CITY OF DOVER BOARD OF ADJUSTMENT
AGENDA
Wednesday, November 20, 2013 9:00 AM

City Hall Council Chambers
15 Loockerman Plaza, Dover, Delaware

ROLL CALL

APPROVAL OF AGENDA

APPROVAL OF MINUTES OF August 21, 2013 Meeting

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.

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.

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
August 21, 2013

A Regular Meeting of the City of Dover Board of Adjustment was held on Wednesday, August 21, 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, Ms. Cornwell, Mrs. Purnell, Mrs. Harvey, and City Solicitor Pepper.

APPROVAL OF AGENDA

Mr. Hufnal moved to approve the agenda with the changes that application V-13-11 would be first on the agenda and V-13-10 would be second on the agenda, seconded by Mr. Senato and unanimously carried 5-0.

APPROVAL OF THE REGULAR BOARD OF ADJUSTMENT MEETING MINUTES OF July 17, 2013

Mr.Senato moved to approve the meeting minutes of July 17, 2013 as submitted, seconded by Mr. Keller and unanimously carried 5-0.

OPENING REMARKS CONCERNING DEVELOPMENT APPLICATIONS

Mrs. Townshend, Director of Planning and Community Development stated that the meeting will 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-13-11:

34 Winged Foot Court: Timothy Bennett has requested a variance from the requirements of Article 4 §4.1 of the *Zoning Ordinance* pertaining to the side yard setback.

Subject property is zoned R-10 (One Family Residence Zone). The Tax Parcel is ED-05-067.17-01-61.00-000. The owner of record is Timothy Bennett.

Ms. Janelle Cornwell, Planner II, submitted the following items for the record: staff report, photos, survey, and the written statements provided by the applicant. The legal notice was published in the Delaware State News on August 11, 2013, and that the public was notified in accordance with regulations.

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

Representative: Mr. Tom Burns., Real Estate Broker for Burns & Ellis.

Mr. Tom Burns was sworn in by Mr. Pepper.

Slide Presentation

Mr. Burns testified on behalf of the owner that the application is a request for a variance to allow for the building to encroach into the side yard setback. The property involves two (2) real estate transfers that have been done in the past 13 years. The house was constructed in the Fox Hall Subdivision in 1973. The subdivision was originally created and drawn in the County. It was recorded after it was annexed into the City. This was the first R-10 zoning classification in 1973 to be utilized and it has the most restrictive setbacks, with a 15-foot yard setback. The other zoning classifications such as R-7 and R-8 have a 10-foot yard setback. The County also has a 10-foot yard setback. Forty years ago it was not uncommon for surveyors and/or builders to build a home within the 10-foot restriction. Referring to slide presentation of the house to the right and left that have been there for about 40 years, the home was transferred to the new owners in 2000. Referring to the house on the right the garage is located to the left and the encroachment is on the left side of the garage and it cannot be seen due to the landscaping. The front of the garage is within the setback. Looking at the side of the garage there is a bump out which is a portion of the house that is in violation of the setback. All of the exterior siding material which would be very difficult to replace are similar. It appears that it was constructed when the house was constructed. The roof line to the left ties into the patio area. Looking at it from the back yard neighboring property where there is sufficient landscaping and trees that obscure any unperceived to the encroachment when it was constructed. If the encroaching portion of the structure was removed you would have to completely reconstruct the patio and porch roof in the back of the house which would be an undue hardship for anything gained to bring the property into compliance. Referring to the survey that the members received in their packet he stated that the survey was completed by the late Earl Smith in 2000 where the property was properly measured at 10-feet and it was not recognized at that time by the closing attorney or surveyor that the 10-feet was incorrect. Recently, McClure did the survey and noticed that the 10-foot was still there. The title searching attorney verified the current survey against the building code which is the 15-foot and realized that there was a violation. They had to go back to the title insurance company that wrote the title 13 years ago. The title insurance company agreed to become the applicant because they were responsible. The most critical issue is that it happened forty (40) years ago and there had not been any issues raised.

