



OFFICE OF LAND USE

NOTICE OF DECISION

REFERENCE: Application 2010-0778-A DATE DECISION FILED: February 25, 2011

APPLICANT: **Diamondscape Management Co. LLC**

PUBLIC HEARING DATE: January 27, 2011 DATE OF DECISION: February 24, 2011

REQUESTED:¹ Area variances to construct a *two bay* ~~three-bay~~ vehicle repair shop: **1.** to construct a building 5 feet from Minquadale Boulevard, and 3 feet from Dover Street (15-foot street yard setback); **2.** to construct paving 3 feet from DuPont Parkway, 3 feet from Dover Street, and 5 feet from Minquadale Boulevard (25-foot paving street yard setback) and 3 feet from the westerly property line (5-foot paving other yard setback); **3.** to provide 0 bufferyard opacity along DuPont Highway (0.4 bufferyard opacity), to provide 0 bufferyard opacity along Minquadale Boulevard (0.4 bufferyard opacity), and to provide 0 bufferyard opacity along Dover Street (0.3 bufferyard opacity); *and* **4.** to allow a .204-acre lot area for the proposed use (1-acre minimum lot area); *and* **4.** to allow 8 parking spaces (12 parking spaces required).

104 Dover Street Parcel Number: 10-010.10-521 Zoned CR CD 10

The Board of Adjustment may grant a variance from the area or dimensional or other requirements of the New Castle County Unified Development Code [hereinafter "UDC"] where it finds the applicant or property owner is experiencing exceptional practical difficulty, rather than routine difficulty, in complying with the specific provisions of the UDC applicable to the subject property.

The Applicant appeared through James Harker, Esq. and presented the following witnesses; Mr. Yehezkiel Knepler, Member of Diamondscape Management Co. and Carmen Casper, Professional Engineer. The Applicant requested to amend the variances. The Applicant proposed to reduce the number of vehicle repair bays from three to two and no longer needed a variance for parking.² The Board heard and **granted** the request for amendment.

The property is a .21 acre parcel located in Minquadale and zoned CR. The property is bordered by Route 13 (DuPont highway), Minquadale Boulevard, and Dover Street. The property was purchased by the Applicant in 1987. The property is located on a peninsula and is a parallelogram. The Applicant testified that the properties along Route 13 consist of commercially-zoned properties with residential properties to the rear of the property. The Applicant provided testimony that a light automobile service is a permitted use on this property. The Applicant testified that he believed that a two bay repair station was the minimum required for a successful

¹ **Amendment to the variance request.** Deletions are represented by strikethrough, additions by italics.

² The original variance proposed a three bay repair shop and a variance to reduce the number of required parking spaces.

repair shop and has previously worked at a repair station. The patrons would enter from DuPont Highway and exit on to Dover Street. The Applicant testified that the site will provide 8 parking spaces and two bays for servicing. The Applicant testified that the repair shop would service approximately 10 to 15 cars per day. The vehicles will be dropped off and picked up after repairs are made. Mr. Casper testified that with only a variance from the 1-acre minimum lot area requirement the applicant could build a 720 square foot building and have approximately one to two parking spaces. Further testimony was presented that for any commercial use on the property to be possible the Applicant would need a variance from at least the 1-acre minimum lot area requirement. The Applicant further testified that the odd shape and size of the lot created an exception practical difficulty.

Public comment was invited by the Board. Councilman Jea Street, State Representative for the 16th District James Johnson, David Trincia, President of the Minquadale Civic Association, Borggia, and Dr. Pappa, spoke in opposition of the variance. The public expressed several concerns. The community was concerned with the storage of tires and oil on the site, dumpsters being visible, potential for oil runoff, the smell from all the vehicles and additional on street parking. The residents expressed further concern in allowing additional traffic to exit on to Dover Street, a residential road, due to the width of the road. The neighbors were overall concerned that having the repair shop in front and near the entrance of the residential development would have an effect on the property values.

The Department of Land Use recommended that the Board Deny the requested variances.

During rebuttal, the Applicant provided testimony that there will be a bio retention area that will capture all the runoff from the property. The Applicant testified that the traffic impact would be minimal and did not believe that even 30 more cars a day on the roads would impact the community. The plan will also provide for screening of the dumpster. The Applicant further testified that there would be some effect to the community with any commercial use of this.

DECISION

The Board votes to **Deny** the: “Area variances to construct a two bay vehicle repair shop: **1.** to construct a building 5 feet from Minquadale Boulevard, and 3 feet from Dover Street (15-foot street yard setback); **2.** to construct paving 3 feet from DuPont Parkway, 3 feet from Dover Street, and 5 feet from Minquadale Boulevard (25-foot paving street yard setback) and 3 feet from the westerly property line (5-foot paving other yard setback); **3.** to provide 0 bufferyard opacity along Dupont Highway (0.4 bufferyard opacity), to provide 0 bufferyard opacity along Minquadale Boulevard (0.4 bufferyard opacity), and to provide 0 bufferyard opacity along Dover Street (0.3 bufferyard opacity); and **4.** to allow a .204-acre lot area for the proposed use (1-acre minimum lot area).”

