CITY OF DOVER BOARD OF ADJUSTMENT
AGENDA
Wednesday, December 21, 2016 at 9:00 AM

City Hall Council Chambers
15 Loockerman Plaza, Dover, Delaware

ROLL CALL

APPROVAL OF AGENDA

APPROVAL OF MINUTES of November 16, 2016 Meeting

NEW BUSINESS

Applicant #V-16-16
74 Laurel Drive. Karen Hettinger and Mark J. Larlham have applied to the Board of Adjustment for a variance from the requirements of Article 5 § 11.211 (c) of the Zoning Ordinance pertaining to new residential construction within the flood hazard area. They have specifically requested to build to the six (6) foot contour. Subject property is zoned R-10 (One Family Residence Zone). The Tax Parcel is ED-05-077.14-01-32.00-000. The owners of record are Thomas J. Bugbee and Sherrill L. Brekke. *Variance #V-15-07 was approved by the Board of Adjustment at its meeting of April 15, 2015. The variance expired because construction did not commence.*

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.

MINUTES OF

BOARD OF ADJUSTMENT MEETING

OF November 16, 2016

- The Meeting Minutes of the November 16, 2016 are still being prepared. These Meeting Minutes will be distributed to the Board of Adjustment via email or hand delivered.
- Adoption of the Meeting Minutes will be considered at the December 21, 2016 meeting of the Board of Adjustment.

City of Dover

Board of Adjustment

December 21, 2016

V-16-16

Location:	74 Laurel Drive
Applicant:	Mark J. Larlham & Karen E. Hettinger
Owner:	Thomas Bugbee & Sherrill Brekke
Tax Parcel:	ED-05-077.14-01-32.00-000
Application Date:	November 6, 2016
Present Zoning:	R-10 (One Family Residence Zone)
Present Use:	Vacant Parcel
Proposed Use:	Single Family Residence
Reviewed By:	Ann Marie Townshend, AICP
Variance Type:	Area Variance
Variance Requested:	Allow for the construction of a new single family residence within the floodplain to the 6-foot contour line.

Project Description:
The applicant is requesting a variance from the *Zoning Ordinance* of Article 5 §11.211 (c) of the *Zoning Ordinance* pertaining to new residential construction within the flood hazard area. Specifically, the applicant is requesting to allow a new single family residence within the floodplain to the 6-foot contour line.

Previous Variances
Regarding this property, a variance was granted to allow construction within the flood hazard area (100-year floodplain) on multiple occasions. Most recently, the Board granted a variance V-15-07 on April 15, 2015 to allow construction within the floodplain to the six-foot contour line. Variance V-15-07, as well as a similar variance granted on March 19, 2014 (Application V-14-05), ultimately expired. Previously, a variance was granted to allow construction to the 7-

foot contour line in May 2013 (Application V-13-05) and was subsequently amended on December 18, 2013 to allow construction to the 6-foot contour line; the variance expired prior to any action to start construction.

Earlier, there were also two (2) other variance applications to the Board of Adjustment to allow for construction of a single family residence within the floodplain. (Applications #8-01 and V-05-07)

Adjacent Land Uses

The adjacent properties are residential and institutional uses. The properties to the north, east and west are zoned R-10 (One Family Residence Zone). The property to the southeast is zoned IO (Institutional/Office Zone). The property is bounded on the southwest by the St. Jones River.

Code Citations

Article 5 Section 11. Environmental protection.

11.21 *Flood hazard areas.* All flood hazard areas shall remain as natural open space, except for the construction of roads authorized by the City of Dover and/or the Delaware Department of Transportation.

a) For the purposes of this section, natural open space is defined as an area of land that excludes buildings, structures, and impervious surface from being constructed on or located within the area. For evaluating flood hazard areas, patios, cement slabs, sidewalks, and other similar constructs are considered to be structures and are similarly prohibited.

11.211 *Redevelopment.* Existing uses or buildings located within a flood hazard area are considered to be nonconforming structures and are subject to the following requirements if redevelopment occurs on properties within the flood hazard area.

a) Nonresidential uses existing in a flood hazard area seeking to redevelop a property under the requirements of Article 10 are required to reduce impervious surfaces for the lot by 15 percent from the preredevelopment conditions.

b) For nonresidential uses where less than 33 percent of the total lot area is located within a flood hazard area, the planning commission may waive or reduce the amount of required reduction in impervious surfaces. For projects being reviewed under administrative site plan review, the city planner may waive or reduce the amount of required reduction in impervious surface for projects where less than 33 percent of the total lot area is located within a flood hazard area.

c) New residential building construction or additions of impervious surface are not permitted in pervious areas of the flood hazard area.