Responding to Mr. Hufnal's question about when the house was built forty (40) years ago that it was strictly County, Mr. Burns stated that upon research the Fox Hall Subdivision was drawn when it was in the County and then it was annexed and the plan was recorded after it was annexed into the City. Therefore, the R-10 and 15-foot setback would have applied. Upon looking at the house on the survey it sits 35-feet from the other property lines. Because of the pie shaped cul-de-sac lot the house was placed there. It was not that a large home was built on the lot; they just did not build the home in the correct location under the building regulations.

Responding to Mr. Keller's question regarding the survey completed by the late Earl Smith in 2000 and McClure in June 2013, in 2000 the footprint of the house and additions differ a little and are illustrated by the photos whereas the rear porch, deck, and roofline has been expanded. Does the City know if there were any permits during the thirteen (13) year timeframe for the addition or

construction of the deck and roofline, Ms. Cornwell stated that Staff did not research if a permit was issued for the deck, but notes that the placement of the deck does not encroach into the side yard setback, it is behind the property.

Mr. Keller stated that the bump out appears on both surveys. He assumed that the bump out from the garage would be the original construction.

Mr. Burns stated that all of the material was consistent.

Responding to Chairman Sheth's question if he was aware of anything built in the last 13 years, Mr. Burns stated that he was not aware. When the house was sold in 2000 there was a an open patio that but is currently a screened porch.

Mr. Keller stated that he had a concern that the application was signed by the owner Mr. Bennett. To prevent in the future any closer construction or addition on the property line he is concerned about limiting the variance approval if it is approved to the distance from the cul-de-sac radius and he roughly judge that 100-feet would contain a 10-foot wide variance approval which would contain that bump out, but would prevent the owner or future owner extending into the 10-foot area in the backyard and putting up additional structure by virtue of this variance request. If you allow the 10-foot variance parallel to the property line down 100-feet it would contain the bump out and allow the existing encroachment, but would prevent and still require a 15-foot side yard setback throughout the balance of the property in the rear.

Responding to Chairman Sheth's question if they decided to rebuild again in the same area would they be allowed to do that, Mrs. Townshend stated that the motion could address it to be specific, if there is an established setback they are permitted to be used as the setback. Mr. Pepper stated that he was not sure of the scenario that the Chairman was thinking, usually you let people rebuild on the same foundation if they do it promptly.

Responding to Chairman Sheth's question that it currently looks like a patio, but could it be changed to permanent, Mr. Pepper stated that it currently looks like an interior shed and they would be able to keep the shed.

Mr. Keller stated that from the exhibits and Mr. Burns testimony he would be in favor of the variance approval, but is concerned about the extension throughout the entire easterly property line for a reduction to 10-feet as oppose to the current 15-feet. He would favor limiting the reduction to 10-foot.

Mr. Hufnal stated that today they are approving what already exists. It occurred 40 years ago. If someone was putting up something in the future it would be new construction under the current codes.

Responding to Mr. Keller's question of whether it was a moot point if they do not otherwise describe the reduction in the side yard setback in some fashion that he tried to illustrate, Mrs. Townshend stated that in the motion if they were to accept the nonconformity at a 10-foot setback for the existing structure, but any additions would have to comply with the 15-foot side yard setback. It would memorialize in the variance decision and applied to future building purposes.

Chairman Sheth stated that he also lives in the Fox Hall Subdivision and all of the cul-de-sac has the same size lots.

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. Keller moved to approve application V-13-11requested variance to allow the building to be located 10-feet from the side property line, rather than 15-feet as required with the proviso that the variance would be approved in relation to the existing structure and the current portion of the existing structure that extends into the 15-foot yard setback and the existing encroachment does not negatively affect abutting properties, the encroachment is somewhat nominal, and as Staff has pointed out that the difficulties associated with removing the encroachment is in fact disproportionate to the benefit gain by the removal. The motion was seconded by Mr. Hufnal and unanimously carried 5-0.

