CITY OF DOVER BOARD OF ADJUSTMENT
AGENDA
Wednesday, December 18, 2013 9:00 AM

City Hall Council Chambers
15 Loockerman Plaza, Dover, Delaware

ROLL CALL

APPROVAL OF AGENDA

APPROVAL OF MINUTES OF November 20, 2013 Meeting

OLD BUSINESS

Applicant #V-13-05:
74 Laurel Drive, Giterdone, LLC has requested 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.

Subject property is zoned R-10 (One Family Residence Zone). The Tax Parcel is ED-05-077.14-01-32.00-000. The owner of record is Giterdone, LLC.

The Board of Adjustment granted a variance permitting that the house be permitted to be constructed in the Flood Hazard Area but requiring that it be placed at the 7-foot contour or greater. A recent property survey shows different topography than the survey reviewed as a part of the variance application. Due to the changes in the topography and the difficulties with placing the house at the 7-foot contour, the applicant has requested that this specific condition be modified to allow placement of the house at the 6-foot contour or greater. The property has transferred to Thomas J. Bugbee and Sherrill L. Brekke.

NEW BUSINESS

Applicant #V-13-14:
200 North West Street: John Bashore has requested a use variance from the requirements of Article 3 §19.2 of the *Zoning Ordinance* pertaining to the prohibition of residential uses in the M (Manufacturing) Zone.

Subject property is zoned M (Manufacturing Zone). The Tax Parcel is ED05-076.08-01-09.00-000. The owners of record are John and Mary Lou Bashore.

Applicant #V-13-15:
43 Washington Street: Kathleen Davies has requested a variance from the requirements of Article 4 §4.1 of the *Zoning Ordinance* pertaining to the maximum lot coverage of 35 percent.

Subject property is zoned R-8 (One Family Residence Zone). The Tax Parcels is ED-05-068.17-01-64.00-000. The owner of record is Kathleen A. (O'Donnell) Davies.

Applicant #V-13-16:
506 through 516 Jefferic Boulevard: Michael J. Harrington, Sr. has requested a variance from the requirements of Article 6 §3 of the *Zoning Ordinance* pertaining to the minimum number of off-street parking spaces required.

Subject property is zoned C-4 (Highway Commercial Zone) and SWPOZ (Source Water Protection Overlay Zone) – Tier 3: Excellent Recharge Area. The Tax Parcels is ED-05-068.09-01-28.01-000. The owner of record is Harrington Properties, LLC.

Applicant #V-13-17:
11 Roosevelt Avenue: Jerry D. Sanstrom has requested a variance from the requirements of Article 5 §1.52 of the *Zoning Ordinance* pertaining to the projection of a porch into the front yard.

Subject property is zoned R-8 (One Family Residence Zone). The Tax Parcels is ED-05-077.17-05-60.00-000. The owner of record is Jerrie D. Sanstrom.

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
November 20, 2013

A Regular Meeting of the City of Dover Board of Adjustment was held on Wednesday, November 20, 2013 at 9:00 A.M. with Chairman Sheth presiding. Members present were Mr. Senato, Mr. Hufnal, Colonel Ericson, and Mr. Keller.

Staff members present were Mrs. Townshend, Mrs. Purnell, Mrs. Harvey, and City Solicitor Rodriquez.

APPROVAL OF AGENDA

Mr. Hufnal moved to approve the agenda as submitted, seconded by Colonel Ericson and unanimously carried 5-0.

APPROVAL OF THE REGULAR BOARD OF ADJUSTMENT MEETING MINUTES OF August 21, 2013

Mr.Keller moved to approve the meeting minutes of August 21, 2013 as submitted, seconded by Mr. Hufnal and unanimously carried 5-0.

OPENING REMARKS CONCERNING DEVELOPMENT APPLICATIONS

Mrs. Townshend, Director of Planning and Community Development stated that the meeting would be conducted in accordance with the approved agenda. She reviewed the procedure for the meeting. She noted that approved variances expire after one (1) year if the approved project has not commenced; that all public notice for the application on this agenda was completed in accordance with code requirements; and the meeting agenda was posted in accordance with Freedom of Information Act requirements.

NEW BUSINESS

Applicant #V-13-12:

11 Vondaway Drive: Orlan T. Kelly, Jr. has requested a variance from the requirements of Article 4 §4.1 of the *Zoning Ordinance* pertaining to the required front yard.

Subject property is zoned R-15 (One Family Residence Zone. The Tax Parcel is ED05-068.15-02-10.00. The owner of record is Orlan T. Kelly, Jr.

Mrs. Ann Marie Townshend, Director, submitted the following items for the record: staff report, survey drawing and the written statements provided by the applicant. The legal notice was published in the Delaware State News on November 10, 2013, and the public was notified in accordance with regulations.

Mrs. Ann Marie Townshend stated that she assisted the applicant with the completion of the application.

Mr. Hufnal questioned the tax parcel number for the above property that was listed on the staff report if it was ED05-068.15-02-10.00 or ED05-068.12-02-10.00. Mr. Keller stated that the

correct number is ED05-068.15-02-10.00. Mrs. Townshend stated that it was correct in the agenda and incorrect in the Staff report.

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

Representative: Mr. Orlan T. Kelley Jr. Owner of the property.

Mr. Orlan T. Kelley Jr. was sworn in by Mr. Rodriquez.

Mr. Kelley testified that he has owned the property for twenty (20) years. At one point there was a mobile home on the lot. The mobile home needed a lot of repair and therefore was demolished with plans to build a single family home. The lot is too small for the setback requirements. All of the lots in the entire subdivision and on that street are the same size. Currently there have been a lot of houses built in the area that use to be all mobile homes. He would like to be approved for a variance to build a house.

Mrs. Townshend stated that in addition to the setbacks the applicant will need a variance from the lot coverage to allow up to 35%. With the lot being undersized for the required lot size it would be hard to make the improvements and maintain 25% lot coverage. This information is noted in the staff report.

Responding to Mr. Hufnal's question that you would need to allow up to 35% of the lot coverage in order to build the house, Mrs. Townshend replied yes.

Mr. Hufnal stated that he was aware that there has been several properties constructed up and down the street and they are all about the same size. Even though this does not fit the setback requirements it is still in conforming to other properties in the neighborhood that were built similar to what the applicant is asking to build.

Mr. Kelley stated that he would like to build a bungalow that would be 48 x 28 feet wide that would also include three (3) bedrooms and two (2) baths.

Mr. Hufnal stated that it would not technically affect the neighborhood because they are all built very similar.

Responding to Mr. Keller's question regarding the two frontages, one being White Oak Road the other being Vondaway Drive, which road would the house face, Mr. Kelley stated the current address is Vondaway Drive, but he thinks it would be better if it faced White Oak Road because he could continue to use the horseshoe driveway. If it is facing Vondaway Drive, even though he has not done the house layout it would take up the driveway. He stated that the house could be faced either way, he is not locked into which way the house faces and it is not a big concern.

Responding to Mr. Keller's question regarding the way the house would be situated and/or gain the address of one street or the other does it play on the requested variance, Mrs. Townshend stated that it does not make a difference either way the applicant would need the reduction of the

front yard to twenty (20) feet because both frontages are front yards. She along with the applicant looked at several different layouts and there was no way to do it and meet the setbacks.

Responding to Mr. Keller's question if the site was presently clear, Mr. Kelley stated yes.

Responding to Mr. Senato's question that it would not make a difference if there was 21 feet on one side and 31 feet facing White Oak Road, either way the front entrance would be less on Vondaway Drive would not make a difference of which location the house is faced because you would still be in compliance either way and it would be the applicant choice which street he wants the house to face, Mrs. Townshend stated that this was correct.

Chairman Sheth declared the public hearing open.

There being no one wishing to speak, Chairman Sheth declared the public hearing closed.

Chairman Sheth questioned if there was any additional correspondence for the record. There was none.

Mr. Hufnal moved to approve application V-13-12 requested variance to allow for the reduction of the front yard to 20 feet and an increase of lot coverage to 35% based upon the testimony given and in keeping with the neighborhood and surrounding properties and that the be allowed to build up to 35% of the lot size. The motion was seconded by Mr. Senato and unanimously carried 5-0.

