CITY OF DOVER BOARD OF ADJUSTMENT
AGENDA
Wednesday, August 21, 2013 9:00 AM

City Hall Council Chambers
15 Loockerman Plaza, Dover, Delaware

ROLL CALL

APPROVAL OF AGENDA

APPROVAL OF MINUTES OF July 17, 2013 Meeting

NEW BUSINESS

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.

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.

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
July 17, 2013

A Regular Meeting of the City of Dover Board of Adjustment was held on Wednesday, July 17, 2013 at 9:00 A.M. with Chairman Sheth presiding. Members present were Mr. Senato, Mr. Hufnal, and Mr. Keller. Colonel Ericson was absent.

Staff members present were Mrs. Townshend, Ms. Cornwell, Mrs. Purnell, Mrs. Harvey, and City Solicitor Rodriguez.

APPROVAL OF AGENDA
Mr. Hufnal moved to approve the agenda as submitted, seconded by Mr. Keller and unanimously carried 4-0. Colonel Ericson was absent.

APPROVAL OF THE REGULAR BOARD OF ADJUSTMENT MEETING MINUTES OF June 19, 2013
Mr.Keller moved to approve the meeting minutes of June 19, 2013 with the necessary correction, seconded by Mr. Senato and unanimously carried 4-0. Colonel Ericson was absent.

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-13-09:
527 William Street: Roger Dale Casey, Jr. has requested a variance from the requirements of Article 5 §1.33 and 1.55 of the *Zoning Ordinance* pertaining to height of a fence within the front yard setback.

Subject property is zoned R-8 (One Family Residence Zone). The Tax Parcel is ED-05-067.20-01-52.00-000. The owner of record is Roger Dale Casey, Jr.

Ms. Janelle Cornwell, Planner II, submitted the following items for the record: staff report, photos, survey, emails, and the written statements provided by the applicant. The legal notice was published in the Delaware State News on July 7, 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. Roger Dale Casey, Jr., Owner.

Mr. Roger Dale Casey, Jr., was sworn in by Mr. Rodriguez.

Mr. Casey testified that the application is a request for variances to allow for a 6 foot fence to be located within the front yard setback along William Street. He bought the house in 2007. He noticed that there was a baseball field across the street after moving in and did not think that it would be an issue. Since living there for five (5) years he has had balls come into the yard hitting his cars. He has also parked on the street and that was also a problem. Later he built a carport and tree house for his daughter and he is still having problems with the balls. In 2008 he contacted the College regarding the fly balls to come up with a resolution for the problem; because the fence stops at the alley. He is requesting a fence to keep the balls and players from coming into his yard. He understood that the zoning issues would be from a visual standpoint coming out of the alley and turning into the alley. The only person that would have a problem with the height of the fence would be the baseball players. His neighbors on both sides and behind him had no problem with his request. He contacted Touch of Class Fencing and presented them with a drawing and they stated that they would order the material and apply for a permit. He is now stuck with $3000 worth of 6 foot material that he cannot use. He would like to know what could be modified on the drawings so that he is aware of what can be done and also to protect his child while playing outside in the tree house. There is a utility pole in the alley that sits 3 feet into the property line.

Chairman Sheth stated that there were similar incidents in the past. The owner put hedges near the street which required approval by the City.

Responding to Mr. Keller's question regarding the submitted photos if there was netting suspended from the poles, Mr. Casey stated that standing from the alley and William Street this was the corner of his property line near the sidewalk. There is a 10 foot gap between the fence and where the netting starts causing foul balls to come through and around the netting then bouncing into his yard. He has seen other cars hit that have parked in front of his house.

Mr. Casey stated that he contacted Dr. Johnston at Wesley College informing him of the situation and requesting them to purchase a fence to help protect his family and property. He was hoping that they could come up with some type of agreement regarding his fencing concerns around the baseball field. A Wesley financial board member came over to see if they could fit this into their budget and afterwards the Director of Athletics sent an email to the Planning Office.

Responding to Mr. Keller's question if the email he was referring to was the one the members had received from Michael Drass, Director of Athletics, Mr. Casey replied yes, he is the Head Football Coach.

Responding to Mr. Keller's question if someone from the College met with Mr. Casey, Mr. Casey replied yes.

Responding to Mr. Keller's question if there was any further discussion regarding screening, Mr. Casey stated that the person from Wesley College stated that it would be a good idea, but they were not sure of the costs of setting new posts.

Responding to Mr. Keller's question if the field was utilized when the College is not in session such as high school or little league, Mr. Casey stated yes, it is used by both for games and practices.

Responding to Mr. Senato's question if the main problem was foul balls, Mr. Casey replied yes.

Responding to Mr. Senato's question if there were other homes having problems with the foul balls, Mr. Casey stated most likely not. He is the only home that is not covered by the College's fence. The home directly beside him has the netting right at the property line, but it ends at his alley. The other houses are far enough way that they would not get the balls.

Responding to Mr. Keller's question regarding the College's appearance of having a 6 foot or 8 foot fence or higher in the vicinity and if that did not contain the foul balls how does Mr. Casey anticipate that a 6 foot fence would prevent balls from entering his property since the balls come in on a high fly ball, Mr. Casey stated the foul balls come in on a high fly ball and hit the street or bounce on a car and then come into his yard. If the college had the netting it would probably stop the foul balls. His main concern is a ball hitting his child if she was playing in the yard or tree house.

Responding to Mr. Senato's question if his child had been hit by a ball, Mr. Casey replied no. If she was hit by a ball traveling at that speed it would probably kill her. This has been expressed to the College. If the College is having a game he tries not to have anyone in his yard.

Responding to Mr. Senato's question if the owners of the ball park added higher netting would it be a solution, Mr. Casey stated that the netting needed to be added more towards his property along William Street. If they added one or two more posts and extend the bottom part of the netting to touch the top part of the 8 foot fence it should address the situation. This was also recommended by the person that came over from the College.

Responding to Mr. Senato's question if he had spoken to the City, Mr. Casey replied no, he was trying to resolve the issue with the College.

Mrs. Townshend stated that the reason the Planning Office received an email from Michael Drass, was because she contacted the College and asked if there was something they could do. The email was the response she received. The email does not address the issue. It was also the Planning Office's thought for the College to extend the netting. She will follow up with the College. She was concerned if the fence was going to solve the problem.

Mr. Senato suggested that the Board should wait before making a decision until there is a direct yes or no from the College as to how they plan to proceed.

Mr. Hufnal stated that the applicant is allowed to put up a 4 foot fence which is permitted in the zoning and this would be a difference of 2 feet from the requested variance. This is not that much of a difference as far as helping to keep the foul balls out. If the City could come to some type of agreement with Wesley College to extend their netting to cover that area, and then the applicant could still put up a 4 foot fence to keep the trash off his property. This would also eliminate it being a deterrent to the neighborhood of having a high fence.