Applicant #V-13-10:
1340 W. North Street: The Proctor and Gamble Dover Wipes Co. has requested a variance from the requirements of Article 4 §4.16 of the *Zoning Ordinance* pertaining to the required number of off-street parking spaces.

Subject property is zoned IPM (Industrial Park Manufacturing Zone) and a portion is subject to SWPOZ (Source Water Protection Overlay Zone) Tier 3 – Excellent Recharge Area. The Tax Parcel is ED-05-076.00-01-07.00-000. The owner of record is The Proctor and Gamble Dover Wipes Co.

Ms. Janelle Cornwell, Planner II, submitted the following items for the record: staff report, photos, written survey, and the written statements provided by the applicant. The legal notice was published in the Delaware State News on August 11, 2013, and that the public was notified in accordance with regulations.

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

Representative: Mr. Mike Bramble, Health Safety & Environmental Leader and Utilities & Facilities Manager.

Mr. Mike Bramble was sworn in by Mr. Pepper.
Presentation:

Mr. Bramble testified on behalf of the owner that the proposed project is to expand the capacity of the site of through a $20 million improvement project. Once the permit has been approved the funding information would be sent to the Proctor and Gamble corporate office for approval. They

would like to redefine the flow of traffic that comes off the main entrance of Hazlettville Road and West North Street. They are looking to utilize Electric Avenue as a new entrance for the employees and a new parking lot. Based on 600,013 SF of building floor area, 751 parking spaces are required. The *Zoning Ordinance* requires one (1) parking space for every 800 SF of floor area. A parking study was done and there is a 24-hour rotating operation. They currently have an existing parking lot that has 225 spaces. The entire Proctor & Gamble workforce consists of 175 employees. They are proposing to create a new parking lot that would consist of 167 parking spaces. This is more than they need for the maximum shift attendance (96 employees). This does not include other parking spaces near the main entrance. Per the drawing there will be 306 parking spaces for vehicles; this does not include the trailer truck parking spaces. If there is a plant wide celebration they would not exceed the parking. They would never see a need to park on the street, general area which consists of residential areas and office buildings, or any impact of other uses of Schutte Park. By minimizing the size of the parking lot an area for storm water would be better for the impervious surface entire area. They plan to make the parking lot pervious. Limiting the number of parking spaces would only be good for storm water management.

Responding to Chairman Sheth's question regarding the capacity of the total parking space they are currently using, Mr. Bramble stated less than 50%.

Responding to Chairman Sheth's question regarding the number of shifts that are operated; Mr. Bramble stated that they operate two (2) shifts around the clock.

Mrs. Townshend stated that the problem with code within the IPM (Industrial/Manufacturing) zone there are a lot of uses that are permitted. This is a manufacturing use where a lot of the floor area is essentially the manufacturing equipment. If you go across the street to Enterprise Business Park you have Easter Seals and FedEx that require more parking. The parking requirement for IPM (Industrial/Manufacturing) is one space for every 800 SF of floor area which is still significantly less than the other zones. It does not address the large manufacturing facility where the occupied space by number of people is significantly lower. It is a challenge to find a parking requirement that does not under park other areas without having an excessive parking requirement on this type of facility.

Responding to Chairman Sheth's question of whether the facility was originally Scott Paper and that there was no significant change on the parking from Scott paper, Mr. Bramble replied that he was not sure of any change.

Mrs. Townshend stated that there is some square footage expansion as part of retrofit, but they are not increasing their number of employees. The square footage for the facility is largely the manufacturing equipment and it is not like a distribution center, office or something where the space is largely occupied by people.

Chairman Sheth stated that he recalled approving a variance for a fence for Kimberly-Clark roughly 25 years ago.

Responding to Colonel Ericson's question regarding whether if the property was sold in the future would there be enough space to build additional parking spaces on the property, Mr. Bramble

stated it would be very hard to accomplish due to the wetlands concerns and other uses such as tractor trailers. If the business did not need tractor trailer parking spaces, then there would be 766 available parking spaces.