Applicant #V-13-13:
Horsepond Road and Starlifter Avenue: Kent County Levy Court and the State of Delaware have requested a variance from the requirements of Article 5 §7.5 of the *Zoning Ordinance* pertaining to the height of a fence in the front yard, and the requirements of Article 5 §16 of the *Zoning Ordinance* pertaining to tree preservation and planting requirements.

Subject property is zoned IPM (Industrial Park Manufacturing Zone) and AEOZ (Airport Environs Overlay Zone) – Noise Zones B, C and D. The Tax Parcels are ED-05-087.00-01-07.00, ED-05-087.00-01-07.02, ED-05-087.00-01-07.03, ED-05-087.00-01-07.04, ED-05-087.00-01-08.00, ED-05-087.00-01-09.00. The owner of record is Kent County Levy Court and the State of Delaware.

Mrs. Ann Marie Townshend, Director, submitted the following items for the record: staff report, location map, site diagram, and the written statements provided by the applicant. The legal notice was published in the Delaware State News on November 10, 2013, and that the public was notified in accordance with regulations.

Vice Chairman Colonel Ericson questioned if there was any member who had a conflict of interest.

Chairman Sheth was recused because he is a member of the Kent County Aeropark Advisory Board.

Representative: Mr. Jeff Stone, of Delaware Economic Development Office, Lead Project Manager of the Cargo Ramp Project.

Mr. Jeff Stone was sworn in by Mr. Rodriquez.

Mr. Stone representing the State of Delaware testified that the first variance being requested is for a fence. The fence is required for security at the Dover Air Force Base. The Civil Air Terminal (owned by DelDOT) is currently surrounded by a 9-foot fence. When the cargo ramp is expanded the security requirements of the Air Force will require the area be surrounded by a 9-foot fence. The second variance is for the tree mitigation and he would like to withdraw because of a misunderstanding. He will go before the Planning Commission for the tree mitigation. He was not aware that it was an option available to them. It is not that they do not want to plant trees they just can't be placed on the property because trees and aircraft do not mix very well. He is happy to do the tree mitigation someplace else in the city.

Mr. Hufnal stated that the 9-foot fence that has been requested is in line with what is already there.

Chairman Sheth declared the public hearing open.

There being no one wishing to speak, Chairman Sheth declared the public hearing closed.

Chairman Sheth questioned if there was any additional correspondence for the record. There was none.

Mr. Senato moved to approve application V-13-13 based on the testimony given for a requested variance of a 9-foot fence in the surrounding area that also have a 9-foot fence. The motion was seconded by Mr. Hufnal and the motion unanimously carried 4-0. Chairman Sheth abstained.

Mr. Keller questioned for clarity that as part of the motion and with the testimony and request to withdraw a variance request #2 that it is not part of the motion for approval. Mrs. Townshend and Chairman Sheth stated that this is correct.

Colonel Erison moved to adjourn the meeting, seconded by Mr. Hufanl and unanimously carried 5-0.

Meeting adjourned at 9:21 A.M.

Sincerely,

Maretta Savage-Purnell
Secretary

MEMORANDUM

City of Dover – Department of Planning & Inspections
P.O. Box 475
Dover, Delaware 19903
Phone: 302.736.7196 Fax: 302.736.4217

Date: December 18, 2013

To: Board of Adjustment

From: Ann Marie Townshend, AICP, Director of Planning & Community Development

RE: V-13-05 – Request from Applicant to Amend Condition of Variance
74 Laurel Drive

The applicant (Gitterdone, LLC) applied to the Board of Adjustment to allow a house to be constructed in the Flood Hazard Area. On May 16, 2013, the Board of Adjustment granted the requested variance, stipulating that the house must be constructed at the 7-foot contour or greater. This condition was based on the survey drawing submitted with the Board of Adjustment application, which showed the proposed house placed at or about the 7-foot contour. The equitable owners, Thomas J. Bugbee and Sherrill L. Brekke, have since closed on the property and are now the owners of record. The topographical survey obtained by the new owners shows different contours than the survey submitted with the Board of Adjustment application. Based on this new survey, the house, if placed at the 7-foot contour, would encroach into the deed-restricted setback of 35 feet. The owner is requesting that this condition be adjusted to allow placement of the house at the 6-foot contour or greater.

Based on discussion and e-mail correspondence with Mr. Rodriguez, this matter can be considered by the Board of Adjustment as "Old Business" and does not necessitate a new public hearing. The e-mail correspondence with Mr. Rodriguez is attached.

If the Board of Adjustment grants the change in the condition of the variance, the applicant shall be aware that the finished floor elevation shall be at or above the base flood elevation based on the requirements of Dover Code Chapter 50 and the requirements of the International Residential Code.

Townshend, Ann Marie

From: Tom Burns <tburns@burnsandellis.com>
Sent: Friday, December 06, 2013 4:32 PM
To: Townshend, Ann Marie
Subject: Laurel Drive
Attachments: Flood plain drawings.pdf

Ann Marie please find attached two surveys for lot A-10 on Laurel drive.
The first depicts the topographic contours of the lot based on a 2006 survey completed by Robert Larrimore. This was the subject of the Variance that was granted in May, 2013 to allow construction of the home between the deed restricted front setback of 35 Ft and the 7 ft contour line as depicted on the survey. As a result of the approval by the Board of Adjustment the lot transferred to the new and now current owners.

Once the buyers took title they engaged their builder to prepare for construction of their home. The builder hired Compass Pointe, surveyors. That survey shows the topographic contour lines to be different enough that they severely impact the ability to construct on the lot as shown.
As a result the new owner is seeking relief to the 6 Ft contour line to be able to construct the home. The footprint of the home will still essentially be in the same place.
No matter where the house sits relative to the contour lines the Finished floor must still be 1 Ft above the flood plain anyhow.

Please let me know if you need any additional information.

Thanks

Tom Burns
Burns and Ellis Realtors
(b) 302-674-4220
(f) 302-674-4795
(c) 302-423-0389
tburns@burnsandellis.com
www.burnsandellis.com

Delaware law requires real estate salespersons and brokers provide you this CIS (Consumer Information Statement) at the earlier of your first scheduled appointment or the first showing of a property. If your first contact is via fax or email this CIS must be supplied with any other papers sent by electronic transmission. Use the link below to view the statement.
http://www.dpr.delaware.gov/boards/realestate/documents/RSPFpamphlet.pdf

Townshend, Ann Marie

From: NIck Rodriguez <nrodriguez@schmittrod.com>
Sent: Friday, December 06, 2013 4:27 PM
To: Townshend, Ann Marie
Subject: Re: V-13-05 - 74 Laurel Drive

Ann Marie, I agree with this email that this change can be handled under Old Business at the December Board meeting and will not require a new public hearing since it is a minor change based upon a more current survey the Board having based its decision on the older survey. Nick
On Dec 6, 2013, at 3:02 PM, Townshend, Ann Marie wrote:

Nick,

As we discussed, the above variance was to allow construction within the Flood Hazard Area, as the lot would be unbuildable if such construction were not permitted. In approving the variance, based on the survey submitted as a part of the application, the Board placed a condition that the house be built at the 7-foot contour or above. Since the buyer has acquired the property and gotten an updated survey, the new survey shows different topography, and by placing the house at the 7-foot contour, the applicant would be unable to meet the front setback that is in the deed restriction. In my phone call, I asked if this could be placed on the agenda as "Old Business" and whether it needed a public hearing. You and I concurred that it does not require a new public hearing, as it is a small change in the variance granted based upon updated information.

Please let me know via e-mail if you concur with this and that we can place this on the December 18th agenda as a requested change to that specific variance condition.

Thank you.

