an allowance for this tenant is this Board from his recollection has never approved an application for an occupancy to an individual as opposed to a broad suite approval for an apartment unit. While Mr. Raymond Williams may be the tenant

today, he may not be the tenant tomorrow. There would not be any kind of assurance what tenant or tenants would occupy it subsequently if allowed usage as an apartment. This span of time represents 13 years by the information provided. In some of the correspondence and the City's Report, there is a reference to Norfolk Southern Railroad Company occupying that office suite for many years. He asked what was the term of their occupancy as an office suite? Mrs. Duncan replied she did not know. They are still in the building, but they no longer have their substation here. They have a small office that they use just for administration. In the past, when it was very active and was doing great business they had more need. Again, they now have a small office that was vacant. She guesses Mr. Duncan did not think about it when he allowed Raymond to live there. They have really been happy that Raymond has lived there. She knows that it is subjective, and the Board is not taking it into consideration, but it is okay. It would be a hardship not having someone in the building. It would be a hardship to have that space vacant when they have other vacant spaces that seem to be vacant for a long time.

Mr. Keller questioned whether they had a formal lease with Norfolk Southern Railroad Company. Mrs. Duncan replied yes.

Mr. Keller questioned whether they had any lease arrangement or rental agreement with Mr. Raymond Williams. Mrs. Duncan replied no.

Mr. Keller asked if Mr. Raymond was technically an employee of the Duncan Center. Mrs. Duncan replied that he is a maintenance contractor for the Duncan Center.

Mr. Keller asked if Mr. Raymond worked approximately 6 hours a day. Mrs. Duncan replied she would say so. He works officially 6 hours, but he is there most of the time. He is not on duty, although if something happens he calls them.

Mr. Keller asked for clarity. It was clear that the applicant made no application to the City for a tenant or apartment usage; is that correct? Mrs. Duncan replied that is correct.

Mrs. Duncan stated that it just came up that Raymond was having great difficulty in the building in which he was living. People were breaking in and he was very unhappy. He asked if he could live there and Mr. Duncan said yes. Nothing has been signed, there are no leases or anything like that.

Colonel Ericson asked about the hardship that was mentioned by Mrs. Duncan because he did not understand what the hardship is and if the hardship by Mr. Williams could be overcome by living somewhere else with a cell phone or hiring three (3) security guards on shifts to cover the building. There are other ways to do it. Mrs. Duncan replied she is sure.

Chairman Sheth asked for clarity if he understood that the City took it in good faith with your application for offices. They (the owners) gets all the benefits until someone complains. If no one had complained to the City, he asked if this would still be going on, is that right? Mrs. Duncan replied right.

Colonel Ericson asked Chairman Sheth what was the complaint about or the issue? Mr. Diaz

replied that he believed that the original complaint was actually from the GSA that they believed there was a residence in the building. Mrs. Duncan reiterated a residence in the building. She finds this very surprising because they did not hear about this. They certainly respect the GSA. Without the GSA there would almost be no building there. Obviously, they do not want to upset the GSA, but they did not know this.

Mr. Senato questioned if there were City Inspectors in the room. Chairman Sheth replied that a Code Enforcement Inspector was present.

Mr. Senato questioned whether the inspector who inspected the building asked to see the Certificate of Occupancy and if the original Certificate of Occupancy was researched and could not be found. Chairman Sheth replied that he thinks Mr. Senato is mistaking this. No one can occupy the building without a Certificate of Occupancy. There is a license fee for each tenant. The question is not about the Certificate of Occupancy.

Mr. Senato stated maybe not but just for the record. Chairman Sheth replied the applicant always had a Certificate of Occupancy. Mr. Hugg replied that the building upon completion or tenant fit out would have received a Certificate of Occupancy based on an original set of plans and being consistent with the zoning. The zoning is IO and the zone does not permit a residential component. Everyone agrees that the record plan clearly shows this as an office space; that is the trigger question. The Code Enforcement Officer and Fire Marshal who were involved are present today and can give their testimony if needed. As previously stated by Mr. Diaz, the initial action was a complaint from a tenant regarding a residential use of the building. That would have triggered an inspection that would determine whether or not that was in fact taking place. From that becomes the question, it is being used for a residential purpose and that is a use violation. There are only two (2) ways to address the issue. One is with a Use Variance which the Board of Adjustment rarely ever considers and it very unusual. The Board deals with space variance, setbacks, etc. all the time, but Use Variances are very unusual although the Board has the authority to deal with them. Or it is to have the actual underlined *Zoning Ordinance* changed to permit certain kinds of residential uses in an IO zoning district. Absent one of those two things the residential use itself today is not allowed by the *Zoning Ordinance*.

Chairman Sheth asked if Mr. Williams paid rent? Mrs. Duncan replied yes, Mr. Williams pays rent that includes heat, air conditioning, and Internet.

Chairman Sheth stated that City Codes suggest any rental property needs a license. The license fee is annually.

Chairman Sheth mentioned that inspections occur on rental properties.

Mrs. Duncan stated that is something that was previously mentioned. Others might want to do the same thing, she honestly did not see that being a bad idea. She really thinks Downtown needs to be changed perhaps with some residential units, it would be better than having empty buildings.

