



City of Dover
Board of Adjustment
November 20, 2024

V-24-05

Title: Property at 1151 N. DuPont Highway - Application for a Variance: Signage

Location: East side of Route 13/North DuPont Highway and north of the intersection with College Road and north of the entrance drive to Bally's/ Dover Motor Speedway

Address: 1151 N. DuPont Highway, Dover, DE

Owner: Tung Ching Lin

Tax Parcel: ED-05-057.00-01-30.01-000

Application Date: October 17, 2024

Present Zoning: C-4 (Highway Commercial Zone)
SWPOZ (Source Water Protection Overlay Zone: Tier 3 – Excellent Recharge Area)

Present Use: Restaurant Building (vacant to be demolished)

Proposed Use: New Restaurant Building with drive-through

Reviewed By: Dawn Melson-Williams, AICP, Principal Planner

Variance Type: Area Variance

Variances Requested: Request has been made for a Variance from the requirements of *Zoning Ordinance*, Article 5 §4.7 associated with signage for a new restaurant building with drive-through and site improvements. The Variance Request seeks to increase the number of permitted wall signs from two (2) wall signs to five (5) wall signs.

Project Description

The property at 1151 N. DuPont Highway is located on the east side of North DuPont Highway north of the intersection with College Road. It is the second property (building) passed the signalized intersection on North DuPont Highway with the entrance drive leading to Bally's Hotel & Casino and the Dover Motor Speedway. The property currently includes a vacant fast-food restaurant building with a drive-through surrounded by a circulation drive and parking

areas. Access to the property is via a shared right-in/right-out entrance with the adjoining property to the north (Grotto's). On the eastern portion of the property there is a circulation drive that travels south to link to Bally's entrance drive. The property is proposed for redevelopment with a new restaurant with a drive-through; it is currently in review as an Administrative Site Plan (S-24-18). For this Application V-24-05, a Site Map sheet shows the project site with the restaurant building location and the placement of the wall signs under consideration (See Exhibit E).

The Applicant has requested a Variance from the requirements of *Zoning Ordinance*, Article 5 §4.7 associated with signage for a new restaurant building with drive-through and site improvements. The Variance Request seeks to increase the number of permitted wall signs from two (2) wall signs to five (5) wall signs. (V-24-05)

Previous Application V-24-04

The Applicant previously requested a Variance from the requirements of *Zoning Ordinance*, Article 4 §4.15 related to future construction of the new restaurant building with drive-through and site improvements; the Board of Adjustment considered Application V-24-02 on August 14, 2024 and granted its approval of a variance pertaining to the building setback. The Variance granted approval of a reduction of the side yard setback of 15 feet to 8.5 feet to accommodate the drive-through canopy. The new restaurant building with drive through, a proposed Raising Cane's, is subject to a separate Site Development Plan review process as Administrative Site Plan S-24-18.

Property and Adjacent Properties: Zoning and Land Use

The 1.13 acre (49,149 SF) +/- property is zoned C-4 (Highway Commercial Zone) and is subject to the SWPOZ (Source Water Protection Overlay Zone: Tier 3 – Excellent Recharge Area). The two adjoining parcels also fronting are zoned C-4 (Highway Commercial and include a restaurant (Grotto's) and a multi-tenant building with retail stores and a restaurant. To the east are the properties of Bally's Hotel and Casino and the Dover Motor Speedway which are zoned RC (Recreational and Commercial Zone). To the west, across DuPont Highway is the main campus of Delaware State University that is zoned IO (Institutional and Office Zone). A majority of the surrounding area is also subject to the SWPOZ (Source Water Protection Overlay Zone). The subject property and the nearby properties have frontage on North DuPont Highway (US Route 13) which is considered as an urban principal arterial.

A Map Exhibit (Exhibit B) prepared by Staff is attached to this Report. It shows the subject property's location and the surrounding zoning. Map Exhibit C shows an aerial view of the area.

Code Citations

C-4 (Highway Commercial Zone)

The subject project area is zoned C-4 (Highway Commercial Zone). *Zoning Ordinance*, Article 3 Section 16 lists the permitted uses, conditional uses, and other provisions of the C-4 zone. For the proposed redevelopment of the property for a new restaurant building with drive-through, the use as a restaurant with drive-through would require Site Development Plan approval. See the following excerpt of the permitted uses in the C-4 zone.

Article 3 Section 16

16.1 *Uses permitted.* In a highway commercial zone (C-4), no building or premises shall be used, and no building or part of a building shall be erected, which is arranged, intended, or designed to be used, in whole or in part, for any purpose, except the following:

- (a) Retail stores.
- (b) Business, professional or governmental offices.
- (c) Restaurants.
- (d) Personal service establishments.
- (e) Service establishments.
- (f) Hotels and motels.
- (g) Places of public assembly.
- (h) Bus terminal.
- (i) Wholesale, storage, warehousing, and distribution establishments.
- (j) Indoor or outdoor recreation and amusement establishments.
- (k) Hospitals and medical centers.
- (l) Drive-throughs.