Ann Marie Townshend, AICP

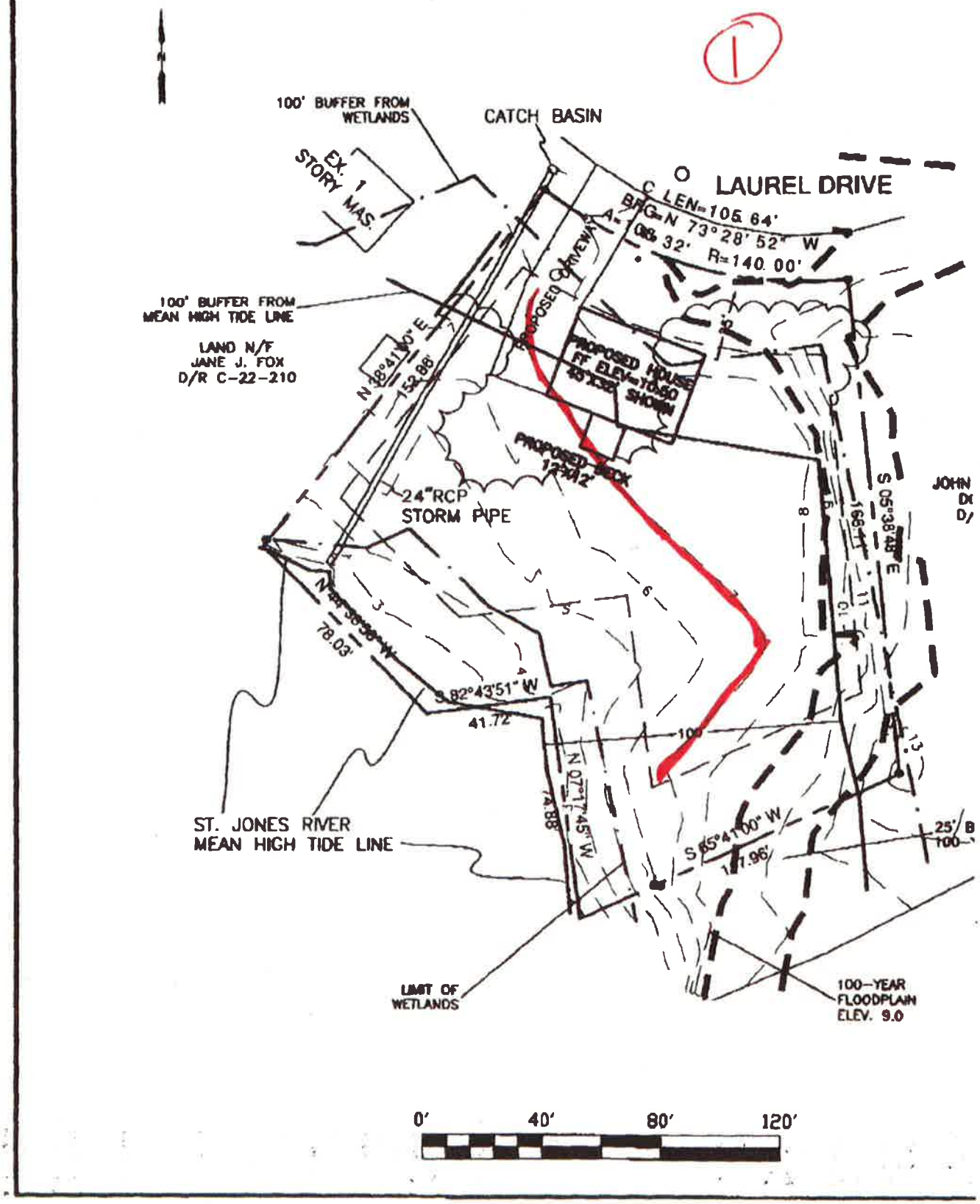
Director of Planning & Community Development

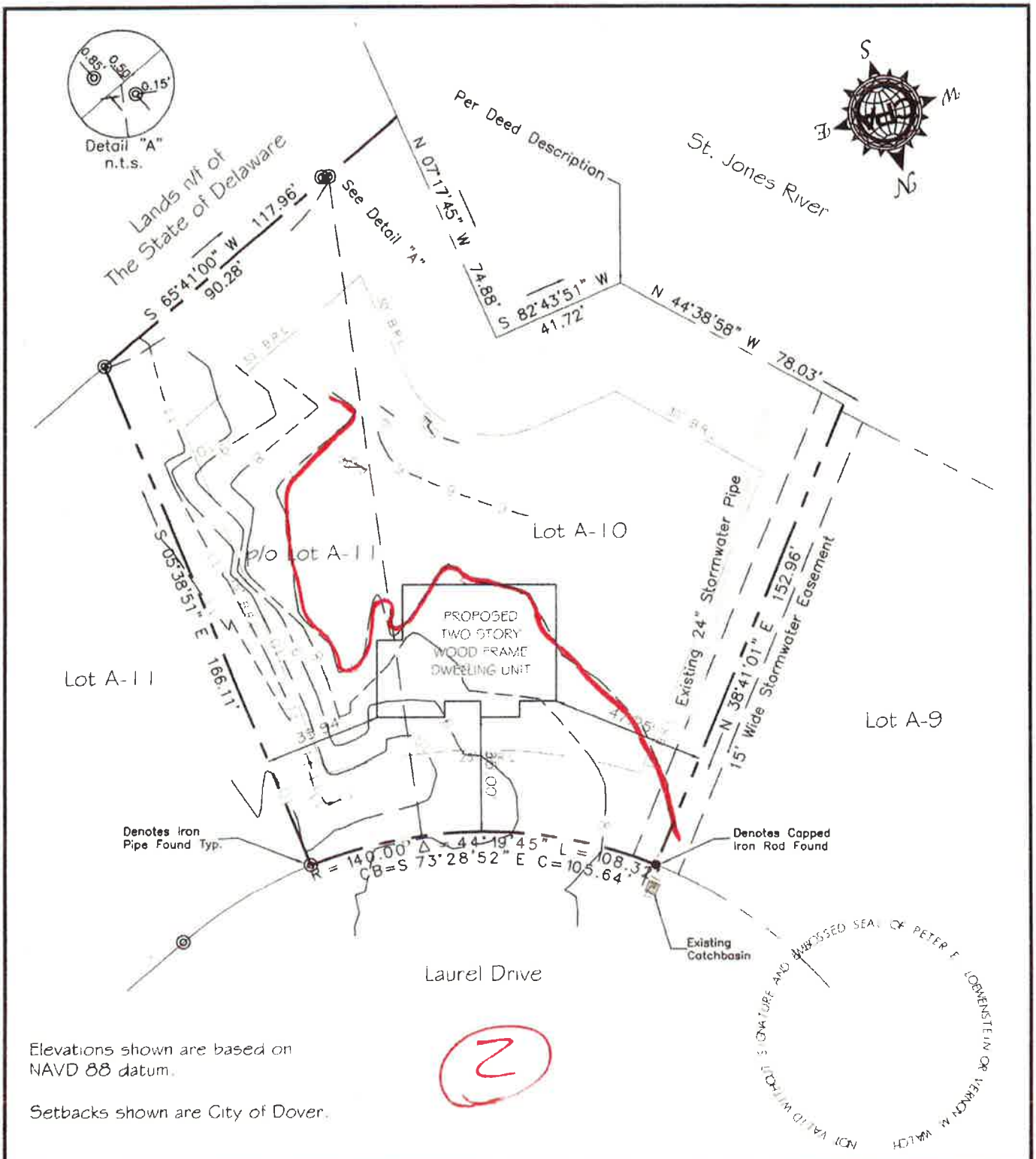
Planning and Inspections / Parks and Recreation

P.O. Box 475

Dover, DE 19901

(302) 736-7196


1
100' BUFFER FROM WETLANDS
CATCH BASIN
EX. 1 STORY MAS.
LAUREL DRIVE
C LEN=105.64'
BRG=N 73°28'52" W
A=08°32'
R=140.00'
PROPOSED DRIVEWAY
100' BUFFER FROM MEAN HIGH TIDE LINE
LAND N/F JANE J. FOX D/R C-22-210
N 38°41'30" E
152.88'
PROPOSED HOUSE FF ELEV=10.50 SHOWN
PROPOSED DECK
24"RCP STORM PIPE
JOHN D D/
S 05°38'48" E
166.11'
N 82°43'51" W
78.03'
S 82°43'51" W
41.72'
N 07°16'45" W
74.88'
S 85°41'00" W
117.96'
25' B
100'
ST. JONES RIVER MEAN HIGH TIDE LINE
LIMIT OF WETLANDS
100-YEAR FLOODPLAIN ELEV. 9.0
0'
40'
80'
120'



Elevations shown are based on NAVD 88 datum.

Setbacks shown are City of Dover.