Chairman Sheth agreed but stated that the decision is determined by City Council. He strongly

recommends it and it will justify that we need something like that. Right now, the Board hands are tied up. Mrs. Duncan said okay.

Mr. Hugg mentioned for the record, a number of the commercial zoning districts in this immediate area and Downtown generally do allow for mixed use including residential. The residential could obviously be a noninvolved tenant, caretaker, custodian or whatever who is occupying a residential space. The issue before you is that in this particular structure as zoned, as built, and as approved a residential use is not permitted. This issue could have come up had the Duncan's applied for a Rental License to rent it as an apartment. We would be essentially in the same situation today because the first thing the Code Enforcement Officer would have looked at is what does the zoning allow and if it allows the use of a residential rental license. The answer would have been no. We would have been in the same situation as we are today.

Mrs. Barrett wanted to comment on the hardship. Raymond obviously would have a hardship. Mr. Duncan would also have a hardship because he would be losing that rent and they have plenty of rental spaces with no tenants; so, they would ultimately be losing a tenant. There are other tenants in the building that have not complained that would also feel a hardship by not having Raymond there. There would be a hardship felt. She did not think it would be a hardship felt if the variance was granted only because she could not see it setting a precedent for other already zoned businesses because this was already built. It is not like they made any changes to make it residential. As people would ask for the variance it would then be building.

Chairman Sheth asked Mr. Pepper if he could comment. Mr. Pepper asked which part the Chairman wanted him to comment on. Mr. Pepper stated that every decision the Board establishes is a precedent. Chairman Sheth stated that and this is what we follow.

Mrs. Duncan asked if they applied through some other way that he can stay there. In other words not ask for a variance but apply to have a multi-use facility. Mr. Hugg replied no, what we are saying is the only way this matter can be resolved that would allow Raymond to stay there would be if this Board issued a use variance and state that it is a unique circumstance not otherwise contemplated in the IO Zoning District that would allow you to do it. Or the City Council with the recommendation of the Planning Commission could consider an ordinance as a text amendment to the Ordinance that will allow residential uses in the IO District. It was done a number of years ago in the C-1 and C-2 Commercial Zones mostly to encourage residences over top of stores; that is more of a Mixed Use.

Mrs. Duncan stated that either one of those would be fine with her.

Chairman Sheth suggested after the meeting Mrs. Duncan could speak with Mr. Hugg and he will be glad to help you. The Board cannot discuss contrary to any of the issues on this meeting. Mrs. Duncan replied okay.

Colonel Ericson asked how long the process would take if she went before with an argument to City Council to change it. Mr. Hugg replied that the matter would need to go before the Planning Commission and to City Council as a first and second reading of a text amendment. You would be looking at a minimum of 60-90 days assuming that the Planning Commission recommends it

and the City Council approves it on the second reading. This does not count any staff time or legal time in writing or clarifying definitions. It is not something that would happen in the next few weeks or months. It is a longer-term process.

Colonel Ericson questioned if in fact the Board voted against the variance could the Board put a provision in the motion that Raymond could stay in the building until (90-days) the issue is resolved through City Council. Mr. Hugg replied no, but he would refer the question to Mr. Pepper. Mr. Hugg replied also that in his mind you would be creating zoning text outside the Board's authority. Mr. Pepper replied that he agreed with Mr. Hugg because it would be inappropriate.

Chairman Sheth commented that if anything goes wrong and they have already been advised by the FBI Agents that they are against; if something goes wrong what would be the City position. Colonel Ericson replied that he wanted it to be on the record.

Mrs. Duncan questioned the way the letter reads from the GSA. She stated that it sounds like they are talking about a residential housing unit. She would not call it a residential housing unit and she wonders if they were aware of what kind of unit they were talking about. She cannot see how this is affecting the area. Chairman Sheth replied if he was in her position he would ask his attorney regarding the lease agreement with GSA. There could be something in the nondisclosure that could jeopardize your lease agreement. He wanted to make her aware of it. 10:04 (09)

Mr. Keller noted that Mrs. Duncan has somewhat of a portfolio of available rental units within the Duncan Center. Mrs. Duncan replied that she did not have it with her, but they do have a portfolio.

Mr. Keller questioned whether they ever represented office suite 001 as an available office suite or as a rental. Mrs. Duncan replied no. Mr. Keller asked why not? Mrs. Duncan replied because Raymond is living there.

Mr. Keller asked that at the conclusion of Norfolk Southern Railroad Company tenancies was it at that time advertised? Mrs. Duncan replied no. It is very specific space and she does not know how many crash pads are needed in this town. She doubts that there is much need for a place like that.

Mr. Keller stated that it represents itself as a 12x12 office with a meeting room and an available restroom facility. Mrs. Duncan replied that it is in the basement with no windows. Not very many people who are going to pay any kind of rent would want to be in a basement with no windows. It is not going to be very rentable.

Chairman Sheth asked Mr. Hugg if he or the Board had any question for the Code Enforcement Officer or Fire Marshal who is present. If we do not have any questions for them, they can be excused.