In the C-4 zone, the set of bulk standards for development is outlined in *Zoning Ordinance*, Article 4 Section 4.15 including setbacks, parking, height, FAR (Floor area ratio), lot coverage, etc. These regulations define the buildable area and the placement of the building.

SWPOZ (Source Water Protection Overlay Zone: Tier 3 – Excellent Recharge Area)

The purpose of the Source Water Protection Overlay Zone (*Zoning Ordinance*, Article 3 §29) is to provide a safe drinking water supply and to ensure that groundwater is adequately protected and maintained. This site is subject to the Tier 3: Excellent Recharge Area. The *Zoning Ordinance*, Article 3 Section 29 lists a series of uses are prohibited throughout the SWPOZ, including in the excellent recharge area. The restaurant with drive-through use that this project proposes is not a prohibited use. SWPOZ: Tier 3 Lands are additionally subject to specific rules regarding impervious coverage if the redevelopment is subject to Planning Commission review. The maximum coverage within Tier 3 Lands is typically 30% or 60% if infiltration is used in the development's stormwater management with accommodations for redevelopment activities.

Sign Regulations

The *Zoning Ordinance*, Article 5 Section 4 – Supplementary sign regulations outlines the provision for the placement of signs. See the purpose statement in the code excerpt below.

Article 5 Section 4

4.1 *Purpose statement.* The purpose of this section is to create a legal framework for a comprehensive and balanced system of signs and other street graphics to facilitate an easy and pleasant communication between people and their environment. The ordinance from which this section is derived is enacted to avoid the visual clutter that is potentially harmful to vehicular and pedestrian safety, property values, business environment and opportunities, and community appearance. With these purposes in mind, it is the intent of this section to authorize the use of signs which are compatible with their surroundings, appropriate to the activity that displays them, expressive of the identity of individual activities and the community as a whole, and legible in the circumstances in which they are seen, understanding that it is important for the economic vitality of the community as well as individual businesses and institutions that they are clearly identified and their services are understood by the traveling public.

The section further outlines the design requirements for different types of signs. Under consideration in this Application is a variance request for the number of wall signs. See the code excerpt on the design requirements for wall signs.

Article 5 Section 4.4 *Design requirements.*

C. *Wall sign placement.*

1. When wall signs are planned, such signs shall be designed as an integral component of the building facade architectural composition.
2. Wall signs shall be limited in area and number in accordance with the provisions of subsection 4.7—Permitted signs, of this section.
3. Wall signs shall be situated so as not to cover or overlap decorative architectural elements such as cornices, belt courses, and window and doorframe moldings.
4. In cases where only one wall sign is permitted because the lot has one frontage, the business may choose to locate the sign on any exterior wall of the building to afford the best possible visibility for the traveling public.
5. In cases where more than one wall sign is permitted, the city planner or their authorized designee may allow the business to locate the additional wall sign on a different exterior wall of the building to afford the best possible visibility for the traveling public.

The *Zoning Ordinance*, Article 5 §4.7 is a table of permitted signs (Sign Table) for properties based on the specific use, road type, and sign type. This property is a non-residential use in nonresidential district and it has frontage on an urban principal arterial See code excerpt below; the wall sign requirement is highlighted (the subject of this variance request).

Article 5 Section 4.7 *Permitted signs.* Signs are permitted in all zones in accordance with the following table, which is a list of permitted sign types by use, proximity to residential uses and road classification.

Use		Road Type	Permitted Signs						
Specific			Sign Type	Number Permitted	Max. Size	Max. Height	Percentage of Total Wall Area	Setback (R.O.W.)	Exclusion Zone
Nonresidential Uses in Nonresidential Districts	Nonresidential Uses	Urban Principal Arterial	Wall	2/frontage	No max	N/A	≤ 15%	N/A	N/A
			Monument or Post and Panel	1/entrance	100 S.F.	10 feet	N/A	10 feet	20 feet
			Pylon OR *	1/frontage	100 S.F.	30 feet	N/A	15 feet	50 feet
			Pylon*	1/frontage	150 S.F.	30 feet	N/A	31 feet	50 feet

*Denotes that an additional wall sign may be permitted/added in lieu of a freestanding pylon sign.