Colonel Ericson stated that the proposal is clear at this time because no additional parking spaces are needed, but he was concerned because there was no guarantee in the future that it would be critical and it would need to be expanded. Could a provision be made to limitation?

Chairman Sheth stated that they are too far away from the street and how large of a space they have for tractor trailers.

Responding to Chairman Sheth's question regarding the number of tractor trailer spaces they currently have, Mr. Bramble replied over 100 spaces. There are fifteen (15) additional parking spaces towards the front entrance that were not counted.

Responding to Mr. Keller's question as he referred to the presentation if there was an additional administrative building or area in the corner, Mr. Bramble stated no, the administrative building is near the front entrance at the current time, it will be shifted so that it is closer to the employee's area of operation.

Mr. Keller stated that on the sketch that was provided it did not show it as a hatch mark area and didn't know if it was existing or proposed.

Responding to Mr. Keller's question if it was a proposal, Mr. Bramble replied yes. The proposal for the project is 87,000 SF of additional building area.

Responding to Colonel Ericson's question regarding if someone else was to purchase the property in the future and additional parking space was needed and there was nowhere to build, would this variance still be applicable or would it need to be reconsidered, Mr. Pepper stated that the variance goes with the property.

Responding to Colonel Ericson's question if the variance was approved and someone triples the number of people working at that site, Mr. Pepper stated that they would have issues with their parking that would need to be solved. This is a combination where state regulations and source water protection that was forced to be adopted and they are trying to comply with that while dealing with their needs.

Mr. Hufnal stated that they are required by code for the parking they are still under what they are allowed to build.

Chairman Sheth stated that they are only using 50%. Any manufacturing company that goes on that plan will need to go through licensing and they will satisfy all the requirements with the State.

Responding to Mr. Senato's question that the new administrative building is 12,000 SF and the additional building area is 85,000 SF, Mr. Bramble stated that it is.

Responding to Mr. Senato's question as he referred to the green area on the presentation that it would be roughly 73,000 -75,000 SF, Mr. Bramble stated yes, of warehouse.

Responding to Mr. Senato's question of how long Proctor and Gamble had been on the site and if it was 40 years, Mr. Bramble stated that the site has been there for 40 years, but Proctor & Gamble has been there since 1996.

Responding to Mr. Senato's question as to what was there previously, Mr. Bramble stated it was Kimberly-Clark and Scott Paper.

Responding to Mr. Senato's question if it was an entity that Proctor & Gamble was affiliated with, Mr. Bramble stated no.

Responding to Mr. Senato's question if they were a new company that took over a whole new plant, Mr. Bramble stated yes.

Mr. Bramble stated that the site has been there for 40 years and they would like to stay there for 40 more years. This is the reason they are investing.

Responding to Mr. Keller's question regarding if the note in the report that the property is legal non-conforming as to the number of parking spaces currently in existence in relation to the footprint of the overall manufacturing plant was correct, Ms. Cornwell stated that it was correct.

Responding to Mr. Keller's question if it was to be a stand-alone improvement of 86,500 SF divided by 800 they will need approximately 108 parking spaces, Chairman Sheth stated additional.

Responding to Mr. Keller's question about whether it was legal non-conforming cannot an improvement be brought about on the site if it did not increase the degree of non-conformity, Mr. Bramble stated that they are planning to turn the existing 225 spaces into trailer parking spaces. Overall the project will be reducing parking spaces.

Ms. Cornwell stated that as shown on the plan there are 306 parking spaces that does not include the tractor trailer parking spaces that was counted by Staff that included the new parking lot and the existing spaces to the upper left on the site plan. With the new building addition they would be required to have more parking spaces and you would be increasing the non-conformity because they are farther back from what the code requires.

Mr. Keller stated that for example they may be creeping towards better compliance because they are short of parking spaces (example: 500 parking spaces and put in an additional footprint which would require 108 spaces, but they would provide 167 parking spaces) so they would be slightly improving the degree of non-conformity.