Colonel Ericson asked who they were. Mr. Hugg replied Ron Coburn is the Code Enforcement Officer and Jason Osika is the Chief Fire Marshal for the City of Dover. Ron would have been

the one that would have initially addressed the complaint as a code violation and would have consulted with the Fire Marshal in terms of whether that particular space met requirements for occupancy as a residential use.

Colonel Ericson asked if any of their testimony includes something that the Board had not considered or talked about to this point.

Mr. Senato stated that he had a question for the Fire Marshal.

**Representative:** Mr. Jason Osika, City of Dover Fire Marshal

Mr. Osika was sworn in by Mr. Pepper.

Mr. Senato asked a question regarding the basement area and the safety of the individual who lives there whether he pays rent or not. He is under the impression that there are no windows in the area. In the event of a fire, smoke, or flooding what is the egress or regress for this lower basement area and the safety concerns regarding the fire department. Mr. Osika replied that what he could remember there are three (3) exits which are stairwells out of the basement area. The building is also sprinkled and has a fire alarm as well. When you go from a safety aspect, it is a pretty safe building.

Mr. Senato stated that he was more concerned with the one area down in the basement. He wanted to know if the individual had quick exit access for his own safety in case of a fire, smoke, or flooding. Mr. Osika replied yes. There are three (3) different exits.

Mr. Keller questioned whether this office building in and of itself had tenants that occupy the premises 24- hours a day. Mr. Osika replied he was not sure.

Mr. Keller questioned absent office occupants with this residential apartment tenant would you supposed it poses a greater risk to the safety and security of that building on a 24-hour basis. Mr. Osika replied that the only thing he would be able to comment on is the Life Safety aspect. He would not be able to speak on the security aspect.

*Chairman Sheth opened the public hearing.*

*Chairman Sheth closed the public hearing after seeing no one wishing to speak.*

*Chairman Sheth questioned if there was any additional correspondence for the record. There was no other correspondence.*

Mr. Keller pointed out from his understanding from a legal aspect that the Board is in fact allowed to have the written letter represent itself as an approved appearance. Mr. Pepper replied yes, the Board has traditionally accepted correspondence that supports an application or opposes an application. The Board should give it such weight as it deems appropriate.

Mr. Hufnal commented that Mrs. Duncan gave an excellent testimony and even though he

sympathizes with her wishes and desires of that area the Board's hands are tied by the Ordinance as to what they can do. He appreciates all of her efforts and he wishes that she will continue to pursue other aspects of this so that they can hopefully end up with what they desire. Under the current circumstances, the Board is sort of limited as to what they can approve.

Chairman Sheth stated that he agreed with Mr. Hufnal and suggested that Mr. Hugg recommend to the Mayor regarding this kind of situation to change the Ordinance the proper way so that the future problem can be solved. Otherwise, we will have the problem everyday with the Board and variances and we will have the same results. Mr. Hufnal replied that he also agreed with Chairman Sheth because the Board could be faced with other circumstances in the future unless we look at the Ordinance and change something in that aspect of it we could have future cases similar to this.

Chairman Sheth stated that perhaps they could figure out that something could not go on for so many years and then they find out that there are always exceptions. Mr. Hugg replied that he did not have a clean and clear answer to the question, but he is sure that there are activities that go on undetected for an extended period of time for the simple reason that nothing has triggered them coming forward. In this case, it is a perfect example of where the applicant did not come to the City asking for a rental license to get an apartment in the building so that did not trigger that question being asked. Had there not been a complaint from a tenant there would not have been an investigation that would have been required. Essentially, other than routine business licenses and annual inspections of that nature, he does not know that even in a fire inspection if this matter would have necessarily been raised. There are probably multiple situations where this does occur with all respect to the applicant innocently. He does not believe that there was any intention on the part of the applicant to hide the fact or if it occurred to them that this was an issue. We find these situations in a number of the provisions in the *Zoning Ordinances* of the City Code that things sometimes are not fully developed or thought about because it did not come to our attention to start with. He reminded the Board that their decision today is limited to this application for a Use Variance for this purpose in this building. If the Board wants to recommend that we do something beyond that then we need to be careful of how it is phrased.

Colonel Ericson asked for clarification if the GSA letter was part of the official record. Mr. Pepper replied yes.

*Colonel Ericson moved to disapprove variance application V-18-03 based upon the information given in a letter from GSA that was given to them by Mr. Diaz and the requirements for a Use Variance has not been met in his mind and furthermore there is another solution to this problem. The motion was seconded by Mr. Senato. The motion unanimously carried 5-0.*

Meeting adjourned at 10:16 A.M.