2

SURVEYING
LAND PLANNING
COMPASS POINT ASSOCIATES
P.O. Box 246
Harbeson, Delaware 19951
(302) 684-2980 fax (302) 684-2983
e-mail: cpallc@comcast.net

Boundary Survey Plan with Topography

Lot A-10 and p/o A-11, The Beeches, Section 2, City of Dover, East Dover Hundred, Kent County, Delaware

Plat Ref: Bk. 16, Pg. 48
Deed Ref: Bk. VI-6940, Pg. 46
Scale: 1" = 40'
Class "X" Survey
Client: Lessard Builders

No recorded rights-of-way, easements or other encumbrances affecting these lands have been provided to the Surveyor by the Client. No Warranty as to title to any lands depicted hereon is explicitly or implicitly provided.

SURVEYED BY: V.W., PLS
DRAWN BY: H.J., PLS
CHECKED BY: P.E.L.
PROJECT #: 130910-A-10
TAX MAP: ED-05-077.14-01.32.00-00
DATE: September 26, 2013
SHEET NO: 1 of 1

City of Dover, DE
Department of Planning and Inspection
P.O.Box 475
Dover De. 19903

Ref: Land Use Variance 12/4/2013

John W. Bashore
P.O.Box 7399
Newark, DE. 19714-7399

1. The square footage of this property is less than required for a property in a Manufacturing zone. Setback lines would prevent the building of a building adequate to support any type of business or manufacturing facility,
2. The reasonable economic use of this parcel of property would be multifamily residential as there are like properties just across the street from the subject property and this would not impact the area in any way. This is the only use available to this parcel as property does not conform to any other and already has a footprint established for a residential use.
3. The granting of this variance will not adversely impact this area and will be in harmony with the general purpose and intent of the ordinance because there will be no change in character of the property or the area. The lot being too small for manufacturing or business and the like residences already in the area would lend its self to being the most likely use of the property. There would be no injurious or detriment to public welfare or the surrounding neighbor hood as there is a church on the opposite corner across the street and numerous multifamily residences straight across the street.

Respectfully submitted,

John W. Bashore

Bayshore Communication Fax:302-292-1138 Dec 10 2013 09:20am P002/002

City of Dover

Board of Adjustment

December 18, 2013

V-13-14

Location:	200 North West Street
Applicant/Owner:	John W. Bashore
Tax Parcel:	ED-05-076-08.01-09.00-000
Application Date:	November 8, 2013
Present Zoning:	M (Manufacturing)
Present Use:	Vacant Residential Structure
Reviewed By:	Ann Marie Townshend, AICP
Variance Type:	Use Variance
Variance Requested:	*Zoning Ordinance*, Article 3, Section 19 Manufacturing Zone, 19.2 Uses Prohibited, 19.22 Residences

Project Description:
The applicant is requesting a use variance from the *Zoning Ordinance* Article 3 §19 to allow the property to be used as a residence. The property currently includes a vacant residential structure. The structure has been vandalized and most of metal components, including electrical wiring and plumbing, have been stripped from the house by vandals.

Adjacent Land Uses
The property is located in a transitional area, with industrial and manufacturing uses on the west side of the street (immediately surrounding the subject property) and residential uses across the street to the east of the subject property. The subject property is surrounded on two sides by Teal Construction, and Terrapin Recycling is located south of the property across a street stub.

Code Citations – *Zoning Ordinance*

Article 3. District Regulations

Section 19. Manufacturing zone (M).

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19.2 *Uses prohibited.* The following uses are specifically prohibited:

19.21 Residences.

Article 4. Zoning Bulk and Parking Regulations

Section 4.16

Bulk and parking regulations for industrial zones in M:

Minimum Lot Area	½ acre
Minimum Lot Width	100 feet
Minimum Lot Depth	150 feet
Front Yard	40 feet
Side Yard	20 feet
Rear Yard	20 feet

Review Standard for a Use Variance

The *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.

2.12 *Use variance*. A variance shall be considered a use variance if it would permit a use of the subject property that would otherwise not be permitted on the subject property. In considering a request for 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; and

(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; and

(c) That the granting of the variance under such conditions as the board may deem necessary or desirable to apply thereto will be in harmony with the general purpose and intent of this ordinance, will not represent a radical departure therefrom, will not be injurious to the neighborhood, will not

change the character thereof and will not be otherwise detrimental to the public welfare.

Review of Application

As a part of the application, the applicant was asked to summarize how the requested variance relates to the four criteria. The applicant's response is provided below, along with a staff assessment of the application in accordance with the required criteria.

1. 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.

   Applicant Responses:
   The square footage of this property is less than required for a property in a Manufacturing zone. Setback lines would prevent the building of a building adequate to support any type of business or manufacturing facility.

   Staff Response:
   The subject property does not meet the minimum lot size, lot width, or lot depth for the M (Manufacturing) zone. While the applicant did not submit a plot plan with precise dimensions of the lot, it is clear that the lot does not meet the dimensional and area requirements. Staff used the geographic information system to prepare and exhibit with approximate measurements, and it appears that the lot is approximately 54 feet by 103 feet, and approximately 5,550 square feet in area. This is significantly less than the half-acre (21,780 SF) minimum lot size. The lot size and dimensions would make it impossible to construct a building that meets the setback requirements for the M zone.

2. 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.

   Applicant Responses:
   The reasonable economic use of this parcel of property would be multifamily residential as there are like properties just across the street from the subject property and this would not impact the area in any way. This is the only use available for this parcel as property does not conform to any other and already has a footprint established for a residential use.

   Staff Response:
   The applicant must demonstrate that the use variance is necessary, as the provisions of the ordinance would deprive the applicant of **all reasonable use of such land or building,** and the variance granted must be the **minimum variance that would accomplish this purpose**. While it is likely infeasible to develop a viable manufacturing use on the subject site, the applicant has not demonstrated that the ordinance would deprive the applicant of all reasonable use of the land, and the request for a multi-family residential use is not the minimum variance that would accomplish the purpose. Other

uses, such as commercial or office uses, would be a lesser departure from the requirements of the ordinance than the requested residential use.

In addition to the manufacturing uses permitted in the zone, the M zone also permits research, design and development laboratories; wholesale storage and warehousing; building contractors yards; public utilities uses; and ministorage. While the property may not be able to accommodate a manufacturing use, the applicant has not demonstrated that any of the other uses permitted in the zone would be infeasible. While the property is small and does not comply with area and dimensional requirements of Article 4 of the *Zoning Ordinance*, an area variance for a use that is permitted in the zone would be the more appropriate variance.

3. The variance would 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.

Applicant Responses:
The granting of this variance will not adversely impact this area and will be in harmony with the general purpose and intent of the ordinance because there will be no change in the character of the property or the area. The lot being too small for manufacturing or business and the like residences already in the area would lend itself to being the most likely use of the property. There would be no injurious or detriment to public welfare or the surrounding neighborhood as there is a church on the opposite corner across the street and numerous multifamily residences straight across the street.

Staff Response:
The granting of the variance has the potential to adversely impact the neighboring manufacturing uses. Residences are expressly prohibited in the M zone as they are deemed incompatible with the uses permitted in the M zone. The neighboring property to the north and west has a chain link barbed wire fence and is an active industrial site.

The residential uses on the east side of North West Street are primarily one-family dwellings. The property immediately across the street at 207 North West Street is a multi-family residence, which is a legal non-conforming use in the RG-1 (General Residence) zone.

The Comprehensive Plan designates this property as Industrial in land use. The allowance of a new residential use would be contrary to the *Zoning Ordinance* and the Comprehensive Plan.

Variance Recommendation:
Staff notes that the standard for a use variance is different and more stringent than the standard for an area variance, as the applicant must demonstrate that the provisions of the ordinance would deprive the applicant of all reasonable use of the land. Additionally, the variance granted must be the minimum variance that would accomplish the purpose. Given these factors, staff recommends denial of the variance for reasons as follows:

- The applicant has not demonstrated that adherence to the requirements of the ordinance deprives him of all reasonable use of the land.
- The variance requested is not the minimum variance necessary to provide for reasonable use of the land.
    - Previously the house was a legal non-conforming one-family residence. The applicant wishes to develop the property as a multi-family residence.
    - Other use categories such as commercial or office use would be less of a departure from the requirements of the ordinance and more compatible with the neighboring industrial uses.
- The requested variance represents a radical departure from the requirements of the ordinance and could have adverse impacts on the neighboring industrial use, as there is the potential for residential neighbors to complain about the noise, hours of operation, and other incompatible characteristics of a neighboring industrial use. These issues of incompatibility represent the reason that residential uses are expressly prohibited in the zone.