Mrs. Townshend stated that the other option would be if it was 6 foot tall is to have it flush with the house.

Mr. Hufnal stated that this would be more conforming with the zoning and the applicant would not need to have a variance for the 4 foot fence. The 4 foot fence would look more appropriate.

Responding to Mr. Hufnal's question if Mr. Casey ever filed any claims when his car was damaged, Mr. Casey replied no.

Responding to Mr. Keller's question if the City was aware of any restrictions including zoning that would prevent Wesley College from increasing the screening, Mrs. Townshend replied no, because what is there is legal non-conforming.

Responding to Mr. Casey's question if Wesley College would be willing to do this on their own or would the City need to push for it to be done, Mrs. Townshend stated that she will need to explore it more and have more information before the next meeting since Dr. Johnston was out of town.

Mr. Keller stated that as he referred to the photos that one of his views on the increase height of fencing is that in the neighborhood there are no other neighboring properties with taller fences.

Responding to Mr. Keller's question if Mr. Casey was aware that 6 foot fencing was allowed on the side between the properties to the north, along West Street, and along the alley which did not require a variance, Mr. Casey stated yes, but he wanted to know where the 4 foot fence could be approved and located so that the contractor can begin working.

Responding to Mr. Casey's question as to where the 4 foot fence could be located, Mrs. Townshend stated that it could be discussed after the meeting. However, a 6 foot fence could be placed near the deck, property to the rear, and along the alley and up to the front yard setback. In front of any area that is flush with the house would be 4 feet or the fence could be pulled back.

Responding to Mr. Casey's question if the 4 foot fence could not go passed the front of the house, Mrs. Townshend stated that the 4 foot fence could go pass the front of the house, but not the 6 foot fence. A variance is not needed for a 4 foot fence.

Responding to Mr. Casey's question if he went to other neighbors that have also complained about the foul balls would it help, Mr. Sheth stated that the Board could not answer yes or no, but Mr. Casey had all the options.

Responding to Mr. Hufnal question if Mr. Casey had already been approved to put up a 6 foot fence in the back of the house near the deck and the rear, and across the alley, Mrs. Townshend stated that he has been told that it complies with the code, but no permit has been issued.

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 an email correspondence from Michael Drass, Director of Athletics that was given to all members.

Mr. Senato moved to table application V-13-09 decision by the Board to allow Mrs. Townshend to work with Wesley College with the possibility of adding more netting to the field to prevent foul balls from entering the neighboring yard, seconded by Mr. Hufnal and the motion was not carried with two (2) yes, two (2) no, Colonel Ericson was absent.

Mr. Keller stated that his dilemma with the motion is that there was no ending time frame involved with the motion to table. Mr. Casey has spent a number of years in his plight with Wesley College. He wondered if City Staff could bring about a quicker resolution. How long does the Board of Adjustment delay the decision for Wesley College to do anything? This could delay Mr. Casey putting up his fence in another fashion or relenting and putting up the 4 foot fence across the front.

Chairman Sheth stated that he agreed with Mr. Keller and the applicant has various options. The City has tried to negotiate for the applicant. There have been multiple cases similar to this in the past.

Responding to Mr. Senato's question if the applicant could legally put up a 4 foot fence, Mrs. Townshend replied yes.

Responding to Mr. Senato's question if the applicant could add another 3 feet of netting above the fence, Chairman Sheth stated that the applicant could discuss this with Mrs. Townshend.

Mr. Keller stated that Mrs. Townshend mentioned a good point that Wesley College's screening was not necessarily considered fencing.

Responding to Mr. Keller's question if Mr. Casey put up a 4 foot fence and similar netting or screening would the City deem it as fencing, Chairman Sheth stated that the applicant did not ask for a 6 foot fence with netting.

Mr. Senato stated that there is a certain amount of money invested in the hearing with the applicant and if the application is approved it would be setting a precedent with the 6 foot fence in the neighborhood. A variance is not needed for the 4 foot fence. If the application is disapproved it cannot be brought back for another year. He understood that Mrs. Townshend was working with Wesley College to get a solution. He would like to come up with a solution today because of the applicant's investment.

Chairman Sheth stated that a solution has been given and the Board's responsibility is the *Zoning Ordinance.*

Mrs. Townshend stated that they were trying to determine if the netting would be considered a fence. There was a Code Enforcement issue a year ago when someone was putting up something that was not considered a traditional fencing, but when we looked in the Zoning Ordinances,

fences are not defined. Therefore, in the absence of the definition in the *Zoning Ordinance* she needed to look at the dictionary definition. If the netting was considered a fence in terms of what is currently there it would not increase the nonconformity that already exists at Wesley College. She would need to look into the code interpretation on the other case and the dictionary definition. She could not conclusively say that it could be done.

Mr. Hufnal stated that a lot of options were discussed today and the applicant will need to decide which option is the best. The applicant's proposal is a 6 foot fence that is against the ordinance as written. It can only be a 4 foot fence. Mrs. Townshend can still continue to work with Wesley College to address the netting even if the 6 foot fence is denied.

Mr. Sheth stated that the applicant could also do netting if it is allowed.

Mr. Senato moved to deny application V-13-09 due to precedent and nonconformity within the neighborhood seconded by Mr. Keller and the motion unanimously carried 4-0. Colonel Ericson was absent.

Mr. Senato moved to adjourn the meeting, seconded by Mr. Hufnal and unanimously carried 4-0. Colonel Ericson was absent.

Meeting adjourned at 9:42 A.M.

Sincerely,

Maretta Savage-Purnell
Secretary

City of Dover

Board of Adjustment

August 21, 2013

V-13-10

Location:	1340 W. North St.
Applicants/Owners:	Proctor & Gamble Dover Wipes Company
Tax Parcel:	ED-05-076.00-01-07.00-000
Application Date:	July 12, 2013
Present Zoning:	IPM (Industrial Park Manufacturing Zone) SWPOZ (Source Water Protection Overlay Zone) Tier 3 - Excellent Recharge Area (a portion of)
Present Use:	Manufacturing
Proposed Use:	Manufacturing
Reviewed By:	Janelle M. Cornwell, AICP
Variance Type:	Area Variance
Variances Requested:	Allow for the reduction in the Bulk Standards regarding the required number of parking spaces.

Project Description:
The applicant is requesting variances from Article 4 §4.16 of the *Zoning Ordinance* pertaining to required number of parking spaces. Specifically the applicant is requested a reduction in the overall number of parking spaces from 766 to 306. Staff notes that the 306 parking spaces does not include the tractor trailer parking spaces located on the site or the fifteen (15) parking spaces located outside of the entrance gate.