Sincerely,

Maretta Savage-Purnell  
Secretary



City of Dover

Board of Adjustment

July 18, 2018

**V-18-04**

Location: 550 Bay Road (on the west side of Bay Road south of Miller Road)

Applicant/Owner: Francis X. Smyth c/o Bay Road One LLC

Tax Parcels: ED-05-077.00-01-10.01-000 and ED-05-077.00-01-11.00-000

Application Date: June 15, 2018

Present Zoning: C-4 (Highway Commercial Zone)

Prior Use: Manufactured Home dealership

Proposed Use: Office Park (currently under construction)

Reviewed By: Julian Swierczek, Planner I

Variance Type: Area Variance

Variance Requested: To go below the minimum lot width of 150 feet required by the C-4 zone. Applicant requests to subdivide the existing 335-foot-wide lot into three (3) lots of 54.34 feet, 130.24 feet, and 150.43 feet width, as measured at the street frontage of Bay Road. The lots measure 54.34 feet, 132.05 feet, and 148.62 feet wide respectively at the building setback line.



### **Project Description**

The applicant is requesting a variance from *Zoning Ordinance* Article 4 §4.15- Bulk and parking regulations for C-4 (Highway Commercial Zone), to allow for a reduction in the minimum lot width requirements, in subdividing the parcel currently addressed as 550 Bay Road.

The site is subject to a prior variance application V-17-12 which went to the Board of Adjustment for review in July 2017 and received partial approval. This was a request for an area variance from the requirements of *Zoning Ordinance* Article 6 §3.11 related to the maximum number of parking spaces permitted. The applicant proposed to construct a total of 231 parking spaces on the parcel. For both parcels, the applicant further requested an area variance from the requirements of *Zoning Ordinance* Article 5 §7.22 related to landscaping options for the Opaque Barrier Requirement. The applicant proposed to eliminate the landscape component of the Opaque Barrier and provide only the fence component. The Opaque Barrier (landscape component) removal was not approved.

Board of Adjustment application V-17-12 was submitted concurrently with Site Development Master Plan Application S-17-19, which was heard before the Planning Commission on July 17, 2017, and received conditional approval. This approved Master Plan involves the construction of an office park and stormwater management area in three phases on property known as 550 Bay Road. The site is currently divided into two parcels: one at the front with frontage on Bay Road and additional proposed access to Martin Street, and one at the rear with no street access as it is planned to be a stormwater pond only. The front parcel is currently addressed as 550 Bay Road and the rear parcel is currently unaddressed. The existing manufactured home dealership has been demolished to allow for redevelopment. Each phase will include construction of one building and associated site improvements. Construction will result in a final floor area totaling 58,730 SF on the current front parcel for the office park and a stormwater management area on what is currently the rear parcel, replacing the originally proposed warehouse/ flex space building, when all site improvements are complete. Administrative Site Plan S-17-30 Bay Road Office Park- Phase 1 was approved in April 2018, and the first office building is under construction.

This current application V-18-04 is proposing combining the current lots 1 and 2 into one single parcel, while subdividing the sections of Lot 1 currently planned to contain the two smaller office buildings into their own lots, proposed to be the new Lot 2 and Lot 3. The applicant is asking for an area variance because the current owner, Century Engineering wishes to maintain ownership of the central access road off Bay Road, while being able to sell on the two new parcels to other developers. This would make the lot width of all newly proposed lots less than the required minimum lot width of 150 ft as stated in the *Zoning Ordinance* Article 4 §4.15.

### **Zoning and Adjacent Land Uses**

A Zoning Map Exhibit (Exhibit A) prepared by staff is attached to this Report. It shows the subject property location and surrounding zoning.

The subject property is zoned C-4 (Highway Commercial Zone) and is located on the west side of Bay Road south of Miller Road. Miller Road is part of a small network of streets that also includes Martin Street and Cowgill Street. When the Office Park project appeared before the

Board of Adjustment in July 2017, it proposed access from Bay Road, Martin Street, and Cowgill Street. However, as of the project's Final Approved Site Plan, it only proposes access from Bay Road and Martin Street.

The neighboring property to the east across Bay Road is zoned IO (Institutional and Office Zone) and is home to the Kent County Levy Court. The property adjacent to the south is vacant land zoned C-4; this land is subject to a proposal to develop a 120,000 SF shopping center (Application S-17-20 heard before the Planning Commission on July 17, 2017). The property adjacent to the west is zoned C-4 and is the site of warehouses for a building supply company. To the north of the property is a vacant C-4 parcel as well as a small residential area zoned RG-1 (General Residence Zone) and RG-3 (Group Housing Zone). Access to the residential neighborhood is from Cowgill Street, Martin Street, and Miller Road.

### **Code Citations**

*Zoning Ordinance*, Article 4 §4.15 lists the bulk and area standards for lots in the C-4 zone. Exhibit B is a table that summarizes the requirements for the C-4 zone and compares them to the applicant's proposed project. The standard requiring a variance is highlighted.

*Zoning Ordinance*, Article 12 defines *Lot Width* as follows:

The distance between the side lot lines of a lot or between the side lot line and the street line most nearly parallel to the side lot line for a corner lot, measured at the street line and setback line. For odd-shaped or triangular-shaped lots or lots fronting on *cl-de-sac* streets, the lot width measured at the street line may be reduced to not less than one-half of the minimum lot width required for the zoning district. If the street line is a curved line, the lot width measurement shall be measured along the arch of the curved line.