Additionally, the following definitions are part of sign regulations of the *Zoning Ordinance*:

Frontage: For the purposes of this section, the term "frontage" refers to a parcel's property line along a right-of-way, be it public or private, excluding alleys and service drives that are abutting residential properties. The parcel must be directly adjacent to the right-of-way for it to be considered to have frontage.

Sign: Any device visible from a public place whose essential purpose and design is to convey either commercial or noncommercial messages by means of graphic presentation of alphabetic or pictorial symbols or representations.

Urban principal arterial: US Route 13, Bay Road, and Court Street between 13 and Bay Road are considered to be urban principal arterials under the provisions of this ordinance. Delaware State Route 1 is not considered to be a road that will provide frontage for any parcel.

Wall area: For purposes of calculating wall area, the calculations shall include the height of the wall from ground level to the roofline (mansard roofs also count as wall area), multiplied by the width of the wall (including all architectural features).

Wall sign: Any sign, other than a projecting sign, which is attached to or painted on any wall of any building and projects from the plane of the wall less than 18 inches. A sign attached to the lower slope or face of a mansard roof, canopy, or awning shall be considered a wall sign for purposes of this ordinance. For purposes of this section only, a "wall" shall include any permanent architectural extension of a wall, including parapets, even if such extension projects beyond or above the enclosed portions of the building. Canopy, marquee, and awning signs are all types of wall signs. (See figure 5-8).

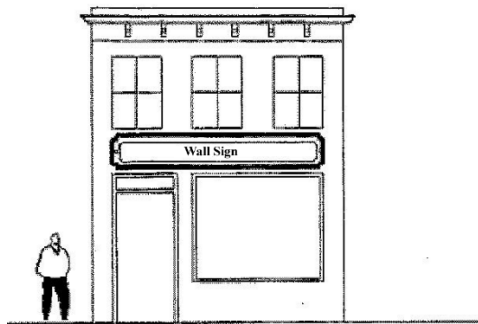


Figure 5-8: Wall Sign

Applicant's Proposed Project and Variances Requested

The Applicant has submitted a Site Map Plan Sheet (Exhibit E). This plan/drawing depicts the proposed new restaurant building and the location of the five Wall Signs identified as A1, A2, A3, A4, and D. Exhibit F are the Cut Sheets depicted the format and sizes of the wall signs. The restaurant building project proposes other signage including refacing the pylon sign, signage internal to the site for the drive-through menu boards, open sign, window signs, etc. The Applicant has requested a Variance from the requirements of *Zoning Ordinance*, Article 5 §4.7 associated with the wall signage for a new restaurant building with drive-through and site

improvements. The Variance Request seeks to increase the number of permitted wall signs from two (2) wall signs to five (5) wall signs. One wall sign is proposed on each of the building's elevations and with an additional wall sign on the south elevation near the drive-through pick-up window.

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 response (Exhibit D) along with a Staff assessment of the application in accordance with the required criteria is provided below.

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

Applicant Response: Parcel is zoned C-4, Highway Commercial, which permits the proposed use, a Restaurant and Drive Through as a by right use.

Staff Response:

The subject property is zoned C-4 (Highway Commercial Zone). The C-4 zoning district is a commercial zoning district that allows for a variety of retail stores, restaurants, offices, and service establishments among other uses. The proposed use as a restaurant and drive-through are permitted uses. The C-4 zone has bulk standards related to setbacks for placement of buildings on a parcel. The property is also subject to the SWPOZ (Source Water Protection Overlay Zone: Tier 3 – Excellent Recharge Area) which has provisions related to prohibition of certain uses and limitations on impervious surface coverage to protect water resources. Sign regulations are not related to the zoning district but instead based on use, road classification, and frontage.

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

Applicant Response: There is currently a Grotto's Restaurant to the west and a Chipotle and Vitamin Shoppe to the east of the site. Located to the rear is the Dover Downs Casino and along our frontage is Rt. 13 (DuPont Hwy), a commercial highway which runs through Dover. In addition, the site currently contains a former Boston Market restaurant which is now closed and vacant as a result of the Company's bankruptcy.

Staff Response:

The subject property at 1151 N. DuPont Highway current includes a vacant restaurant building which is proposed for redevelopment with construction of a new restaurant building with drive-through. It is located along a major commercial corridor (DuPont Highway), a road type of urban principal arterial in the sign regulations. The adjoining parcels include a restaurant (Grotto's) and a multi-tenant building with retail stores and a restaurant. To the east are the properties of Bally's Hotel and Casino and the Dover Motor Speedway. To the west, across DuPont Highway, is the main campus of Delaware State University.

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

Applicant Response: The property is located along Rt. 13, a busy commercial highway, with other similar uses adjoining it and located in the vicinity. The request to add three additional walls signs on the proposed building on this side will not negatively impact the adjoining properties which are also commercial uses.