	Permitted by Code	Required by Code	Request for
Off-street Parking			
Per 800 SF of floor area	1	766	306
Per employee, per largest working shift (if greater than the requirement under the floor area calculation)	1	96	-

Staff notes that the applicant originally requested a variance for the use of alternative material choice for the parking lot; however, staff determined that that variance request was not necessary and is in compliance with the *Zoning Ordinance*.

Adjacent Land Uses
The adjacent properties are residential, industrial, and recreational uses. The properties to the north across North West Street are zoned R-8 (One Family Residence Zone) and IPM (Industrial Park Manufacturing Zone) a portion of one of the properties is subject to the SWPOZ (Source Water Protection Overlay Zone) Tier 3 – Excellent Recharge Area. The properties to the south and west are zoned ROS (Recreational and Open Space Zone) and a portion is subject to the SWPOZ (Source Water Protection Overlay Zone) Tier 3 – Excellent Recharge Area, Schutte Park. The properties to the east are zoned IPM (Industrial Park Manufacturing Zone).

Code Citation
Section 4.16. [IPM zones].
Bulk and parking regulations for industrial zone (IPM) [are as follows]:

	IPM (Conventional Planned)
Minimum required:	
Per 800 SF of floor area	1
Per employee, per largest working shift (if greater than the requirement under the floor area calculation)	1

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:
   The Procter & Gamble Dover Site lies in an IPM (Industrial/Manufacturing) zoned area. The site has been in existence for nearly 40 years, and pursues the manufacture of Pampers and Luvs Baby Wipes on-site, accompanied with the inflow of raw materials and the outflow of finished product using truck/trailer transportation. Granting of this **Parking Space Requirement Variance** to allow the appropriate number of parking spaces on the site should have no impact on the zoning classification of the property or any impact on the site's ability to continue its manufacturing operations.

   Staff Response:
   The property is located within the IPM (Industrial Park Manufacturing Zone) zone and the use as manufacturing is a permitted use. A portion of the property is also located within the SWPOZ (Source Water Protection Overlay Zone) Tier 3 – Excellent Recharge Area. New development located within the SWPOZ Tier 3 requires a reduction in the overall impervious surface of the site. The reduction in the overall number of parking spaces would be in keeping with the nature of the SWPOZ Tier 3 zone reducing the amount of impervious surface area.

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

   Applicant Responses:
   The Procter & Gamble Dover Site lies in an area that includes a manufacturing site adjacent to the property on the east side (Kraft), a city park (Schutte Park) on the west side of the property. Across from the P&G site in the northerly direction is an area of office buildings and also a residential area is across from the northwest portion of the P&G property. South of the P&G property contains wooded area and wetlands. Granting of this **Parking Space Requirement Variance** to allow the appropriate number of parking spaces on the site should have no impact on the immediate vicinity or any of their uses.

   Staff Response:
   The character of the properties located within the area are industrial (Kraft General Foods, NRG Energy), recreational (Schutte Park) and residential. The use is consistent with a number of the other uses in area. The reduction in the overall number of parking spaces would not be out of character.

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

   Applicant Responses:
   The neighboring properties and their uses should not be affected by the granting of the **Parking Space Requirement Variance**. Benefits such as improved stormwater management through the limiting of the size of parking lot surfaces would most likely only positively affect neighboring properties and their uses.

Staff Response:
The reduction in required number of parking spaces would not negatively impact the neighborhood as the site would be providing enough parking for employees during the largest shift as well as tractor trailer parking.

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 **Parking Space Requirement Variance** is not granted (or if the restriction of basing the number of parking spaces on site building square footage is not removed), the Procter and Gamble Dover site would be significantly impacted on the its ability to perform the Future State Project. Significant expense would be incurred to manage the increased stormwater runoff of installing additional or larger parking lots to meet the parking space criteria. Potential enlargement of the site's existing retention pond would likely be required in addition to other erosion control efforts needing to put in place. Additionally, the P&G site would have a very difficult time finding available space to construct additional parking areas due to the limited free space currently existing on the property. The Procter and Gamble Future State Project could bring a capital investment $20 Million to the Procter and Gamble Dover Site to strengthen the site's long-term viability. The intent is to use local area resources for the associated engineering and construction efforts of the Future State Project. The excessive and unnecessary expense of mitigating the effects of adding unnecessary parking lot spaces/areas could impact the advisability of the Procter and Gamble Company investing in the Dover site's Future State Project and effectively cancelling the project.

Staff Response:
Exceptional practical difficulty has been demonstrated as the required number of parking spaces significantly exceeds the larges shift. The applicant has also demonstrated that providing the required number of parking spaces impacts the ability for the site to expand and would impact the sites ability to be in compliance with the SWPOZ which requires a reduction in the impervious surface on the site.

Variance Recommendation:
Staff recommends approval of the variances to allow for the reduction in the overall number of parking spaces to 306 (as shown on the plan) for reasons as follows:

- The applicant has demonstrated exceptional practical difficulty as the required number of parking spaces 4 times larger than the number of people employed the company.
- The applicant has demonstrated exceptional practical difficulty as meeting the required number of parking spaces would hinder improvements to the facility.
- The applicant has demonstrated exceptional practical difficulty as the site is currently legal non-conforming with regards to the number of parking spaces provided on the site.
- The parcels would not negatively impact the surrounding neighborhood as the proposed parking spaces are sufficient for the largest shift.
- The granting of the variances would allow for a subdivision that would bring the use more into conformance with the *Zoning Ordinance* as it would reduce the amount of impervious surface required for the site.

Procter&Gamble

The Procter & Gamble Dover Wipes Company
1340 West North Street, P.O. Box 7010C
Dover, Delaware 19903
(302) 678-2600

Parking Lot Space – Variance for City of Dover

The Procter and Gamble Dover Wipes Facility (P&G), located at 1340 W. North Street in Dover, Delaware is requesting a **Parking Space Requirement Variance** from the City of Dover and the Board of Adjustments. P&G would like to implement a Future State Project that would involve the addition of warehouse buildings and a new administrative building along with a new employee parking lot. P&G would like to design parking requirements based on its current and future parking needs and not have the number of parking spaces determined solely by the square footage of the site's buildings. Below, I directly answer the questions concerning Area Variance evaluation criteria. I also direct you to the following pages of information following the four evaluation criteria sections. You will find numerous areas of information that will exhibit the negative impacts of requiring the excessive and unnecessary amount of parking spaces based on building structure square footage, as well as the positive impacts of limiting the number of parking spaces to the minimum necessary for effective current and future operation of the P&G Dover Site.

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

The Procter & Gamble Dover Site lies in an IPM (Industrial/Manufacturing) zoned area. The site has been in existence for nearly 40 years, and pursues the manufacture of Pampers and Luvs Baby Wipes on-site, accompanied with the inflow of raw materials and the outflow of finished product using truck/trailer transportation. Granting of this **Parking Space Requirement Variance** to allow the appropriate number of parking spaces on the site should have no impact on the zoning classification of the property or any impact on the site's ability to continue its manufacturing operations.