### **Exceptional Practical Difficulties Tests**

*Zoning Ordinance* Article 9 §2 dictates the specific powers and duties of the Board of Adjustment with regard to granting variances. Specifically the Board must determine:

2.1 *Variance*. The board shall have the authority to authorize variances from provisions of the Zoning Ordinance that are not contrary to public interest where the board determines that a literal interpretation of the Zoning Ordinance would result in undue hardship or exceptional practical difficulties to the applicant. In granting variances, the board shall determine that the spirit of the Zoning Ordinance is observed and substantial justice is done.

2.11 *Area Variance*. A variance shall be considered an area variance if it relates to bulk standards, signage regulations, and other provisions of the Zoning Ordinance that address lot layout, buffers, and dimensions. In considering a request for an area variance, the board shall evaluate the following criteria and document them in their findings of fact:

- (a) the nature of the zone in which the property lies;
- (b) the character of the immediate vicinity and the contained uses therein;
- (c) whether, if the restriction upon the applicant's property were removed, such removal would seriously affect neighboring properties and uses; and

(d) whether, if the restriction is not removed, the restriction would create unnecessary hardship or exceptional practical difficulty for the owner in his efforts to make normal improvements in the character of that use of the property that is a permitted use under the provisions of the Zoning Ordinance.

### **Review of Application**

As part of the application, the applicant was asked to summarize how the requested variance relates to the above criteria. The applicant's responses are provided below along with a Staff assessment of the application in accordance with the required criteria. The applicant's responses are also provided in Exhibit B.

1. The nature of the zone in which the property lies.

#### **Applicant Response:**

"The existing property is currently zoned C4 (Highway Commercial). The previous use of the property was a mobile home retailer. The proposed use is office buildings which is a permitted use within the zoning district."

#### **Staff Response:**

The property is zoned C-4 (Highway Commercial Zone). This zone permits retail uses as well as business, professional, and government offices and wholesale, storage, warehousing, and distribution establishments. The proposed uses of the site are permitted under the zoning.

2. The character of the immediate vicinity and the contained uses therein.

#### **Applicant Responses:**

"The property previously housed a mobile home retailer, consisting of various mobile homes and associated out-buildings. The site is currently under construction to build the first building in the approved development. The site fronts along Bay Road (US 113), but also has two side roads that abut the site along the north property lines. One of these side roads is incorporated in the approved plan to provide access into the site.

There is an RG-1 (General Residence) zone along a portion of the North-East property line that has been developed into single family residential, C-4 (Highway Commercial) zone along a portion of the North-East property line, which contains a vacant parcel, a C-4 (Highway Commercial) zone along the South-East property line, which contains a vacant parcel, and a C-4 (Highway Commercial) zone along the North-West property line, which contains lumber yard/supplier. South of the site is the Blue Hen Mall and old Value-City shopping center, both of which contain expansive parking areas. East of the site is the Kent County Levy Court office. The proposed use of the site is not out of character for the area."

#### **Staff Response:**

Staff concurs with the applicant's description, and with the assessment that the office use of the site is not out of character for the area. Bay Road is home to a number of large

office uses, including the Kent County Levy Court, DelDOT administrative offices, and the Blue Hen Corporate Center (former Blue Hen Mall).

3. Whether, if the restriction upon the applicant's property were removed, such removal would seriously affect neighboring properties and uses.

**Applicant Response:**

“Removal of the restriction would be a benefit to the surrounding property owners. If the variance is denied, the owner will subdivide the property by placing a property line down the center of the entrance boulevard, which would meet all code requirements and potentially result in a higher development density.

The entrance boulevard is designed to support use as a high-end office park. Approval of the variance request will allow the property owner to maintain the fixtures and amenities along the entrance boulevard as designed, providing a more attractive and functional site that will serve as a better neighbor. Additionally, if the variance is denied, future owners of the front two lots may have the ability to modify the geometry of the entrance drive and could impact the functionality of the site.”

**Staff Response:**

Planning Staff agrees with the assessment of the applicant in that the main reason for the variance request is so that a single main property owner can maintain ownership; and therefore, ensure maintenance of the site's main entrance drive. Were the restrictions on the applicant's property to be removed, this would not adversely affect the neighboring properties, as this would allow the applicant to ensure maintenance of the entire access drive to the site in a consistent manner.

4. Whether, if the restriction is not removed, the restriction would create unnecessary hardship or exceptional practical difficulty for the owner in his efforts to make normal improvements in the character of that use of the property that is a permitted use under the provisions of the Zoning Ordinance.

**Applicant Response:**

“If the restriction is not removed, the applicant will be prevented from maintaining ownership of the entrance boulevard into the site and subdividing the site to allow for development of the front portion of the site in a manner that is compliant with the current zoning code. The applicant will need to either give up ownership of the entrance or will need to forgo development of the southeast portion of the site.”

**Staff Response:**

*Zoning Ordinance*, Article 4 §4.15 states that the minimum required lot width of a parcel in C-4 (Highway Commercial Zone) is 150 ft. This minimum requirement would not allow the applicant to maintain the primary drive that accesses their proposed office building from Bay Road, while also subdividing the front two parcels to be able to sell to new developers.