City of Dover, DE
Department of Planning and Inspection
P.O.Box 475
Dover De. 19903

Ref: Land Use Variance 12/4/2013

John W. Bashore
P.O.Box 7399
Newark, DE. 19714-7399

1. The square footage of this property is less than required for a property in a Manufacturing zone. Setback lines would prevent the building of a building adequate to support any type of business or manufacturing facility,
2. The reasonable economic use of this parcel of property would be multifamily residential as there are like properties just across the street from the subject property and this would not impact the area in any way. This is the only use available to this parcel as property does not conform to any other and already has a footprint established for a residential use.
3. The granting of this variance will not adversely impact this area and will be in harmony with the general purpose and intent of the ordinance because there will be no change in character of the property or the area. The lot being too small for manufacturing or business and the like residences already in the area would lend its self to being the most likely use of the property. There would be no injurious or detriment to public welfare or the surrounding neighbor hood as there is a church on the opposite corner across the street and numerous multifamily residences straight across the street.

Respectfully submitted,

John W. Bashore

Bayshore Communication Fax:302-292-1138 Dec 10 2013 09:20am P002/002

City of Dover

Board of Adjustment

December 18, 2013

V-13-15

Location:	43 Washington Street
Applicant/Owner:	Kathleen A. Davies
Application Date:	November 15, 2013
Present Zoning:	R-8 (One Family Residence Zone)
Present Use:	Residence
Reviewed By:	Tracey Harvey
Variance Type:	Area Variance
Variance Requested:	Variance from the impervious coverage limit of 35% to install a pre-built shed in the rear yard and extend the driveway for additional parking.

Project Description:

The applicant is seeking a variance from Article 4, Section 4.1 of the *Zoning Ordinance*, the bulk standard requirements of the R-8 zoning, specifically as those requirements relate to impervious coverage. The applicant seeks to install a 14ft x12ft pre-built shed of 165 S.F. in the rear portion of the existing property. The requested variance would allow for the total lot coverage (house with garage, patio, sidewalk and driveway) on the property to exceed the 35% lot coverage regulation by 2.8% (existing patio and shed) for a total of 37.8% lot coverage. The property is located at 43 South Washington Street.

Adjacent Land Uses

The lands to the north and south are all similarly zoned R-8 and are residential uses. The lands to the east and west are zoned R-8 and are also residential uses. Immediately adjacent to the subject property are other single family detached houses.

Code Citations

Section 4.1. [One-family residence zones.]

Bulk and parking regulations for one-family residence, R-20, R-15, R-10, R-8 and R-7 zones [are as follows] (see also article 12, definitions; article 5, supplementary regulations; and article 6, off-street parking, driveways and loading facilities):

TABLE INSET:

			For Dwellings In:				
			R-20	R-15	R-10	R-8	R-7
Minimum required:							
	Lot area (sq. ft.)		20,000	15,000	10,000	8,000	7,000
	Lot width (ft.)		120	100	80	70	50
	Lot depth (ft.)		150	125	110	100	100
	Front yard (ft.)		30	30	25	25	20
	Minimum side yard (ft.)		25	20	15	10	5
	Total both side yards (ft.)		50	40	30	20	10
	Rear yard (ft.)		40	40	30	30	30
	Livable floor area/DU (sq. ft.) 1,200		1,200				
	Off-street parking spaces/dwelling units		3	3	2	2	2
Maximum permitted:							
	Building height						
		Stories	2 1/2	2 1/2	2 1/2	2 1/2	2 1/2
		Feet	35	35	35	35	35
	Lot coverage		20%	25%	30%	35%	40%

Exceptional Practical Difficulties Tests

Article 9§2 dictates the specific powers and duties of the Board of Adjustment with regard to granting variances. In order to grant a variance the Board must determine in that exceptional practical difficulties exists.

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.

An area variance shall be evaluated on the following criteria;

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

   Applicant Responses:
   This is an R-8 residential zoning classification. Single family home

   Staff Response:
   The Washington Street area is zoned R-8 (One Family Residence Zone) and consist of single family homes. The properties located on the north side of the street of the subject property have their driveways and garages located in the rear of their properties where entrance is gained through the alley. The alley is accessed from Rodney Road, the block north of Washington Street. The use of the alley for access appears to minimize lot coverage due to length of the driveways and encourages detached parking garages. The R-8 Zone requires a minimum lot area of 8000 SF; this property consists of 9000 SF.

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

   Applicant Response:
   This is a residential street, same zoning. The neighborhood has single-family houses. On our side of the street access to our parking is via an ally way down Rodney Street. Most single-family houses have a shed on their property and others have multiple sheds. Other homes have structures for animals, in addition to sheds.

   Staff Response:
   The area in which the applicant is proposing placement of the shed would not be out of character with the immediate vicinity as there are other existing buildings with similar conditions in the surrounding area. Exterior buildings such as sheds and garages are common within this community since all of the properties surrounding the north side of the subject property must gain entrance for parking from the alley.

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

   Applicant Response:
   This request would have no effect on the neighborhood. We have invested a lot of our monies to better enhance our home and to improve the appearance of the property and neighborhood. The shed we had built is custom to match the house and is not a standard looking shed. It would enhance the property.

   Staff Response:
   There would be no effect on the neighboring properties if the restriction were removed as the neighboring properties also have sheds.

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:
   If the restriction is not lifted we would be unable to make additional improvements to our property and increase the value of our home or make any other additional cosmetic changes that will improve the looks of the home and neighborhood. We have additional plans to completely redo the driveway (see attached photo) and as you can see, it needs replacing. Off the driveway we wanted to make additional parking by removing some grass to accommodate friends and families for outings and visitations. There is no additional parking in front of the house as our neighbors don't have garages or sufficient space on their own property and utilize Washington Street to park. The home next door has 4 individual and they each have their own vehicles that consumes many parking spaces and our neighbors have 2 vehicles and no garage. They also park on the street. Most of the time, they are parking in front of mailboxes.

   Staff Response:
   The lot coverage at construction of the house with attached garage was at 34.6% which did not leave room for any additional improvements to the property with an impervious coverage limit of 35% for the R-8 Zoning District. The placement of a shed in the rear of the property would not have an adverse effect on the character of the neighborhood, as the surrounding properties have accessory structures located on their properties.

   The request for additional increase in lot coverage to expand parking in the driveway would not create an unnecessary hardship for the applicant. The applicant has a two garage and a two car wide driveway in the rear of the property that can occupy 4-5 vehicles due to its length. In addition, there is on street parking available on the north and south side of Washington Street.

Variance Recommendations:
Staff recommends approval of the variance to exceed the 35% impervious coverage limit for the placement of a shed in the rear yard, and denies the request for additional impervious coverage to accommodate parking by expanding the driveway for the following reasons:

- The lot coverage at construction did not leave enough room for any additional improvements to the property such as the placement of accessory structures which typically occur on residential properties.
- Staff recommends setting the maximum impervious coverage for the lot at 40%.
- The variance proposed for the shed would have no effect on the existing character of the neighborhood.
- The additional lot coverage to accommodate the expansion of the parking area in the driveway would not create a hardship for the owner. There is a garage accessible in the rear of the property and existing driveway with the capacity to fit 4 to 5 vehicles. In addition, there is on street parking available on the north and south side of the nearby streets.

Response to Criteria
Area Variance

1. This is a R-8 residential zoning classification. Single family home.

2. This is a residential street, same zoning. The neighborhood has single-family houses. On our side of the street access to our parking is via an ally way down Rodney Street. Most single-family houses have a shed on their property and others have multiple sheds. Other homes have structures for animals, in addition to sheds.