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

The Procter & Gamble Dover Site lies in an area that includes a manufacturing site adjacent to the property on the east side (Kraft), a city park (Schutte Park) on the west side of the property. Across from the P&G site in the northerly direction is an area of office buildings and also a residential area is across from the northwest portion of the P&G property. South of the P&G property contains wooded area and wetlands. Granting of this **Parking Space Requirement Variance** to allow the appropriate number of parking spaces on the site should have no impact on the immediate vicinity or any of their uses.

Procter&Gamble

The Procter & Gamble Dover Wipes Company
1340 West North Street, P.O. Box 7010C
Dover, Delaware 19903
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3. Whether, if the restriction upon the applicant's property were removed, such removal would seriously affect neighboring properties and uses:

The neighboring properties and their uses should not be affected by the granting of the **Parking Space Requirement Variance**. Benefits such as improved stormwater management through the limiting of the size of parking lot surfaces would most likely only positively affect neighboring properties and their 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 permitted uses under the provisions of the zoning ordinance:

If the **Parking Space Requirement Variance** is not granted (or if the restriction of basing the number of parking spaces on site building square footage is not removed), the Procter and Gamble Dover site would be significantly impacted on the its ability to perform the Future State Project. Significant expense would be incurred to manage the increased stormwater runoff of installing additional or larger parking lots to meet the parking space criteria. Potential enlargement of the site's existing retention pond would likely be required in addition to other erosion control efforts needing to put in place. Additionally, the P&G site would have a very difficult time finding available space to construct additional parking areas due to the limited free space currently existing on the property. The Procter and Gamble Future State Project could bring a capital investment $20 Million to the Procter and Gamble Dover Site to strengthen the site's long-term viability. The intent is to use local area resources for the associated engineering and construction efforts of the Future State Project. The excessive and unnecessary expense of mitigating the effects of adding unnecessary parking lot spaces/areas could impact the advisability of the Procter and Gamble Company investing in the Dover site's Future State Project and effectively cancelling the project.

*****Please see the following pages for supporting information on the benefits of minimizing parking areas and the negative impacts of excessive parking areas*****

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Initial Pre-Application Meeting Notes:

If solely derived on the square footage of the entire facility, a total of 763 spaces are required throughout the site based on current City of Dover- Code of Ordinances. This is calculation is based on the code requirement of 1 space per 800 square feet within the IPM zoning classification, which can be viewed below:

- http://library.municode.com/HTML/13910/level3/PTIICOOR_APXBZO_ART4ZOBUPARE.html#PTIICOOR_APXBZO_ART4ZOBUPARE_S4.16MIPZO

The designation of an IPM zoning classification as currently written, which can be viewed below, carries with it severe limitations/detriments pertaining to wise land use and environmental stewardship of which the Procter & Gamble Dover Wipes Company is trying to achieve within its design parameters for the future expansion and continued business at the Dover Site.

- http://library.municode.com/HTML/13910/level3/PTIICOOR_APXBZO_ART3DIRE.html#PTIICOOR_APXBZO_ART3DIRE_S20INPAMAZOIP

The ordinance that mandates 1 space per 800 square feet is in direct conflict with the legislative intent on zoning, which can be seen below:

The legislative intent of zoning is to provide for the orderly and desirable development and wise use of land. Zoning provides specifications, procedures, and a precise plan designated to guide new development while improving, conserving, or facilitating desirable change in existing portions of the city. As provided in the Delaware Code Municipalities Law (title 22, section 303, 22 Del. C. § 303), this ordinance is to serve the purpose of protecting and promoting the general welfare, which is intended to include the following:

1. To encourage the most appropriate use of land throughout the city
2. To assure [ensure] adequate sites for present and future local and regional needs for residence, industry, and commerce.
3. To allow the greatest freedom in development and design consistent with other purposes expressed herein.
4. To enhance the general appearance of the city.
5. To provide for the privacy of family residences.
6. To facilitate the adequate and efficient provision of community facilities, services, and utilities.
7. To promote the safe and efficient circulation of vehicles and pedestrians
8. To require the adequate provision for off-street parking and loading
9. To retain the overcrowding of land with persons or structures in relation to open space, circulation, and neighboring land uses.
10. To prevent and eliminate other hazards and nuisances.
11. To attain the objectives set forth in the comprehensive development plan.

The Dover Wipes Company currently has 186 Procter & Gamble employees, and is a 24-hr production facility. The number of parking spaces needed for its employees is based on this employee headcount with the work/shift pattern of the business being taken into consideration. Thus our calculations are not being based on a fictionalized number associated with a planned industrial park of 763 parking spaces, which the Procter & Gamble Dover Wipes Company does not agree with as being required, sustainable, or environmentally friendly.

By our internal calculations we determined, we are required to have 167 parking spaces to serve the current & future need of the business. Of the 167 spaces 6 will be ADA spaces as per ADA Standards for Accessible Design 28 CFR Part 36. The 167 parking spaces within our main entrance design will fully encompass P&G employees, Visitors, ADA regulations, and Vendors with a suitable buffer built in for special circumstances or events that may require additional parking.

As stated above, our parking lot count is based on numerical data gather during peak times of usage during shift change. The highest parking lot count was 96 vehicles at 8:30 am on a Wednesday during regular production. This parking lot count was performed by our security agency from 4/23/13 – 5/16/23, and the report can be viewed below.

Procter&Gamble

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Security Daily
Parking Count Recorc



This Picture Was Taken During Peak Time Day Shift Monday-Friday of our current P&G parking lot.

As we have shown using actual data as the measure to drive the amount of parking spaces we are required to have at this manufacturing plant, we strive to reduce one of the most ubiquitous features of the modern American landscape. In other words parking lots are so commonplace; the significant environmental and cost impacts associated with them are often completely over looked. Below you will see an overview of the Negative Environmental Impacts of parking lots developed and released in conjunction with the EPA.

Water Quality Impacts

The Procter & Gamble Dover Wipes Company
1340 West North Street, P.O. Box 7010C
Dover, Delaware 19903
(302) 678-2600

Parking lot runoff is a major contributor to non-point source pollution of our waterways. Conventional parking lots quickly move storm-water into receiving water bodies. As it flows across pavement, the water picks up pollutants from the surface. This results in large volumes of polluted runoff entering surface water and groundwater resources, negatively affecting water quality.

Contaminants in parking lot runoff can originate from a variety of sources, including the paving materials used to build them. Recently, the USGS has pinpointed parking lot sealants as a large source of non-point source pollution, specifically polycyclic aromatic hydrocarbons (PAHs), a known carcinogen that can be toxic to fish and wildlife. [1] Automobiles are also a major source of pollutants in parking lot runoff, including antifreeze, oil, hydrocarbons, metals from wearing brake linings, rubber particles from tires, nitrous oxide from car exhausts, debris from brake systems, and grease.