Mrs. Townshend stated that some of the car parking towards the front of the site is being eliminated and moved. Therefore, it does increase the degree of non-conformity.

Mr. Keller stated that it speaks to Colonel Ericson's remark about the difficulties involved with ultimately providing more parking spaces if you are eliminating parking from those areas that could be resumed to parking in some reasonable fashion unless there would be a building structure.

Responding to Colonel Ericson's question regarding the location of the tractor trailer parking, Mr. Bramble referring to the presentation stated that some would be in the area of the new parking lot and the existing parking lot would be turned into tractor trailer parking.

Responding to Mr. Senato's question if they would be eliminating any of the tractor trailer parking areas, Mr. Bramble stated that they are eliminating twenty (20).

Responding to Mr. Senato's question if they were eliminating the two drop lots, Mr. Bramble stated no.

Responding to Mr. Senato's question as to the number of tractor trailers, Mr. Bramble stated that there are 100. He stated that they are maintained and they will add roughly 30 spaces. For the most part they are maintaining about the same amount of tractor trailer parking spaces.

Responding to Mr. Senato's question if they were substituting one area and moving it over to an existing truck area parking, Mr. Bramble stated yes.

Responding to Mr. Senato's question if the northern parking spaces could be turned into possible automobile parking, Mr. Bramble stated that in the future it could be a possibility.

Responding to Chairman Sheth's question of how much employment will be created due to the new construction; Mr. Bramble stated the head and employment count is neutral.

Responding to Chairman Sheth's question if the manufacturing activity was increasing, Mr. Bramble stated that they would be increasing the speeding line capacity. Productivity goes up a lot per person. The project is to keep the employment here.

Responding to Mrs. Townshend's question regarding if the variance could be specifically granted based on the use, if the use was to change and it was not a manufactured use; Mr. Pepper stated that it would require rezoning. Mrs. Townshend stated that it would not require a rezoning because there are a lot of uses permitted in the manufacturing zone that are not manufacturing. For example, if Proctor and Gamble sold the plant to be an office building then the parking would be insufficient and there would be major renovations. Mr. Pepper stated that at the current time there are 100 tractor trailer parking spaces and if it became an office building they would not need that many tractor trailer parking spaces. Those parking spaces could be transformed into vehicle parking spaces which would park 200-300 vehicles.

Chairman Sheth referred to a past variance regarding General Foods moving the Rice & Chocolate part of the plant and in the process General Foods would have been lost, but it was granted without them coming to the Board of Adjustment and General Foods stayed in Dover. There were issues regarding water, sewer, rice and chocolate product. For example, if someone

else buys the property then that would be another process. Nothing happened with the last three (3) processes that were Scott Paper, Kimberly-Clark, and Proctor and Gamble.

Mr. Bramble stated that the company is still making baby wipes.

Responding to Mr. Keller's question when the existing non-conformity came about and if it was prior to the requirements for the current IPM zone, Mrs. Townshend stated that she was not certain. The plant has been in Dover for a long time. Mr. Pepper stated that if it is characterized as legal non-conformity it would indicate that it predates these regulations.

Chairman Sheth stated that it is good news for Dover that someone is spending $20 million dollars to expand their manufacturing line.

Mr. Senato stated that there were 306 parking spaces with the new addition and 100 tractor trailer parking spaces if the drop lots were eliminated two (2) or three (3) cars could fit into each tractor trailer space if it was an office complex.

Responding to Mr. Keller's question as to what is a drop lot, Mr. Bramble stated that a drop lot is when materials come in to be manufactured the trailers are dropped off and then products are picked up to be delivered.

Chairman Sheth stated that there used to be tractor trailer and roadway parking in the area where the new Royal Farms is being built. They did not get enough business therefore, they sold the land.

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-13-10 requested variance to reduce the overall number of parking spaces from 766 to 306 to enhance their operation and including Staff Recommendations, seconded by Mr. Hufnal and the motion unanimously carried 5-0.