3. This request would have no effect on the neighborhood. We have invested allot of our monies to better enhance our home and to improve the appearance of the property and neighborhood. The shed we had built is custom to match the house and is not a standard looking shed. It would enhance the property

4. If the restriction is not lifted we would be unable to make additional improvements to our property and increase the value of our home or make any other additional cosmetic changes that will improve the looks of the home and neighborhood. We have additional plans to completely redo the driveway (see attached photo) and as you can see, it needs replacing. Off the driveway we wanted to make additional parking by removing some grass to accommodate friends and families for outings and visitations. There is no additional parking in front of the house as our neighbors don't have garages or sufficient space on their own property and utilize Washington Street to park. The home next door has 4 individuals and they each have their own vehicle that consumes many parking spaces and our other neighbors have 2 vehicles and no garage. They also park on the street. Most of the time, they are parking in front of mailboxes.

We would also like to have the lot coverage set to include additional parking in the future. We have included that area in our drawings that are included in this package.

City of Dover

Board of Adjustment

December 18, 2013

V-13-16

Location:	506-516 Jefferic Boulevard
Applicant:	Frontline Ministries
Owner:	Harrington Properties LLC.
Tax Parcel:	ED05-068.09-01-28.01-000
Application Date:	November 15, 2013
Present Zoning:	C-4 (Highway Commercial Zone) SWPOZ (Source Water Protection Overlay Zone) Tier 3 - Excellent Recharge Area
Present Use:	Church
Reviewed By:	Tracey N. Harvey
Variance Type:	Area Variance
Variance Requested:	Allow a reduction of the number of required off-street parking spaces.

Project Description:
The applicant is requesting a variance from the *Zoning Ordinance* of Article 6 Section 3.1 Required Off Street Parking Spaces. Specifically, they are requesting a variance to allow for a reduction in the number of off-street parking spaces to 169 from 178. The Board of Adjustment granted a variance for application V-12-05 on June 22, 2012 which expired.

Adjacent Land Uses
The adjacent properties are a mixture of commercial and residential uses. The properties to the north and east are all zoned C-4 (Highway Commercial Zone) and are subject to the SWPOZ (Source Water Protection Overlay Zone) Tier 3 – Excellent Recharge Area. The properties to the south are zoned C-4 (Highway Commercial Zone), R-20 (One Family Residence Zone) and are subject to the SWPOZ (Source Water Protection Overlay Zone)

Tier 3 – Excellent Recharge Area. The properties to the west across North DuPont Highway are zoned C-1A (Limited Commercial Zone) and are subject to the SWPOZ (Source Water Protection Overlay Zone) Tier 3- Excellent Recharge Area.

Code Citation

Article 6 Section 3. - Required off-street parking spaces.

3.1 *Schedule of requirements.* Accessory off-street parking spaces, open or enclosed, shall be provided for any lot as specified in Article 4—Zoning Bulk and Parking Regulations, or as specified below for each use in any zone, whichever is greater.

(a) *Exceptions.*

i. Where Article 3—District Regulations, specifies a minimum parking requirement, this parking requirement shall prevail.

ii. For existing buildings within the C-2 zoning district, the requirements of Article 4, Section 4.14—[C-1, C-1A, C-2, C-2A zoned], bulk and parking regulations governing the C-2 zoning district shall prevail.

For:	At Least One Parking Space For Each
Places of worship	Two hundred (200) square feet of floor area, but not less than one (1) space for each four (4) seats, where provided
Libraries	Three hundred (300) square feet of floor area
Medical offices—All types	Three hundred (300) square feet of floor area
Nursery school or kindergarten	Adult attendant, plus one for every 20 children
Elementary or junior high school	Eight (8) seats in main auditorium/cafeteria or gymnasium
High school, technical school, college or university	Five (5) seats in main auditorium/cafeteria or gymnasium; if none, see Article 4—Zoning, Bulk and Parking Regulations
Hospitals or sanitariums	Three beds
Apartments	Two (2) per dwelling unit and one (1) for every two hundred (200) square feet of office space and 0.25 per dwelling unit for visitor space
Roominghouses	Guestroom
Dormitories	Three (3) beds
Eating and drinking places	Four (4) seats plus one (1) for every three (3) bar seats
Funeral homes	Two (2) employees, plus five (5) spaces for each chapel
Hotels and motels	Guestroom, plus one (1) for every 200 square feet of office space, banquet hall, or meeting areas
Athletic fields, baseball, football or boxing stadiums and arenas; race tracks	Three (3) seats
Golf courses	Per employee and four (4) parking spaces for each hole
Golf or baseball driving range	One-half (½) stall
Airports	Per employee and for each two (2) airplanes in storage

Exceptional Practical Difficulties Tests

Article 9, §2 dictates the specific powers and duties of the Board of Adjustment with regard to granting variances. In order to grant a variance the Board must determine in that exceptional practical difficulties exists.

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.

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

Applicant Responses:

1. 506-516 Jefferic Boulevard, Dover, DE, is the property our request for Area Variance applies. The tenant, Frontline Ministries, is currently the sole tenant of a building originally designed as a multi-use, multi-tenant shopping center with office space.

2. Frontline Ministries owns the adjoining property to the South, 595 North DuPont Highway, which they call the South Campus of Frontline Ministries. The existing parking spaces at this location are included in all of the parking calculations for the main building. Both properties share a common driveway entrance off of DuPont Highway.

3. Both properties are zoned C4, Highway Commercial Zone.

4. Both properties are in Source Water Protection Overlay Zone Tier 3, which means the soils have excellent recharge. No additional impervious surface will be allowed on either site.

5. Parking calculations are as follows, refer Drawing C1, "Conceptual Floor Plan and Parking Plan," for Frontline Ministries, dated 18May 2012:

PARKING CALCULATIONS

Existing Parking Spaces:	151
Proposed Additional Parking:	18
Total Available Parking:	169

Zoning Ordinance:	For the sanctuary and Fellowship Hall provide "one (1) space per two hundred (200) square feet of floor area but not less than one (1) space for each four (4) seats, where provided."
Parking Required Based On Square Foot Calculations:	26,814 @ 200 s.f. per parking space = 134 required parking spaces
Parking Required Based On Seating Provided:	Sanctuary & Stage: 462 seats @ 4 seats per space = 16 spaces Fellowship Hall: 248 seats @ 4 seats per space = 62 spaces
Total:	178 total spaces required
Parking Required Based On Most Restrictive:	The required parking based on seating provided Is greater than the parking required based on Square foot calculations, therefore, the required parking is 178 spaces
Parking Shortfall:	178 required parking spaces minus 169 available parking spaces = 9
Area Variance Requested:	Request release from zoning requirements in the amount of 9 parking spaces
Non-Concurrent Use:	Since the tenant does not plan for schedule events in both the Sanctuary and the Fellowship Hall at the same time, these spaces will be used non-concurrently. The greater occupancy is the Sanctuary, requiring 116 parking spaces. With 169 available parking spaces, the property has enough parking for the maximum number of cars when the spaces are used non-concurrently.

6. Note that the number of required parking spaces has decreased since Frontline Ministries has become the sole tenant of this property. When Frontline Ministries expanded their Sanctuary in September of 2011, the required number of parking spaces was 248 (occupancy was granted on the basis that the business tenants were not open on Sunday mornings during worship service). Now that Frontline Ministries is the sole tenant and a Fellowship Hall is proposed, the total parking requirement has been reduced to 178, a decrease of 70 required parking spaces.

Staff Response:
The property is zoned C-4 (Highway Commercial Zone).The use as a place of worship is a permitted use within this zoning district. The surrounding uses are commercial or residential in nature.

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

Applicant Responses:
1. Refer Drawing C2, "Vicinity Map" for Frontline Ministries, dated 15 November 2013.

2. The property resides on the corner of DuPont Highway and Jefferic Boulevard. North DuPont Highway is a six lane divided highway with mostly commercial properties on each side. Jefferic Boulevard is a three lane divided broad way with grass and trees in the median. It is a short road that connects to overflow parking for Dover Downs and a residential community East of the property.

3. Directly North of the property on North DuPont Highway is the Fairfield Inn Marriott. Travelling north, there is a Popeye's Chicken restaurant, Hibachi Steak House restaurant, and Cash Point Car Title Loans business.

4. Northeast of the property and across Jefferic Boulevard, there is a self-storage facility. Travelling East, there is a grassy field which serves as overflow parking for Dover Downs Speedway.