Were the applicant to not have their variance request approved, they would either have to maintain ownership of the two front development sites which they have stated they would like to sell, or divide the maintenance of the road between two development sites that as of yet do not have a developer and may create inconsistencies with maintaining the entrance drive. Staff considers this an unnecessary hardship.

### **Variance Recommendations**

Staff recommends approval of the variance to allow for the reduction in minimum lot widths.

Staff recommend approval for reasons as follows:

- The decreased minimum lot width would not have significant negative impacts on neighboring properties in terms of traffic or the urban design of the area. The ability to consistently maintain the entirety of the entrance drive by the applicant would improve the physical quality of not only the proposed development site, but of the immediate surroundings as well.

### **Advisory Comments to the Applicant**

- If granted, variances become null and void if work has not commenced within one (1) year of the date the variance was granted. At present there is no provision for extension.
- In order to create the series of three lots, an application for a Minor Subdivision Plan for review by the Planning Commission is required.

## GUIDE TO ATTACHMENTS

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<b>Exhibit</b>	<b>Description/Author</b>	<b># Pages</b>
A	Zoning Exhibit Map (Staff)	1
B	Zoning Requirements and Requested Bulk Standards Table	1
C	Background Information and Criteria Responses (Applicant)	2
D	Site Plan as approved by Planning Commission (Applicant)	1 (11"x17")
E	Site Plan with proposed lot lines (Applicant)	1 (11"x17")



City of Dover

Board of Adjustment

July 18, 2018

**V-18-05**

Location: 1424 Forrest Avenue, Dover DE

Applicant: Jonathan M. Baske c/o McDonald's Real Estate Company

Owner: McDonald's Real Estate Company

Tax Parcel: ED-05-076.10-02-53.00-000

Application Date: June 15, 2018

Present Zoning: C-2A (Limited Central Commercial Zone)  
COZ-1 (Corridor Overlay Zone)

Present Use: Restaurant

Proposed Use: No Change

Reviewed By: Eddie Diaz

Variance Type: Area Variance

Variance Requested: To permit a total of four (4) wall signs in lieu of the allowed quantity of two (2), and to permit a wall sign at 32.8 SF in lieu of the maximum 32 SF permitted.

### **Project Description**

The applicant proposes to undertake major renovations to the McDonald's Restaurant at 1424 Forrest Avenue (Building Permit Application #18-1051) in Dover. As part of the renovation, the applicant proposes to remove all existing building signage and install new signs. The applicant proposes to install a total of four (4) new wall signs on the building, as well as various directional and drive-through signs elsewhere on the property. Directional and drive-through signs do not require permits, so the requested variance only pertains to the wall signs.

Two (2) of the wall signs may be installed in compliance with the *Zoning Ordinance*, based on the property's frontage on Forrest Avenue (an "Urban Minor Arterial" street). However, the two (2) other wall signs are not permitted. In addition, one of the signs would exceed the maximum sign area of 32 SF, a maximum based on the proximity of residential uses. The applicant is requesting a variance from the Supplementary Sign Regulations specified in the *Zoning Ordinance*, Article 5 §4.7 to allow the property to exceed its maximum permitted number of signs and maximum sign area.

The applicant's sign plan can be found in Exhibit D. Building elevations showing the signs can be found in Exhibit E. Note that both the wall signs subject to this variance request (Type A and Type B) and the other types of signs that do not need permits (Type C through Type I) are shown in these exhibits. Several existing freestanding signs on the property are not shown in detail and not proposed for removal; these include the main pylon and several other directional signs.

### **Adjacent Land Uses**

The property is located on the south side of Forrest Avenue near the southern end of Kenton Road. To the north of the property across Forrest Avenue is a parcel of City-owned open space zoned ROS (Recreation and Open Space Zone). Further north is the Hampton Square subdivision, zoned RG-3 (Group Housing Zone). To the northeast of the property across Kenton Road is a Citizens Bank branch zoned C-2A (Limited Central Commercial Zone) and the Greentree Shopping Center, zoned SC-2 (Community Shopping Center Zone). To the east of the property is the Kent 8 Plaza Shopping Center, zoned SC-1 (Neighborhood Shopping Center Zone). To the south/rear of the property is the Deerfield subdivision, zoned R-8 (One Family Residence Zone). To the west of the property is a Wawa, zoned C-2A. Finally, to the northwest of the property is the Country Club Apartments, zoned RG-2 (General Residence Zone).

A map of the property and surrounding area may be found in Exhibit A.

### **Code Citations**

The City of Dover sign regulations found in *Zoning Ordinance*, Article 5 §4 determine the allowable number, type and dimensional characteristics of signage on a property according to:

- The type of use
- Proximity to residential uses
- Classification of roads on which the property has frontage

The proposed restaurant is considered a permitted, non-residential use located adjacent to a residential use as specified in Article 5 §4.3 of the *Zoning Ordinance*.



The City of Dover sign regulations distinguish three (3) types of roads for purposes of determining allowable signage. Forrest Avenue is an “Urban Minor Arterial” as defined by Article 5 §4.3.

The entire “Sign Table” from *Zoning Ordinance* Article 5 §4.7 is presented in Exhibit B. The section pertaining to this project is highlighted in the middle section of the table.