Article 12. Definitions

Flood hazard area: Land areas delineated on the Federal Emergency Management Agency's (FEMA's) Community Flood Insurance Rate Map as being within the limits of the 100-year floodplain, and any lands subsequently identified by FEMA as being within the limits of the 100-year floodplain as a result of any revision to the community flood insurance rate map approved by FEMA, or by issuance of a conditional letter of map revision issued by FEMA.

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 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 criteria.

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

   Applicant Responses:
   - The property is located in R-10 single family residential zone.
   - The neighborhood is single family residential.

   Staff Response:
   The property is located within the R-10 (One Family Residence Zone) zone and the use as a one-family detached dwelling is a permitted use.

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

   Applicant Responses:
   - Exclusively single family residential.

   Staff Response:
   The character of the properties located within the area are one-family detached dwellings or vacant parcels of land.

   The use as a one-family detached dwelling is consistent with the other residential uses that are in the area.

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

   Applicant Responses:
   - All properties located on south side of street are in flood plain.
   - All setbacks can be maintained.
   - Storm drainage exists between all neighboring properties.

   Staff Response:
   The construction of a new one-family detached dwelling would not negatively impact the neighborhood as the other uses are one-family detached dwellings or vacant lots, many of which lie within the floodplain.

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 Responses:
   - Article 5, Section 11.211(c), prohibits building in the flood plain.
   - The subject property is a recorded lot.
   - The six neighboring properties similarly located in the flood plain are improved.
   - Sewer lateral has previously been installed.
   - Sufficient lot area exists to support a single family residential improvement.
   - The flood plain is three dimensional and if the finished first floor is above elevations 9.0 feet then the improvement is out of the flood plain.

   Staff Response:
   Based on review of the information submitted with this and the previous applications for this property, exceptional practical difficulty has been demonstrated as there is no other use that would be permitted on the property, and prohibiting construction in the flood hazard area (100-year floodplain) would render the lot unbuildable. The FEMA Flood Insurance Rate Map (FIRM – Map Number 10001C0169J) indicates that a significant portion of the property to be located within Zone AE (Special Flood Hazard Area subject to Inundation by the 1% Annual Chance Flood and Base Flood Elevations determined) also commonly known as the 100-year floodplain. The house itself would be required to be constructed at an elevation that would be above the base flood elevation (see requirements of *Dover Code of Ordinances*, Chapter 50 - Floods). The subdivision was developed to allow for all of the lots within the subdivision to be used as one-family detached dwellings prior to current restrictions on development within flood hazard areas (100-year floodplain). Without approval of the requested variance, there would be no location on the lot where a home could be placed.

Variance Recommendation:
Staff recommends approval of the variance to allow for the building to be constructed within the flood hazard area (100-year floodplain) to the 6-foot contour for reasons as follows:

- The applicant has demonstrated exceptional practical difficulty as there is no other use that would be permitted on the property and not allowing the construction renders the lot unbuildable.
- The building of a one-family detached dwelling would be in keeping with the character of the neighborhood and is an allowable use in the R-10 zoning district.
- The house would be built above the Base Flood Elevation.
- The lot at 74 Laurel Drive was created prior to current restrictions on building in the flood hazard area (100-year floodplain).

Advisory Comments to the Applicant:

- Compliance with the requirements of all codes related to construction within the flood hazard area (100-year floodplain) including *Dover Code of Ordinances*, Chapter 50 and the International Residential Code (in place at the time of construction) is required. Elevation Certificates will be required for any construction within the flood hazard area.
- Staff notes that the 100 foot setback from the top of bank of wetlands and water bodies may be reduced to 75 feet for single family residential uses (*Zoning Ordinance*, Article 5 §11.22).
- 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 of variance approvals.

GUIDE TO ATTACHMENTS

Exhibit	Description/Author	# Pages
A	Zoning Exhibit Map (Staff)	1
B	Applicant Responses (Applicant)	1
C	Site Plan, *proposed* (Applicant)	1 (8.5" x 14")
D	Notice of Decision, V-15-05	1
E	FIRM Map for Laurel Drive area	1

CITY OF DOVER
BOARD OF ADJUSTMENT

Schedule of application deadlines and Board of Adjustment meeting dates for the year of 2017. The submittal procedures for the Board of Adjustment are outlined in *Zoning Ordinance*, Article 9, Section 3. Prior to application submission a pre-application meeting with Planning Staff is required.

MONTH	DEADLINE DATE	MEETING DATE
JANUARY	12/16/16	01/18/17
FEBRUARY	01/13/17	02/15/17
MARCH	02/10/17	03/15/17
APRIL	03/17/17	04/19/17
MAY	04/13/17	05/17/17
JUNE	05/12/17	06/21/17
JULY	06/16/17	07/19/17
AUGUST	07/14/17	08/16/17
SEPTEMBER	08/18/17	09/20/17
OCTOBER	09/15/17	10/18/17
NOVEMBER	10/13/17	11/15/17
DECEMBER	11/17/17	12/20/17
JANUARY	12/15/17	01/17/18

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