5. Directly East of the property is the Residence Inn Marriott. South of the Residence Inn Marriott is a Child Care Center and a row of single family residences on Buckson Drive. On the East side of Buckson Drive are the Westfallen Apartments, Derby Estates townhouses, and the Towne Point Elementary School.

6. Directly South of the property is the Frontline Ministries South Campus. It has a meeting room used only for special events, but after the Fellowship Hall has been opened, the South Campus will no longer be needed. Travelling South, there is a Hair Salon, and Oil Massage business, State Farm Insurance business, Holiday Inn, and the Big K Shopping Center.

7. Directly across from the property on the West side of North DuPont Highway, is a two-story office building with parking below that appears to be vacant. Directly South of the office building is a single-family residence. Travelling South on North DuPont Highway is Mid Coast business, a Battery retail store, a Pawn Shop and Jewelry store, and a Valero gas station and mini-mart. Travelling North on DuPont Highway from the office building is LePore's Liquors retail store, The Red Roof Inn, Boardwalk Fries restaurant, and Kirby and Holloway restaurant.

8. Contained uses on the property: Refer Drawing C1, "Conceptual Floor Plan and Parking Plan" for Frontline ministries, dated 15 November 2013. As noted above, Frontline Ministries is now the only tenant of this former shopping center. Frontline Ministries is a traditional church, but also operates a TV studio, School of Ministry, and Bookstore, all on the premises. Currently the Church has a recently enlarged Sanctuary, one Sunday School Classroom, and office space. In the two-story portion of the building formerly occupied by Harrington Realty ERA, Frontline Ministries plans to open additional Sunday School Rooms, enlarge the narthex, relocate the main entrance to the North end of the building, and place administrative offices for the various service programs on the Second Floor. With the approval of this Area Variance request, Frontline Ministries plans to open a Fellowship Hall, improve the existing kitchen, and consolidate the existing separate toilet rooms into gang male and female toilets.

9. Church schedule: The church schedule is vital to a proper understanding of the Area Variance request. The parking requirements in the Zoning Code are based on the assumption that the large assembly spaces, namely the Sanctuary and the Fellowship Hall, may be occupied concurrently. The leaders of Frontline Ministries are fully aware that they do not have the parking to accommodate such a situation, so they have adjusted their schedule accordingly. **The Sanctuary and Fellowship hall are non-concurrent uses of the building.** The proposed schedule for the building is shown below:
   - Sunday School: Sunday morning at 9:00am at the South Campus 595 N. DuPont Hwy. Approximately 20 people in attendance. Once renovations are completed, Sunday School will be relocated to the portion of the main building at 506 Jefferic Blvd., formerly occupied by Harrington realty, and attendance may increase.
   - Worship Service: Sunday morning at 10:00am, at 516 Jefferic Blvd. (Sanctuary), approximately 300-350 people in attendance. Seating for 462.
   - Bible School: Monday night at the School of Ministry, 514 Jefferic Blvd., approximately 25 people in attendance
   - Special church events monthly approximately 200-350 in attendance in the Sanctuary, Saturday evenings starting at 5:00 or 7:00 and running approximately two hours.
   - Administration: Monday thru Friday full time administrative staff from 9:00am to 4:30pm approximately 6 people in the First Floor office area.

Once the Second Floor renovations are completed, additional offices and administrative staff will be added, same timeframe.

- Backpacks and School Supplies Program: Once per year in July or August in the Fellowship Hall on a Saturday morning
- Winter Coat Drive: Once per year in October or November in the Fellowship Hall on a Saturday morning
- Community Thanksgiving Dinner: Once per year on Thursday, Thanksgiving Day in the Fellowship Hall in the afternoon and evening
- Community Christmas Dinner: Once per year in the Fellowship Hall on the Saturday afternoon and evening prior to Christmas
- Toy Giveaway: Once per year in December in the Fellowship Hall on a Saturday morning
- Award Banquets: Once or twice in December in the Fellowship Hall on a Saturday evening
- Fellowship Hall rental will be available to church members and members of the community for weddings and special events. The Fellowship Hall will be available throughout the week except on Sunday mornings and when special events are scheduled in the Sanctuary. Note that a wedding is a non-concurrent use of the Sanctuary and Fellowship Hall. Attendees will move from the Sanctuary to the Fellowship Hall. They will not be occupied concurrently.

Staff Response:
The site is a former shopping center that has been converted from multiple tenant spaces to a church. The use is consistent with other uses in the area. The other uses in the area provide the required off street parking spaces. The site is permitted to utilize the joint facilities section of the *Zoning Ordinance* to allow for parking to be located on an adjacent property. The site utilizes twelve (12) parking spaces located on the property to the south (the South Campus). Staff notes that the added parking provided on the southeast side of the building provides an 18 foot drive aisle and would only allow for one way traffic. This parking would also need to be reviewed by the Fire Marshal to ensure life safety is being met.

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

Applicant Responses:

1. No negative impact whatsoever due to **non-contingent use** of property. Refer Drawing C1, "Conceptual Floor Plan and Parking Plan" for Frontline ministries, dated 15 November 2013. As noted in the Schedule above, Criteria 2 Item No. 9, the Sanctuary and Fellowship Hall will not be used at the same time. The greater occupancy is the Sanctuary, requiring 116 parking spaces. With 169 available parking spaces, the property has enough parking for the maximum number of cars when the spaces are used non-concurrently.

2. A volunteer parking lot crew works the parking lot for the Sunday morning Worship Service. They do not allow attendees park where they are not allowed to park. However, if nine cars find on-street parking on the neighborhood streets at 10:00 a.m. on Sunday morning, this would not "seriously" affect neighboring property and uses.

3. Now that Frontline Ministries is the sole tenant on the property, this creates a **positive impact** on the neighboring properties. The former occupancy, as a strip shopping mall, could have less desirable businesses such as tattoo parlors, liquor stores, easy cash, adult movie sales, etc. Frontline Ministries does not allow alcohol consumption anywhere on the property. Full Church occupation brings worship, fellowship, training, and events that benefit the community, such as Winter Coat Drive, Community Thanksgiving Dinner, Community Christmas Dinner, and Toy Giveaway. Frontline Ministries has a youth outreach program called "Taking Back the Streets" which focuses on New Street in Dover, DE. The congregation is divided into "12 Pillars" with separate goals, such as cleaning up trash in Dover City streets, so the youth can become proper heirs to the City. The Social Services program of Frontline Ministries helps disadvantaged Dover City residents with food, rent, utility bills, and other needs.

4. The proposed Fellowship Hall will have a **positive impact** on the neighboring Properties as a venue for weddings, anniversary parties, and special events open to the public and serving the community.

Staff Response:
The reduction of nine (9) parking spaces would not negatively affect the neighboring properties. The reduction in the overall number of parking spaces by nine (9) spaces would not negatively impact the neighborhood as the applicant has indicated that the uses would not be used at the same time. There are people who assist in the parking to ensure people park in the appropriate lot during Sunday Services.

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:
1. Without the Area Variance, Frontline Ministries could not convert a portion of the business occupancy into a Fellowship Hall assembly occupancy as planned.

2. A Fellowship Hall is a normal and expected part of the Church experience. Without a Fellowship Hall, the Church cannot adequately meet the needs of its congregation and adequately serve the Dover community.

3. Without a Fellowship Hall, Frontline Ministries would have difficulty or be prevented from hosting the following events: Winter Coat Drive, Community Thanksgiving Dinner, Community Christmas Dinner, and Toy Giveaway.

4. Without a Fellowship Hall, Frontline Ministries would be prevented from having a venue for weddings, anniversary parties, special events open to the public and serving the community

5. Frontline Ministries has already signed a lease for the property and is obligated to the lessor.

6. Frontline Ministries would have to sublease the four tenant units currently allocated to the Kitchen, Storage, and Fellowship Hall.

7. The Church, in its desire to meet the needs of its congregation by providing a Fellowship Hall, would likely need to relocate to another property that has the required parking area. This would present a tremendous hardship to the Church financially, as it has already made a sizable investment in improving large portions of the current location. The new location may be outside of the Dover City limits, which may create additional blight in the form of an abandoned shopping center. This would create an immediate and serious hardship to the Owner, Harrington Properties, LLC. Finding tenants for an entire shopping center in an aging building across the highway from an abandoned two-story office building would be extremely difficult in this economic climate.