This section is what applies to “Nonresidential Uses Adjacent to Residential Districts” as shown in the vertical text on the left, and shows the sign types, maximum number of signs, sign area, sign height, and minimum required setbacks and exclusion zones for signs on properties fronting on “Urban Minor Arterial” streets.

For this property, two wall signs are permitted based on the property’s frontage on Forrest Avenue. The signs granted by Forrest Avenue are limited in size to 32 SF. They are additionally limited to being no more than 15% of the size of the facade they are on. To promote flexibility in signage designs, wall signs may be placed on any façade of the building regardless of what street classification they are permitted under. (See *Zoning Ordinance*, Article 5 §4.4(C)(5).)

The table below compares what is permitted under *Zoning Ordinance* Article 5 §4.7 to the applicant’s proposed signage. Based on the ability to locate signs on any façade, the two allowed signs have both been located on the north (front) façade; they could be permitted on other facades as well.

**Table 1**  
**Allowed and Requested Signage, 1424 Forrest Avenue**

Sign #	Description	Location		Max size	Max height	% of Wall Area	Setback (ROW)	Exclusion Zone
1	McDonald's wordmark fascia sign (Type A)	north façade	Permitted	32 SF	N/A	15%	N/A	N/A
			Requested	32.8 SF		2.8%		
2	48" Arch logo fascia sign (Type B)	north façade	Permitted	32 SF	N/A	15%	N/A	N/A
			Requested	14 SF		1.2%		
3	48" Arch logo fascia sign (Type B)	east façade	Permitted	not permitted	N/A	not permitted	N/A	N/A
			Requested	14 SF		1%		
4	48" Arch logo fascia sign (Type B)	west façade	Permitted	not permitted	N/A	not permitted	N/A	N/A
			Requested	14 SF		1%		

**Exceptional Practical Difficulties Tests**

*Zoning Ordinance* Article 9 §2 dictates the specific powers and duties of the Board of Adjustment with regard to granting variances. Specifically, the Board must determine:

2.1 Variance – The board shall have the authority to authorize variances from provisions of the Zoning Ordinance that are not contrary to public interest where the board determines that a literal interpretation of the Zoning Ordinance would result in undue hardship or exceptional practical difficulties to the applicant. In granting variances, the board shall determine that the spirit of the Zoning Ordinance is observed and substantial justice is done.

2.11 Area Variance. A variance shall be considered an area variance if it relates to bulk standards, signage regulations, and other provisions of the Zoning Ordinance that address lot layout, buffers, and dimensions. In considering a request for an area variance, the board shall evaluate the following criteria and document them in their findings of fact:

- (a) the nature of the zone in which the property lies;
- (b) the character of the immediate vicinity and the contained uses therein;
- (c) whether, if the restriction upon the applicant's property were removed, such removal would seriously affect neighboring properties and uses; and
- (d) whether, if the restriction is not removed, the restriction would create unnecessary hardship or exceptional practical difficulty for the owner in his efforts to make normal improvements in the character of that use of the property that is a permitted use under the provisions of the Zoning Ordinance.

### **Review of Application**

As a part of the application, the applicant was asked to state how the requested variance relates to the above four criteria. The applicant's responses are provided below, along with a staff assessment of the application in accordance with the required criteria. The applicant's responses are also provided in Exhibit C.

1. The nature of the zone in which the property lies.

#### **Applicant Response:**

"The property is located within the C-2A Limited Central Commercial Zone and the COZ-1 Corridor Overlay Zone. The site fronts Forrest Avenue (Route 8) which is a five (5) lane road, two (2) lanes in each direction with a center turning lane. This area of Forrest Avenue functions as a commercial corridor. The proposed improvements will not impact the nature of the zone. The McDonald's Restaurant is existing and the proposal is for a renovation project."

#### **Staff Response:**

Staff concurs that the proposed improvements will not impact the nature of the C-2A zone, as it is possible to have a property zoned C-2A with additional allowed signage. For instance, this property would be allowed four signs if it had a second street frontage, and it would be allowed signs larger than 32 SF if the area around it was only commercial. Staff would not describe this part of Forrest Avenue as an entirely commercial corridor, as there are residential neighborhoods across the street.

2. The character of the immediate vicinity and the contained uses therein.

#### **Applicant Response:**

"Overall, the immediate vicinity is primarily commercial in nature. A Wawa convenience store/food market with fuel station is located directly adjacent to the west and there is a Bank that is adjacent to the west of the Wawa. A commercial strip, housing DQ, Great Clips, Talbots, an eye doctor, and a nail salon to name a few uses, is located directly adjacent to the east. The commercial strip, McDonald's, Wawa, and Bank are interconnected by access drives. An Apartment complex is located to the north, across Forrest Avenue. A Citizen's Bank is located diagonally across the Forrest Avenue and Kenton Road/Route 104 intersection to the northeast. The proposed improvements will not impact the character of the immediately vicinity. The McDonald's Restaurant is existing and has been part of the character of the immediate vicinity since its construction nearly 30 years ago.