Mr. Senato stated that as a member of the Board of Adjustment it has been a pleasure to work with Ms. Cornwell, she has done an exceptional job. She will be leaving the City and accepting a Planner's position with Kent County.

Mr. Keller moved to adjourn the meeting, seconded by Mr. Ericson and unanimously carried 5-0.

Meeting adjourned at 9:55 A.M.

Sincerely,

Maretta Savage-Purnell
Secretary

City of Dover

Board of Adjustment

November 20, 2013

V-13-12

Location:	11 Vondaway Drive
Applicant/Owner:	Orlan T. Kelley, Jr.
Tax Parcel:	ED-05-068-12.02-10.00-000
Application Date:	October 17, 2013
Present Zoning:	R-15 (One Family Residence Zone)
Present Use:	Vacant residential lot
Reviewed By:	Ann Marie Townshend, AICP
Variance Type:	Area Variance
Variance Requested:	*Zoning Ordinance*, Article 4, Section 4.1 – Front Yard and Lot Coverage.

Project Description:
The applicant is requesting a variance from the *Zoning Ordinance* Article 4 §4.1 for the reduction of the front yard to 20 feet and an increase of lot coverage to 35%.

Adjacent Land Uses
The property is surrounded by residential lots on the south and west. It is bounded by Delaware Route 1 on the east and White Oak Road on the north.

Code Citation

		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	2½	2½	2½	2½	2½
	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. Specifically the Board must determine:

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

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

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

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

Applicant Responses:
Residential use in a residential zone.

Staff Response:
The property is a residentially zoned property, and the proposed use is residential. The R-15 Zone is a larger lot one family residence zone, and the subject property is smaller than the minimum lot size for the zone.

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

Applicant Responses:
Residential area

Staff Response:
The surrounding properties are also residentially zoned and residential in use. Many of the lots are smaller than the minimum lot size of the R-15 zone.

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

Applicant Responses:
Would not affect neighboring uses.

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

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:
- Parcel less than minimum lot size required
  - Lot is 9,931.68 square feet
  - Minimum lot size is 15,000 square feet
- Does not meet depth or width requirements
- Corner lot- 2 front yards
- Multiple lot layout scenarios attempted – none met setbacks.

Staff Response:
Because the lot is less than two-thirds of the minimum required lot size, it is very difficult to construct a house on the property and comply with lot coverage and setback requirements. The fact that it is a corner lot further complicates this, as corner lots have two front yards. Planning Staff worked with the property owner on multiple scenarios to lay out the house on the lot, and none of the layouts met the required setbacks. Without a variance, it would be very difficult to reasonably use the property.

Variance Recommendation:
Staff recommends approval of the variance for reasons as follows:

- The proposed variance would be in keeping with the character of the zone and the surrounding areas.
- The applicant has demonstrated exceptional practical difficulty, as the property does not conform with the lot size requirements, so meeting the setbacks and lot coverage requirements leaves very little developable land on the parcel.
- Two similar variance requests on Vondaway Drive were approved by the Board of Adjustment in recent years (V-07-09 and V-05-14) due to similar circumstances. Many of the lots on Vondaway Drive do not comply with the bulk standards of the R-15 zone.

City of Dover

Board of Adjustment

November 20, 2013

V-13-13

Location:	Horsepond Road and Starlifter Avenue
Applicant/Owner:	Kent County Levy Court/State of Delaware
Tax Parcel:	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
Application Date:	October 18, 2013
Present Zoning:	IPM (Industrial Park Manufacturing)/AEOZ (Airport Environs Overlay Zone) – Noise Zones B, C and D
Present Use:	Vacant Lots and Civil Air Terminal
Reviewed By:	Ann Marie Townshend, AICP
Variance Type:	Area Variance
Variance Requested:	*Zoning Ordinance*, Article 5, Section 7.5 to allow a 9.0-foot fence within front, side and rear yards and to allow the use of barbed wire adjacent to a residential zone. *Zoning Ordinance*, Article 5, Section 16 to remove on-site tree planting, preservation and mitigation requirements.