[1] Van Metre, P. et al (2006), Parking Lot Sealcoat: A Major Source of Polycyclic Aromatic Hydrocarbons (PAHs) in Urban and Suburban Environments, USGS Fact Sheet 2005-3147, January 2006.

Water Supply Impacts

Conventional parking lots consist of large areas of impervious surfaces that do not permit the infiltration of water into the soil. Unlike natural conditions where rainwater filters into the ground, impervious surfaces halt this process, inhibiting a watershed's natural hydrological cycle and preventing groundwater recharge. As a result, water tables are lowered, reducing stream flow during dry periods, depleting water supplies, and exacerbating the negative impacts of droughts.

Storm-water Management Impacts

According to the USGS, an impervious, man-made surface will generate 2 to 6 times more runoff than a natural surface. In addition to the direct impact of paving, conventional parking lots also typically include pipes, curbing, gutters, and drains to help speed water off of parking surfaces. These systems cause runoff to move even faster downstream, increasing the risk of stream flooding. Sewer systems often become overwhelmed by the rapid runoff of storm-water, causing them to overflow and, in the case of combined sewer and storm-water systems, discharge raw sewage into receiving waterways. In addition to the human health risks related to combined sewer overflows, these discharges can cause algal blooms to form, depleting aquatic oxygen levels and altering a water body's habitat.

Disturbance of Habitat and Local Ecology

Traditional parking lots can have a host of negative impacts on adjacent habitat and fauna. The velocity and volume of runoff from parking lots can damage plant, fish and invertebrate habitat. During storm events, runoff can erode stream banks and alter the natural shape of a waterway. Stream edge habitat and stream channel protection removed during the construction of the parking lot increases the potential for erosion. Sediments entering the waterway as a result of erosion can smother habitat and stress aquatic organisms. The turbidity created from the sedimentation can disrupt an aquatic ecosystem by diminishing light transmission, reducing plant growth, altering food supplies, interfering with navigation, decreasing spawning habitat, and reducing shelter.

The contaminants in parking lot runoff also pose a risk to wildlife. Toxic substances from contaminated ground and surface water supplies have the potential to bio-accumulate in the tissue of fish and other organisms in the wildlife food chain. They can also accumulate in sediments, posing risks to bottom feeding organisms and their predators.

The impact of parking lots on water supplies also affects local ecology. Unnaturally low stream flows as a result of decreased infiltration can reduce deep water and swift flowing habitats. The decreased water quality and increase volume and velocity of runoff can lead to habitat loss, stress aquatic species, and have an overall negative effect on biological diversity in abutting areas.

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Heat Island Effect

Heat island effect (HIE) occurs in urban areas where materials that have heat-absorbing properties, such as asphalt, are prevalent. In urban areas, the combined effect of such surfaces can cause a change in the energy (temperature) balance, leading to hotter air and surface temperatures. Recent research indicates that urban areas are 2 to 8°F hotter in summer due to this increased absorbed heat. (3)

Parking lots contribute significantly to HIE. Asphalt, one of the most common paving materials used in parking lots, is a dark and heat absorbing material.(4) When the asphalt cools at night, all the heat it has absorbed during the day is released into the air, slowing the rate of nighttime cooling. This hot surface also affects surrounding water bodies when combined with the parking lot's storm-water function. When water is forced to flow quickly off the lot's surface, not enough time is allowed for evaporation to occur, again limiting natural cooling of the air. Lastly, the land clearing needed to create space for parking lots diminishes tree cover and other natural vegetation that can help shade land and moderate temperatures.

The environmental impacts of the HIE are varied. Hotter temperatures can lead to more CO2 emissions due to increased energy demand to cool neighboring buildings. HIE can also increase smog, and subsequently exacerbate pulmonary and cardiovascular health problems. During rain events, paved surfaces can transfer their higher heat to runoff, increasing the temperature of receiving waters. This warmer water can be detrimental to the natural habitats of fish and other aquatic life.

3 U.S. EPA, (1992), *Cooling Our Communities*, GPO#055-000-00371-8, January 1992, accessed at www.epa.gov, as cited in Pavement Busters Guide (2002), page 10, Victoria Transport Policy Institute.

4 Gibbons, J. (1999), *Pavements and Surface Materials*, Technical Paper #8, pg. 2, University of Connecticut Nonpoint Education for Municipal Officials (NEMO) program, accessed at http://nemo.uconn.edu/tools/publications/tech_papers/tech_paper_8.pdf.

Decrease in GREENSPACE

Green-space is a finite resource that possesses value for a variety of reasons, including conservation, recreation, and agricultural purposes; or simply because of its scenic qualities and contribution to the overall character of a city or town. Proper management of green-space is essential to achieving and maintaining sustainable communities. With the increased usage of cars, more green-space is being paved to accommodate demand for parking; it is estimated that 30 to 40 percent of a typical American downtown is used for parking spaces.

Ineffective local government zoning restrictions also result in larger areas of paved surface than necessary to meet the parking demand. Many municipalities require a minimum number of parking spaces per development project, often forcing developers to build more spaces than needed to meet actual demand. For instance, commercial parking lots frequently have 60 to 70 percent vacancy rates. The parking stall sizes required by zoning can also be larger than necessary, eliminating opportunities to alter parking lot configuration designs to achieve higher car capacity and minimize the area of impervious surface used.

Conventional parking lots are often viewed as unattractive, hostile, and sometimes unsafe areas. In contrast, green parking lots with urban GREENSCAPING, provides aesthetic benefits, including privacy and noise reduction, to landowners and to communities. All of these benefits are lost when an area is conventionally constructed and paved.

In closing, I ask the City of Dover to envision/understand the reasons behind our request for variance, and the consequences current zoning regulations would put on this business and future generations. The

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Procter & Gamble Dover Wipes Company implores the City of Dover to grant us variance from current zoning regulations that would require us to construct 763 parking spaces in our design for improving our production facility.

By granting us variance to build a parking lot to suit our current and future needs at 167 spaces we would be able to implement “Green” Parking Lot Construction Techniques that take an innovative approach to planning and design, which can greatly mitigate the known/recognized negative impacts traditional parking lots inherently have by design, which are briefly captured in the above synopsis prepared in conjunction by the EPA.

By granting The Procter & Gamble Dover Wipes Company this parking lot variance the city of Dover Planning Office would be adhering to the legislative intent of zoning which strives to protect the welfare & environment of the current & future citizens of the City of Dover & State of Delaware, of which the Dover Wipes Company is honored to help promote/sustain as a integral member of the local community.