**Staff Response:**

The applicant's description of the surrounding area is generally accurate, though Staff would again question the designation as "primarily" commercial. Staff will also note that completely changing the architecture and signage of a building does have inherent potential to change the character of the immediate vicinity, even if the impact would not be as great as that coming from a new building.

3. Whether, if the restriction upon the applicant's property were removed, such removal would seriously affect neighboring properties and uses.

**Applicant Response:**

"No, the neighboring properties and uses would not be seriously impacted by the extent of the variances requested. As this is already a commercial corridor, and the adjacent uses to the east and the west are commercial properties, the proposed signage will not be visually intrusive as an overall reduction of sign area is proposed (94 SF existing; 74.8 SF proposed). The signage is proposed to aid its customers in safely identifying the location of the McDonald's Restaurant as they navigate on Forrest Avenue (Route 8) as well as through the interconnected access drives."

**Staff Response:**

Staff concurs that if the building's total sign area is being reduced, then negative impacts on neighboring properties are unlikely. However, the applicant did not provide elevations and sign specifications for the existing building signs, so it is not clear where the reductions will be seen. Street view imagery shows the restaurant currently has two wall signs, one on the front (north) façade and one on the west façade; these will be directly replaced by two of the four new signs. The new signs (particularly the 32.8 SF sign) may individually be larger than the ones they are replacing even if the total sign area goes down.

The building also has three window signs consisting of the McDonald's logo, one each on the north, west, and east facades. It is not clear whether or not these three signs are included in the 94 SF total stated by the applicant. Window signs are important because they affect the total sign area both before and after the renovation, and the reduction in total sign area may be greater or lesser than that stated when they are considered. It is not known whether any window signs are proposed for the new design. Window signs are considered a different kind of building sign from wall signs and have their own placement and permitting rules under the *Zoning Ordinance*. They are frequently left out of sign plans because they are installed by a different contractor.

Worth noting is that the restaurant is currently relying on a window sign for east-facing building signage, and it appears this would be replaced by a wall sign under the new design. Wall signs tend to have more impact than window signs, especially if light sources are placed inside them.

4. Whether, if the restriction is not removed, the restriction would create unnecessary hardship or exceptional practical difficulty for the owner in his efforts to make normal improvements in the character of that use of the property that is a permitted use under the provisions of the *Zoning Ordinance*.

**Applicant Response:**

“McDonald’s is looking to reinvest in this property within the community by remodeling this restaurant building. The exterior elevations will be updated with a reimaged façade including new, modern signs which propose a decrease in overall sign area. The McDonald’s has proposed this signage package to aids its customers in safely identifying the location of the McDonald’s Restaurant as they navigate on Forrest Avenue (Route 8) as well as through the interconnected access drives. Without these modern signs, the reimaging project and reinvestment in this site will not be possible.”

**Staff Response:**

Staff believes that the maximum allowable building signage under the *Zoning Ordinance*, together with the proposed and existing freestanding signs, is adequate to safely direct customers onto the site and to the building. The main pylon and permitted wall signs should be enough to tell customers which building the McDonald’s is. The wide variety of directional signs proposed should be able to direct people once they are on site. Staff also believes reimaging and reinvestment in the site will be possible without extra signs. Most of the modernization effort comes from the building architecture; while the signs may be designed to fit into the architecture, the architecture will be able to stand without them. Because of these factors, Staff does not believe an exceptional practical difficulty or unnecessary hardship exists.

It is also not clear that the applicant has considered alternative signage strategies that would provide the desired amount of signage while still complying with the *Zoning Ordinance*. Possible things the applicant could do include joining logos and text together into fewer signs (which would still need to be less than 32 SF), shrinking the oversize wall sign by less than a square foot, continuing to use window signs, and/or constructing a monument sign at the site entrance if an additional large navigational aid is needed.

**Variance Recommendation**

Staff recommends **denial** of the variance to permit four (4) wall signs exceeding the maximum two (2), as well as one (1) wall sign over 32 SF in area, for the following reasons:

- A reduction in total sign area is not sufficient to guarantee a reduction in impact. One must consider whether individual signs will be replaced by larger ones, whether all building signage is represented in the total both before and after, and whether there will be more illumination than there was previously.
- The signs permitted under the *Zoning Ordinance* are sufficient to meet the applicant’s goals of reinvestment, modernization, wayfinding, and safety. The applicant does not appear to have fully explored other signage options available to them.

**Advisory Comments to the Applicant**

- If granted, variances become null and void if work has not commenced within one (1) year of the date the variance was granted. At present there is no provision for extension.

## GUIDE TO ATTACHMENTS

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<b>Exhibit</b>	<b>Description/Author</b>	<b># Pages</b>
A	Zoning Exhibit Map (staff)	1
B	Sign Table from <i>Zoning Ordinance</i> Article 5 Section 4.7 (Staff)	1
C	Applicant Responses to Criteria	1
D	Applicant's Proposed Sign Plan	1 (24"x36")
E	Proposed Elevations (applicant)	2 (24"x36")
F	Site Plan (applicant)	1 (24"x36")
G	McDonald's authorization for project (applicant)	3
H	Deed to property (applicant)	5