Staff Response:
The inability to provide the required number of parking spaces could possibly reduce the size of the church. The site has been redesigned to provide additional parking on the site. There is limited ability to provide any additional parking on the site. The SWPOZ causes a conflict with expanding impervious cover to provide more parking. The SWPOZ Tier 3 – Excellent Recharge Area dictates the amount of impervious surface that may be on a site.

Variance Recommendations:
Staff recommends approval of the area variance for a reduction of the required number of off-street parking spaces for the reasons as follows:

- The applicant has demonstrated exceptional practical difficulty as the site is not able to provide additional off street parking spaces within the shopping center and they cannot expand on this or the adjacent parcel due to the SWPOZ Tier 3 – Excellent Recharge Area.
- The variance would not negatively impact the neighborhood as the use of the sanctuary and fellowship hall are not proposed to be used at the same time and there are parking lot attendants to assist people to find a parking space to keep them off of other properties.

- The layout of the parking lot has been reconfigured to add additional parking spaces.
- The site is unable to provide the required nine (9) off street parking spaces due to property layout and the existing building on the site.

Advisory Comments:

- If approval is granted it shall be noted that it is the understanding that the use of the fellowship hall and sanctuary will not be used at the same time.
- If approval is granted the parking area behind the building will need to be marked as one way as this area does not meet code for two way traffic flow.
- Staff notes that if the church adds additional seats in the future another variance would be need to be requested to address the increase in the required number of off-street parking spaces.

City of Dover

Board of Adjustment

December 18, 2013

V-13-17

Location:	11 Roosevelt Avenue
Applicant/Owner:	Jerrie D. Sanstrom
Tax Parcel:	ED-05-077-17.05-60.00-000
Application Date:	November 8, 2013
Present Zoning:	R-8 (One Family Residence Zone)
Present Use:	Residential
Reviewed By:	Ann Marie Townshend, AICP
Variance Type:	Area Variance
Variance Requested:	*Zoning Ordinance*, Article 5, Section 1.52 Entries and Porticos

Project Description:
The applicant is requesting a variance from the *Zoning Ordinance* Article 5 §1.52 to allow for the front porch (deck) of 11 feet in width to project into the required front yard. Upon review of the application, it appears that the variance requested may actually be for relief from the provisions of Article 4 §4.1 as it relates to the front yard, as the proposed projection is not roofed-over as stated in Article 5 §1.52. Applying either standard of the *Zoning Ordinance* would require a variance for the construction of the proposed improvement.

Based on the information provided by the applicant, the front deck would project approximately 10 feet from the face of the house and be approximately 11 feet wide at its furthest projection. The three stairs would be angled off the side of the deck and would project further into the front yard than the deck itself. The information provided does not include precise measurements and therefore cannot be evaluated as to the exact setback requested.

Adjacent Land Uses
The property is in an area of mixed uses. The neighboring properties on the north side of Roosevelt Avenue area zoned R-8 (One Family Residence Zone) and are residential in use. The property immediately to the west, at the corner of South State Street and Roosevelt Avenue is

zone R-8 and is used as a funeral home. The property to the north is zoned IO (Institutional and Office) and is the location of the Dover YMCA. The properties to the south across Roosevelt Avenue are zone C-4 (Highway Commercial) and are developed in a mix of residential, commercial and office uses.

Code Citations – *Zoning Ordinance*

Article 4, Section 4.1 (Select provisions)

		For Dwellings In:				
		R-20	R-15	R-10	R-8	R-7
Minimum required:						
	Front yard (ft.)	30	30	25	25	20

Article 5, Section 1.5

1.5 *Exceptions to yard requirements.*

1.51 *Permitted obstructions.* Cornice or cantilevered roofs and chimneys may project not more than 2½ feet into a required yard. Belt courses, windowsills and other ornamental features may project not more than six inches into a required yard. Paved terraces, steps, and walks (other than such as are needed for access to the buildings on the lot) shall not project within 15 feet of a street line or four feet of a property line.

1.52 *Entries and porticos.* A roofed-over but unenclosed projection in the nature of an entry, portico or awning not more than eight feet wide and extending not more than six feet into the required front yard shall be exempt from the requirements of this section when the building otherwise complies with the regulations of this section. In computing the average setback, the presence of such entries and porticos shall be ignored.

1.53 *Existing setback.* No proposed one-family or two-family dwelling need have a setback greater than the average setback of the two existing dwellings with the greatest setbacks within 200 feet on each side of the said proposed dwelling, on the same side of the street and within the same block and the same zone.

1.54 *Open decks.* An open deck or patio extending to within ten feet of a rear lot line or within 20 feet of a rear lot for second story decks shall be exempt from rear yard setback requirements and lot coverage requirements so long as the principal structure complies with the regulations. Such open decks or patios shall not be enclosed and used as a part of the principal structure.

1.55 *Fences.* Fences or walls shall be limited to a maximum height of four feet above the ground when situated within front yard areas, and shall be limited to a maximum height of six and one-half feet above ground when situated within side and rear yard areas. Fences situated on corner lots shall be subject to the provisions of article 5, section 1.3. For the purposes of this provision, on lots with dual street frontage that are not corner lots, a fence situated to the rear of the principal structure shall be limited to a maximum height of six and

> one-half feet above ground. Fences or walls with a height in excess of six and one-half feet above ground shall conform to the setback requirements for dwelling buildings as set forth in article 4 of this appendix. Fence material commonly referred to as "barbed wire" and/or "razor wire," or any similar material, shall be prohibited in residential zones.

Exceptional Practical Difficulties Tests

The *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.
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> 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:
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> > (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 summarize how the requested variance relates to the four criteria. The applicant's response is provided below, along with a staff assessment of the application in accordance with the required criteria.

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

   Applicant Responses:
   This is R-8 zoning surrounded by commercial properties.

   Staff Response:
   The property is residential with a single family detached house and located in a residential zone. The use is consistent with the zone.

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

Applicant Responses:
There are private homes and rental houses, surrounded by commercial; i.e. Walgreens, a funeral home and residence and the expanding YMCA backing up to the owner's property, and Carrolls Corner.

Staff Response:
The immediate vicinity includes a mix of uses, including residential, commercial, a funeral home, and the YMCA.

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

Applicant Responses:
No. Property has a chain link fence around it with bushes and trees. No obstructions to any other property or their uses.

Staff Response:
If the restriction were removed, it would not adversely affect neighboring properties and uses.

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:
Probably – would impede emergency personnel and equipment from easily entering house and making it difficult access for movers and appliance personnel.

Staff Response:
Currently, the steps and porch encroach into the front yard. As evidenced in the pictures provided by the applicant, the proposed deck is being constructed over the existing porch and steps. The proposed deck could be constructed over the existing porch and steps without further encroachment into the front yard without a variance. The applicant has not demonstrated that utilizing the setback of the current entry steps and porch is infeasible and therefore has not demonstrated exceptional practical difficulty.

Variance Recommendation:
In Article 5, Section 1.52, the *Zoning Ordinance* allows for projections of entries and porticos up to six feet into the front yard. These projections also must not exceed eight feet in width. The proposed project is not truly an entry or portico as articulated in the code, as there is no vertical element or roof to the structure. However, it is also not a paved terrace, steps or walk that is permitted to project into the front yard under the provisions of Article 5, Section 1.51. The structure proposes to replace (or be built over) an existing porch and entry stairs; however, the structure is a deck. The allowance for decks to encroach into required setbacks addresses only the rear setback. Staff believes

that the appropriate variance would be a variance from the provisions of Article 4 §4.1 as it relates to the front yard for the principal structure. The front yard setback is 25 feet and this front porch deck structure is 19.4 feet from the front property line (based on sketch by applicant submitted with the application).

Staff recommends denial of the variance for reasons as follows:

- The applicant has not demonstrated that the deck could not be constructed utilizing the setbacks of the existing porch and stairs, and therefore has not demonstrated exceptional practical difficulty.
- The applicant began construction of the deck prior to application for a Building Permit. Had the Building Permit been applied for prior to commencement of construction, staff may have been able to work with the applicant to minimize the encroachment and not require a variance.