City of Dover

Board of Adjustment

August 21, 2013

V-13-11

Location:	34 Winged Foot Court
Applicant/Owner:	Timothy Bennett
Tax Parcel:	ED-05-067.17-01-61.00-000
Application Date:	July 12, 2013
Present Zoning:	R-10 (One Family Residence Zone)
Present Use:	Single Family Residence
Reviewed By:	Janelle M. Cornwell, AICP
Variance Type:	Area Variance
Variance Requested:	Allow for the building to encroach into the side yard setback.

Project Description:
The applicant is requesting a variance from the *Zoning Ordinance* of Article 4 §4.1 of the *Zoning Ordinance* pertaining to the side yard side yard setback. Specifically the applicant is requesting to allow the building to be located 10 feet from the side property line, rather than 15 feet as required.

Adjacent Land Uses
The adjacent properties are residential uses. The properties to the north and east are zoned R-10 (One Family Residence Zone). The properties to the south and west across Kenton Road are zoned R-8 (One Family Residence Zone)

Code Citation
Article 4 Section 4.14

	R-10
Minimum required:	
Lot area (SF)	10,000

Lot width (ft.)	80
Lot depth (ft.)	110
Front yard (ft.)	25
Minimum side yard (ft.)	15
Total both side yards (ft.)	30
Rear yard (ft.)	30
Off-street parking spaces/dwelling units	2
Maximum permitted:	
Building height	
Stories	2½
Feet	35
Lot Coverage	30%

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:
The subject property is zoned R-10 in the Fox Hall subdivision. R-10 requires a side yard setback of a minimum of 15'.

Staff Response:
The property is zoned R-10 (One Family Residence Zone). The use as a single family residence is a permitted use within the R-10 Zoning District.

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

Applicant Responses:
The Fox Hall subdivision is an established neighborhood and was initially constructed in the early 1970's. Winged Foot Court, where the subject is located, was one of the first streets where homes were constructed. The subject is located at the end of the cul-de-sac on a pie shaped lot.

At the time of construction the house was apparently placed aesthetically on the lot with more than 35' of setback on the opposite side of the house. Thus the lot was more than large enough to accommodate the house; it was simply and apparently placed in error. All of the homes on this cul-de-sac were constructed in the same era and are architecturally similar and pleasing. The landscaping is mature and all of the houses blend in nicely together.

Staff Response:
The character of the immediate vicinity is that of residential uses. The use as a single family residence is consistent with the character of the other uses within the area and the zoning district.

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

Applicant Responses:
The encroaching portion of the structure was either originally constructed with the house or added later. The applicant has no knowledge of this. However, the property was transferred in 2000 by the original owner who built the house to Ray and Judy Allen. The Earl Smith survey clearly shows the property sitting 10' off of the property line but neither Smith nor the closing attorney at the time recognized that the 10' was in violation of the 15' requirement.

The Allen's subsequently sold the property to Timothy Bennett in good faith in May of 2013 with closing to occur at the end of June.

It was not until the McClure survey was done that the setback issue was discovered. The violation has existed for a very long time and has been a non-issue with the neighbors as no complaint has ever been filed. The encroachment is suitably landscaped and is virtually obscured and does not create a negative impact on the neighbors or streetscape.

If the variance were to be granted this would not have seriously affect the neighboring properties.

Staff Response:
The reduction of the side yard setback from 15 feet to 10 feet on the east side would not seriously affect neighboring properties or uses. The encroachment of the building, in its current location, is not noticeable. The residential property currently encroaches into the side yard setback and there are no known issues affecting the neighborhood.

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 removed it would create an unnecessary hardship on the house and the current owner because it would require that a portion of the house be removed to correct the violation. Since this is part of the garage portion of the property it would reduce the given utility of vehicle and garage type storage in such a way as to reduce the value of the property that has now been purchased twice with the violation in place. When you observe the attached photos it is very obvious that the encroaching portion is an integral part of the structure both physically and architecturally. The roof line is an integral part of the rear portion of the structure and the attached covered patio area. Removal of the encroaching portion would have substantial consequences as it would necessitate removal of part or the entire roof over the covered patio. I can only estimate that the cost would be in the thousands of dollars and it would be difficult to match existing siding and roof materials.

Staff Response:
Staff concurs with the applicant that it would be impractical to remove a portion of the house or modify the house to eliminate the encroachment. Requiring that the house be reconstructed or modified would create an exceptional practical difficulty, in that the benefit gained by correcting the encroachment would not justify cost, inconvenience, and constriction difficulties required to correct the encroachment.

Variance Recommendation:
Staff recommends approval of the variance to allow for the house to encroach into the side yard by 5 feet for reasons as follows:

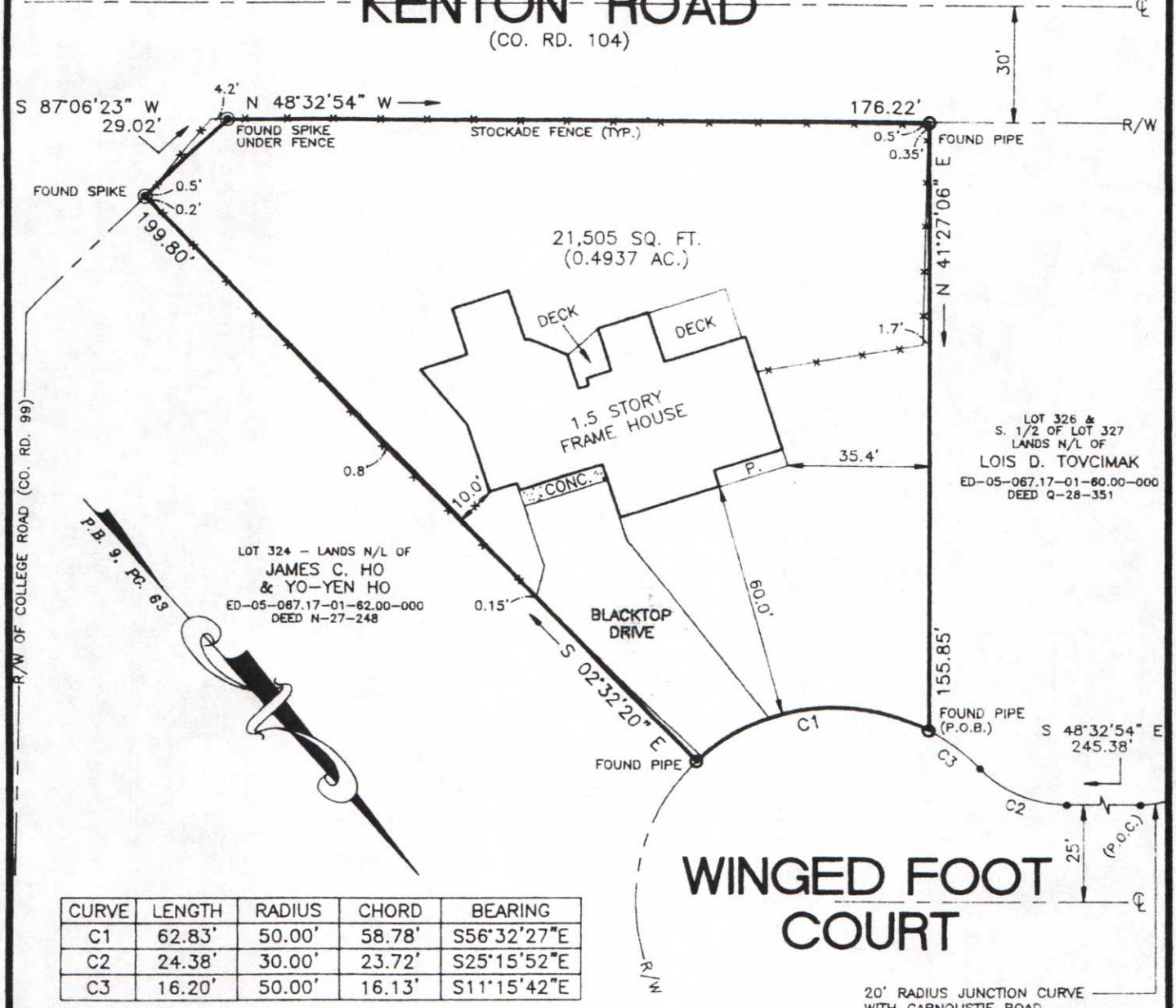
- The applicant has demonstrated exceptional practical difficulty as the house was constructed over 40 years ago and moving or modifying the house would be a hardship.
- The difficulties associated with removing the encroachment are disproportionate to the benefit gained by the removal of the encroachment.
- The house constructed with the requested setback is nominal and is indistinguishable to other properties.
- The encroachment would not negatively affect the neighboring properties.