Project Description:
The applicant is requesting a variance from the *Zoning Ordinance* Article 5 §7.5 to allow for the placement of a 9.0-foot barbed wire fence within the front, side and rear yards and adjoining a residential zone. The applicant is also requesting a variance from the *Zoning Ordinance* Article 5 §16 to reduce the tree planting required.

Adjacent Land Uses
The adjacent properties are a combination of R-20 (One Family Residence), R-8 (One Family Residence), and IPM (Industrial Park Manufacturing). All are subject to the Airport Environs Overlay Zone (AEOZ) – Noise Zones B, C and D. The R-20 property is the Dover Air Force Base, which is not subject to City zoning requirements. The R-8 property is the Janes Road subdivision, and the IPM property is the Kent County Aeropark.

Code Citation

Article 5, Section 7:

7.5 *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 eight feet above the 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 eight feet above ground. Fences or walls with a height in excess of eight feet above the 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 along property lines which adjoin residential zones.

Article 5, Section 16:

16.6 *Tree preservation and planting in nonwoodlands.*

16.61 *Tree preservation and planting plan required.* All developments in nonwoodland areas requiring approval of the planning commission shall be required to submit, with its application and plans, a tree preservation and planting plan as set forth in [sub]section 16.8, and shall conform with the following provisions.

16.62 *Tree density.* On each property for which a tree preservation and planting plan is required by this section, existing trees may be retained and new trees shall be planted such that the lot shall attain or exceed a tree density of one tree per 3,000 square feet of lot area or fraction thereof. Trees needed to meet buffer requirements shall not be counted towards tree density. Trees required to be planted in parking areas as specified by the planning commission shall not be counted towards tree density.

16.63 *Minimum standards for new trees.* For [new] trees to be counted toward the required tree density, they must be of a species and size as set forth in the table of trees approved by the planning commission and kept on file in the office of the city planner.

16.64 *Minimum standards for existing trees.* For existing trees to be counted toward the required tree density, the tree shall have a minimum caliper dimension of two inches. No trees over eight inches in caliper dimension shall be removed unless within an area of 30 feet from the proposed building foundation, off-street parking lot, and utility placement.

Exceptional Practical Difficulties Tests
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.

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

Applicant Responses:
Variance 1 and 2. The properties for which the variance is requested are zoned IPM (City of Doer zoning, Industrial Park Manufacturing). Adjoining T.P. ED-05-087.00-01-07.01, which is located to the north, is zoned IPM (City of Dover zoning Industrial Park Manufacturing). Adjoining T.P. ED-05-07.00-01-09.00, located to the east is owned by the State of Delaware and is currently utilized for the existing Civil Air Terminal Facility. The subject parcels are bounded by Horsepond Road (south) and Starlifter Avenue (west).

Staff Response:
The property is located within the IPM (Industrial Park Manufacturing Zone) and is industrial in nature. It is also in the AEOZ (Airport Environs Overlay Zone), Noise Zones B, C and D. The proposed use is consistent with these zones.

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

Applicant Responses:
Variance 1 and 2. The immediate vicinity is characterized by several different uses:
   a. The property north of the subject parcel is zoned IPM (City of Dover zoning, Industrial Park Manufacturing) and is currently vacant.

b. On the south side of Horsepond Road lies Dover Brook Meadow, a residential subdivision.
c. On the west side of Starlifter Avenue lies Kent County Industrial Park, a fully developed industrial park that houses various manufacturing facilities.
d. On the east side of the subject parcels is the Dover Air Force Base, a fully developed, securitized, military installation.

As the property is located between the Dover Air Force Base and the Kent County Aeropark, the proposed use is compatible with the surrounding uses. While there are residential properties located nearby, the Dover Air Force Base is the most significant presence 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:
Variance 1. Allowing for the proposed fence height to exceed the code maximum of four (4) feet within the front yard to a total height of nine (9) feet would not result in a negative impact on the surrounding properties. The proposed fence would be tying into the existing fence line along the property line shared with the Dover Air Force Base that is currently nine (9) feet in height. Since the surrounding properties north of the subject parcels and to the west of Starlifter Avenue have current use as Industrial Parks, the height of the fence would balance into the current demographics of the surrounding area.