The Board found that although the strip of land between Route 13 and Dover Street is commercial across Dover Street is a residential neighborhood. The Board comprehends that the Applicant will need a variance to allow the .204-acre lot to be used for any commercial use (1-acre minimum lot area), however, the Board found that the remaining variances will likely adversely affect surrounding properties as the variances are inconsistent with the character of the

surrounding community. The Board further found that allowing paving to encroach 22 feet into the 25 foot paving setbacks on DuPont parkway and Dover Street, 20 feet into the 25 foot setback on Minquadale Boulevard and reducing the bufferyard opacity to 0 was significant and would adversely affect the neighboring properties. By granting all of the variances and removing the restrictions the neighboring properties would be seriously affected. Board of Adjustment of New Castle Cty. V. Kwik-Check Realty, Inc., 389 A.2d 1289 (Del. 1978). If the restriction were not removed the restrictions would not create unnecessary hardship or exceptional practical difficulty for the owner in relation to his efforts to make use of this property as the Applicant provided a plan that would allow for the use of the land without such significant variance requests.

VOTE: 4-0 (DENY: Burt, Collins, Hudson, and McCann)

BOARD OF ADJUSTMENT
OF NEW CASTLE COUNTY



David Burt
Chair

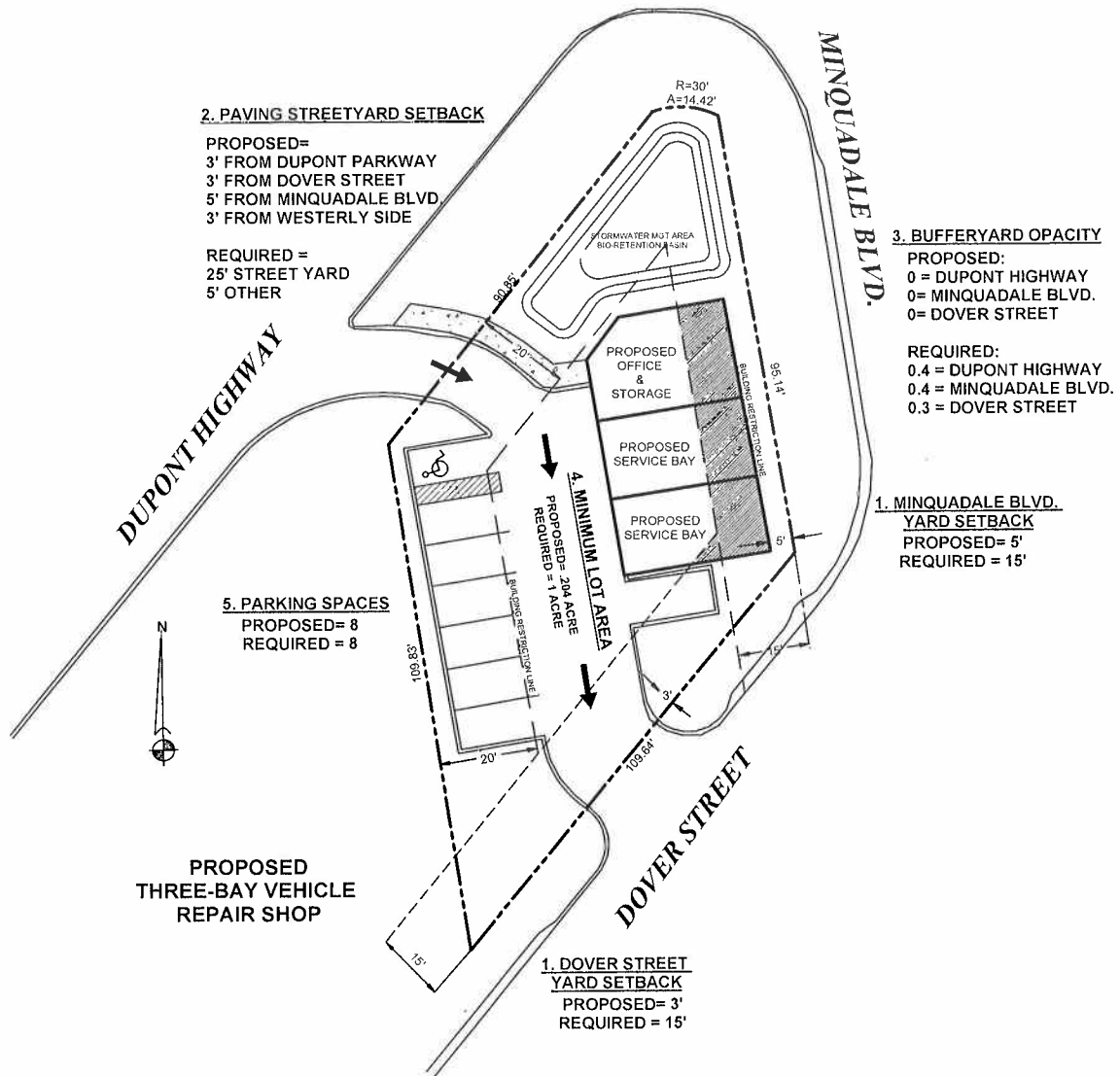
NOTE: Variances are neither building permits nor Certificates of Occupancy. Appropriate permits must be obtained from the Division of Development and Licensing prior to construction or establishment of the use. This decision should be kept in a safe place with the property deed. This decision may be appealed to the Superior Court by any person aggrieved by it within 30 days of its filing in the office of the Board of Adjustment.

NOTE: A variance becomes void if the variance is not put into effect within two (2) years of the filing date of this decision.

PUBLIC HEARING DATE: January 27, 2011
COUNCILMAN DISTRICT: 10

ZONING: CR

APP. NO. 10-0778-A
TAX PARCEL: 10-010.10-521



BOARD OF ADJUSTMENT NEW CASTLE COUNTY, DELAWARE

Applicant: Diamondscape Management Co. LLC
Address of Subject Property: 104 Dover Street
New Castle, DE 19720

Applicant seeks: VARIANCE Various

DECISION:
DATE OF DECISION: SCALE: 1" = 40'