1. The subject property is zoned R-10 in the Fox Hall subdivision. R-10 requires a side yard setback of a minimum of 15'.

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CURVE	LENGTH	RADIUS	CHORD	BEARING
C1	62.83'	50.00'	58.78'	S56°32'27"E
C2	24.38'	30.00'	23.72'	S25°15'52"E
C3	16.20'	50.00'	16.13'	S11°15'42"E

(P.O.B.) = POINT OF BEGINNING
(P.O.C.) = POINT OF COMMENCEMENT

WE HEREBY STATE THAT THIS SURVEY WAS PREPARED FOR IDENTIFICATION PURPOSES ONLY FOR THE INDIVIDUAL(S) NOTED BELOW. NO RESPONSIBILITY IS EXTENDED AND/OR ASSUMED BY THE SURVEYOR TO ANY FUTURE LAND OWNER OR OCCUPANT.

OWNER: SCOTT E. BEDWELL & LAURLIN P. BEDWELL

BUYER: A. RAY ALLEN & JUDITH ANN ALLEN

I HEREBY STATE THAT THE IMPROVEMENTS INDICATED HEREON ARE LOCATED AS SHOWN.

CLASS 'A' SURVEY
34 WINGED FOOT COURT
TAX PARCEL NO. ED-05-067.17-01-61.00-000

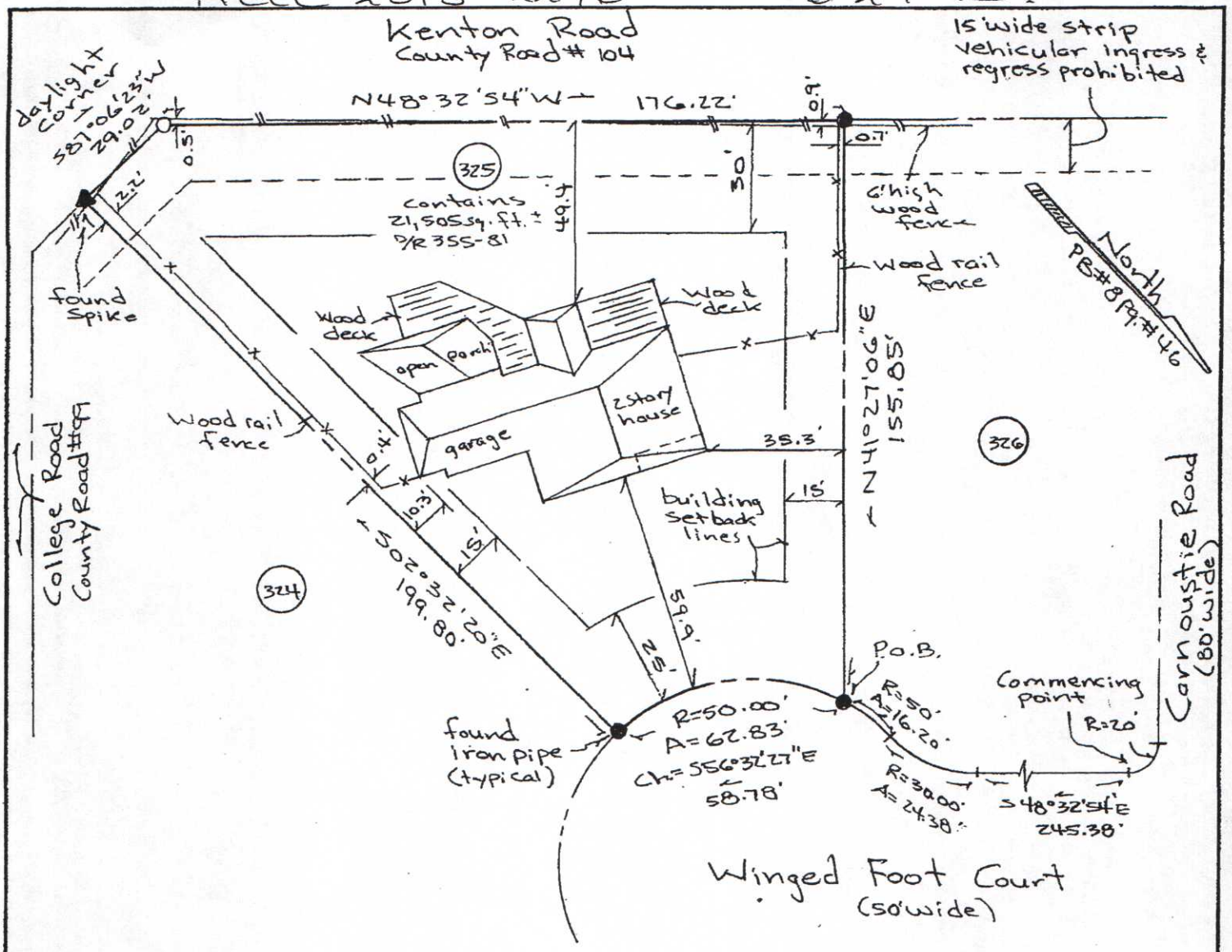
LOT #325
FOX HALL

IN THE CITY OF DOVER
KENT COUNTY, DELAWARE

EARL D. SMITH, Inc.
PROFESSIONAL LAND SURVEYORS
490 NORTH DuPONT HIGHWAY
P.O. BOX 129
DOVER, DELAWARE 19903
E-Mail: EDSINC586@aol.com
(302) 734-3381 FAX (302)734-3637

SCALE: 1" = 40'
DATE: 1-28-00
FB/PG: 72/56
DRAWN BY: SDB
1-00-25.DWG

Rett 2013-2276 6-27-13.