Variance 2. The adjoining properties would not be negatively impacted if the tree preservation/mitigation requirement were waived. The existing trees on the site generally do not provide enough cover or foraging area to provide much wildlife value that could be of benefit to nearby properties.

Staff Response:
Variance 1. If the restriction on the fence height is removed, it would not seriously affect neighboring properties and uses. There is currently a tall fence with barbed wire surrounding the Dover Air Force Base. The extension of a 9-foot fence in this area would add any more than the impact of the existing fence.

Variance 2. If the requirement for tree planting were removed, it would not seriously affect the neighboring properties and uses; however, some tree planting would help to buffer the Civil Air Terminal from the nearby residential 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:
Variance 1.
a. To not approve a variance for the height of the fence and the use of barb wire would prevent construction of the project. The proposed use is functionally

dependent upon access to Dover Air Force Base. This access is conditional upon several requirements, one of which is maintaining Dover Air Force Base security standards. The proposed fence is the standard perimeter fence for Dover Air Force Base. To not allow for the variance to the fence height would prevent compliance with Dover Air Force Base security requirements and void the project.

b. To not approve a variance for the location of the fence would cause a hardship in development and maintenance of the property. Aircraft turning movements and storage spatial parameters require the apron expansion be designed as shown on the included display. State stormwater regulations require the construction of stormwater facilities that utilize the majority of the remaining developable space. The fence is located such that all development is enclosed within the fence, allowing for maintenance and higher security standards.

Variance 2.

a. Aircraft turning movements and storage spatial parameters require the apron expansion be designed as shown on the included display. State stormwater regulations require the construction of stormwater facilities that utilize the majority of the remaining developable space. These requirements limit the ability to preserve most existing trees.
b. These same requirements also minimize the ability to mitigate trees. Furthermore, any tree mitigation would provide for potential debris, damage to aircraft, could potential act as a means of unauthorized access, and would likely have a low survivability rate due to damage from jet wash. Tree mitigation could also encourage wildlife habitation which is discouraged by DAFB and is dangerous to both aircraft and wildlife.
c. The Zoning Ordinance requires approximately 4.75 acres of mitigation, and amount which does not fit within the site confines.

Staff Response:

Variance 1. The unique circumstances relating to the need for security around the Civil Air Terminal and Dover Air Force Base present an exceptional practical difficulty. Without the variance to allow a 9-foot fence with barbed wire, the proposed improvements could not be constructed. This is a unique circumstance that is peculiar to this specific use and property.

Variance 2. While circumstances exist that make compliance with the tree planting requirement difficult, given the security issues and nature of the use, the *Zoning Ordinance* allow the Planning Commission to consider tree mitigation for projects where tree planting on the site is not practical or feasible. Where the *Zoning Ordinance* provides for an administrative remedy, a variance is not justified.

Variance Recommendation:

Staff recommends approval of Variance 1 to allow for a 9-foot fence with barbed wire on top for reasons as follows:

- There is existing fence of the same height with barbed wire on top surrounding the Dover Air Force Base. This will not change the character of the area as it is a small extension of the fencing.

- The unique security issues related to the Dover Air Force Base pose an exceptional practical difficulty, as the Civil Air Terminal is dependent upon the infrastructure of the Dover Air Force Base in order to operate. Without the proposed fence, the project would not comply with security requirements and would not be feasible.

Staff recommends denial of Variance 2 to relax the tree planting requirements for reasons as follows:

- While compliance with tree planting requirements would propose difficulty for development of the site, the *Zoning Ordinance* allows for an administrative remedy through tree mitigation, which can be approved by the Planning Commission. Where an administrative remedy is available, this should be sought prior to approval of a variance.