Staff Response:

Planning Staff notes that the variance is to add additional wall signs to the new building walls thus the signs will be attached to the building itself. This request does not increase the number of freestanding signs for the restaurant; it would be eligible to have one freestanding sign (a pylon) which is similar to its neighbors. With the increase from two (2) to five (5) wall signs, this assists the potential customer in identifying the restaurant's location and entry doors as the site would have parking on two sides of the building. The wall signs would be viewable from different approaches to the building to clearly identify its use as a restaurant, but at no location would you be able to view all five signs at once. This property has a shared entrance from North DuPont with another restaurant use. It also has a second approach via a circulation drive along its eastern property line. These wall signs would help guide the customer to the parking areas and drive-through lanes for this restaurant rather than parking on neighboring properties. Therefore, the requested Variance should not impact the use of neighboring lands.

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: The proposed restaurant and drive through are an entirely new type of fast food restaurant for the Dover market. As such signage is extremely important for advertising the use to those who are not familiar with the Raising Cane's brand. Signage is also particularly important along a commercial highway serving a number of other retail and restaurant uses with limited time to "catch one's eye" as they drive along the highway. In addition, the site served as a Boston Market restaurant for a number of years, so it is imperative to get the word out that the prior use is no longer at this location and has been replaced with a new use.

Staff Response:

The existing format of the property's circulation drive areas and location of the existing entrance (from DuPont Highway and to Bally's Entrance drive) affects the proposed site design layout of building and parking locations. The resulting building placement will create a building with no true rear elevation. The north and east elevations of the building face key parking areas from which building access is gained. The west elevation is the front façade that faces the public street corridor of North DuPont Highway, but it does not include the typical front entry point due to the positioning of the building to gain longer dual-lane drive-through lanes on this property. Four of the wall signs are similar in style and look to present the restaurant name to customers approaching the property/building. The fifth wall sign is to be placed on the wall along the drive-through lane at a height more visible to the drive-through customer in their vehicle and is formatted more like a painted mural (but must be considered a sign by definition). The covered drive-through lanes at the point of ordering and food pick-up are commonplace with fast-food restaurants with such operations. Multiple signs are needed to guide the potential customer (pedestrian or by vehicle) to the correct location. The Planning Staff finds that an exceptional practical difficulty may be determined to be present.

Variance Recommendations

Staff recommends approval of the Variance to allow up to five (5) wall signs for this restaurant with drive-through. Planning Staff finds that the Applicant has strived to demonstrate an exceptional practical difficulty; they would incur by not having this Variance granted.

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

- The *Zoning Ordinance* permits the development of restaurants and drive-throughs in the C-4 zoning district; however, signage is based on uses, road type, and sign type.
- The *Zoning Ordinance* establishes in the sign regulations other design requirements for the placement of wall signs and sizing parameters, i.e. limiting wall sign in size to 15% of the total wall area (height x width of wall). The business can choose which exterior wall to place a sign for its best visibility.
- The increase in the number of wall signs will serve to identify the restaurant location along the road corridor and the location of key entry points into the building.
- For this redevelopment project of a new building and site improvements, a Site Development Plan application will be required subject to the provisions of the *Zoning Ordinance*. In addition to Building Permits for the restaurant's construction, a separate Sign Permit is required.

Advisory Comments to the Applicant

- If granted, the variance becomes 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.
- If the requested variance is granted, the Applicant must still obtain the appropriate Site Development Plan and construction activity Permits approvals for construction of a Building on the property. An Administrative Site Plan is currently under review for this project.
- The placement of signs at the property and building is subject to the provisions of the *Zoning Ordinance*, Article 5 §4. A Sign Permit application is required to be submitted for review. It is noted that there are certain types of signage that do not require a Sign Permit for their placement. Continue consultation with the Planning Office to classify all signage proposed for the project.
- The Applicant should be aware that whenever the Board of Adjustment denies an application for a variance, such application for a variance, or an application on the same property, which is substantially similar, shall not be accepted for reconsideration by the Board of Adjustment sooner than one year from the date of denial (*Zoning Ordinance*, Article 9 §3.8).

GUIDE TO ATTACHMENTS

Exhibit	Description/Author	# Pages
A	BOA Application Form	1
B	Zoning Map Exhibit (Staff)	1
C	Planning & Inspections View Map – Aerial Map Exhibit (Staff)	1
D	Applicant's Written Responses: Narrative	1
E	Site Map: Wall Signs Sheet (Dated 6/04/2024) showing locations of Wall Signs A1, A2, A3, A4, and D	1
F1	Cut Sheets for W5-8ft (Sign A) and PMRL (0915)	2
F2	Painted City Art Mural (Sign D) dated 6/04/2024	