GENERAL NOTES:

1. Lot shown is subject to easements and restrictions of record.
2. Certifications for this plan and copies of this plan are valid only if they bear the impression seal and signature of the licensed land surveyor named below.
3. This plan is based on deed records (D/R) shown, any record plan noted below and on physical evidence found.

This plan exceeds the requirements for a Class B Survey

Current Zoning R-10
City of Dover
Residential (PB#8 Pg#46)

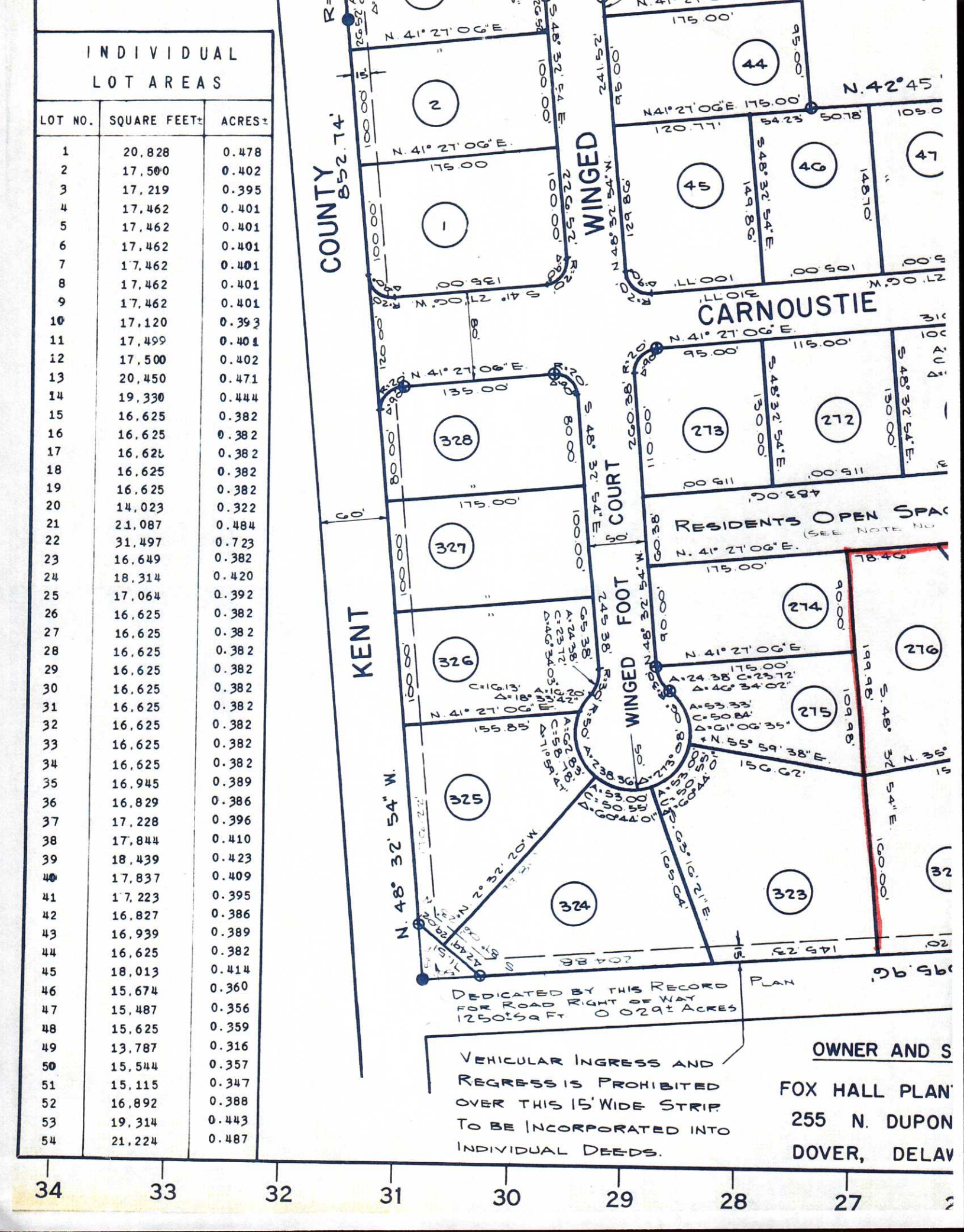
Boundary Survey Plan
of property to be conveyed to:

Timothy P. Bennett

Fox Hall Subdivision - Section I-A - Lot 325
(PB#8 Pg#46) -#34 Winged Foot Court - City of Dover
East Dover Hundred - Kent County - State of Delaware

McClure Associates INCORPORATED
Professional Land Surveying
140 Mifflin Road
Dover, Delaware 19904
(302) 674-4558

Drawing number- MA1 05-34-13
Drawing by- W.M'Clure
Scale- 1"= 40'
Date- 6/10/13
EDOS-67.17-01-61
FB# 136 pg.#74



INDIVIDUAL LOT AREAS

LOT NO.	SQUARE FEET±	ACRES±
1	20,828	0.478
2	17,500	0.402
3	17,219	0.395
4	17,462	0.401
5	17,462	0.401
6	17,462	0.401
7	17,462	0.401
8	17,462	0.401
9	17,462	0.401
10	17,120	0.393
11	17,499	0.401
12	17,500	0.402
13	20,450	0.471
14	19,330	0.444
15	16,625	0.382
16	16,625	0.382
17	16,625	0.382
18	16,625	0.382
19	16,625	0.382
20	14,023	0.322
21	21,087	0.484
22	31,497	0.723
23	16,649	0.382
24	18,314	0.420
25	17,064	0.392
26	16,625	0.382
27	16,625	0.382
28	16,625	0.382
29	16,625	0.382
30	16,625	0.382
31	16,625	0.382
32	16,625	0.382
33	16,625	0.382
34	16,625	0.382
35	16,945	0.389
36	16,829	0.386
37	17,228	0.396
38	17,844	0.410
39	18,439	0.423
40	17,837	0.409
41	17,223	0.395
42	16,827	0.386
43	16,939	0.389
44	16,625	0.382
45	18,013	0.414
46	15,674	0.360
47	15,487	0.356
48	15,625	0.359
49	13,787	0.316
50	15,544	0.357
51	15,115	0.347
52	16,892	0.388
53	19,314	0.443
54	21,224	0.487