

**CITY OF DOVER, DELAWARE
BOARD OF ADJUSTMENT MEETING
Wednesday, July 19, 2023 at 9:00 AM**

City Hall Council Chambers, 15 Loockerman Plaza, Dover, Delaware

AGENDA

IN PERSON & VIRTUAL MEETING NOTICE

This Board of Adjustment Meeting will be held in person at City Hall in the City Council Chambers. And as a Virtual Meeting using WebEx. Members of the Board of Adjustment as well as Representatives of each Variance Application will have the option to attend in person or receive a specific invitation to attend this meeting virtually. Members of the public are welcome to attend the meeting in person or virtually via WebEx.

PUBLIC PARTICIPATION INFORMATION

To Attend City of Dover Board of Adjustment Meeting of July 19, 2023

Join by Phone Dial: 1-650-479-3208

Webinar password: 36837262 from phones and video systems

Or Join Online

Event Address: <https://bit.ly/BOA7192023>

Event number/Access Code: 2530 338 8099

Event Password: 253 033 88099

Written comments are accepted via mail to City of Dover – Board of Adjustment,
P.O. Box 475 Dover, DE 19903 and via email at CompPlan@dover.de.us.

If you are new to WebEx get the app now at <https://www.webex.com/> to be ready when the meeting starts. For problems accessing the meeting, please call the Planning Office at (302) 736-7196.

WELCOME

ROLL CALL

APPROVAL OF AGENDA

APPROVAL OF MINUTES

- [1.](#) Adoption of Meeting Minutes from February 15, 2023

COMMUNICATIONS & REPORTS**Meeting Reminder:**

2. The next Board of Adjustment meeting will be held August 16, 2023.

Special Recognition

3. Resolution honoring the service of Col. Arthur G. Erickson to the Board of Adjustment

NEW BUSINESS4. **Applicant #V-23-02**

59 Sherwood Court. A request has been made for a variance from the requirements of Article 3 §1.15 (e)(i) of the *Zoning Ordinance* pertaining to the minimum lot area required for the keeping of chickens for domestic purposes. Specifically, to allow for a reduction in the minimum lot area required in order to allow for the keeping of chickens from 10,890 SF to 10,018 SF. Subject property is zoned R-8 (One-Family Residence Zone). The Tax Parcel is ED-05-076.20-01-24.00-000. The owner of record is Jason M. & Joanna L. Francis.

ADJOURN

Posted Agenda: Wednesday, July 12, 2023

THE AGENDA ITEMS AS LISTED MAY NOT BE CONSIDERED IN SEQUENCE. PURSUANT TO 29 DEL. C. §10004(e)(2), THIS AGENDA IS SUBJECT TO CHANGE TO INCLUDE THE ADDITION OR THE DELETION OF ITEMS, INCLUDING EXECUTIVE SESSIONS, WHICH ARISE AT THE TIME OF THE MEETING



Resolution

Whereas, Col. Arthur G. Ericson became a member of the City of Dover Board of Adjustment on October 11, 2004 and has served with diligence and distinction in this capacity to ensure that the spirit of the City's Zoning Ordinance is observed and substantial justice is done; and,

Whereas, Col. Arthur G. Ericson has played a role in ensuring fundamental fairness and careful forethought in the interpretation of the Zoning Ordinance to ensure undue hardship and exceptional practical difficulties are mitigated by the granting of variances through his service on the Board of Adjustment; and,

Whereas, Col. Arthur G. Ericson in reviewing and deliberating on variance applications considered a property zoning classifications, character of the area, affects on neighboring properties and uses, and the creation of unnecessary hardship or exceptional practical difficulties for property owners seeking to make normal improvements to their properties; and,

Whereas Col Arthur G. Ericson completed his term of service on the City of Dover Board of Adjustment in July 2023.

Now Therefore Be It Resolved That, the City of Dover Board of Adjustment does hereby express its sincere appreciation to **Col. Arthur G. Ericson** for his faithful and diligent service to the Citizens of the City of Dover as an active member of the City of Dover Board of Adjustment and extends it best wishes to **Col. Arthur G. Ericson** in future endeavors.

K.C. Sheth
Board of Adjustment Chair

Mary Ellen Gray, AICP
Director of Planning and Inspections

**CITY OF DOVER
BOARD OF ADJUSTMENT MINUTES
February 15, 2023**

A Regular/Hybrid Meeting of the City of Dover Board of Adjustment was held on Wednesday, February 15, 2023, at 9:00 A.M. in person in the City Council Chambers and using the phone/videoconferencing system WebEx. Member's present were Chairman Sheth, Colonel Ericson, Mr. Keller, Mr. Senato, and new Board member Ms. Jane Warren. Mr. Hufnal has resigned.

Staff members present were the new Planning Director Mrs. Mary Ellen Gray, Mr. Swierczek, Deputy City Solicitor Mr. Junge, Mrs. Savage-Purnell, and the new Planner Ms. Katherine Oehmke.

APPROVAL OF AGENDA

Mr. Keller moved to approve the agenda as submitted. The motion was seconded by Colonel Ericson and unanimously carried 5-0.

APPROVAL OF THE REGULAR BOARD OF ADJUSTMENT MEETING MINUTES OF OCTOBER 20, 2021

Mr. Keller moved to approve the meeting minutes of October 20, 2021, with the necessary corrections. The motion was seconded by Colonel Ericson and unanimously carried 3-0. Mr. Senato abstained from voting on the approval of the meeting minutes as he was not present at that meeting.

COMMUNICATIONS & REPORTS

The next Board of Adjustment regular meeting is scheduled for March 15, 2023, at 9:00am in the City Council Chambers and with a virtual format.

Chairman Sheth apologize for not informing the Board of Mr. Hufnal's resignation as he was not aware of the resignation until five minutes ago today. He was a great asset to the Board of Adjustment. We had a great time professionally. He had a great input on the Board of Adjustment. He was also not aware of the new Planning Director Mrs. Mary Ellen Gray. He asked if any of the other Board members would like to make comments.

SPECIAL RECOGNITION

Resolution honoring the service of Mr. William Hufnal to the Board of Adjustment

Mr. Senato asked about the resolution. Mr. Swierczek stated that there is a copy of a draft Resolution to commemorate the service of Mr. Hufnal. It should be read into the record and he is happy to do that. If the members of the Board would then like to vote on whether to adopt that or not.

Mr. Keller stated that he would subscribe to exactly what Mr. Swierczek just said, to have it read into the record and we can lend comment if we have any at the end or acceptance of the

presentation.

Chairman Sheth mentioned that's a great idea. He asked if Mr. Hufnal would be recognized at the next City Council meeting. Mrs. Gray stated that this Resolution was read into the record and presented to Mr. Hufnal at the City Council meeting on Monday as well.

Mr. Swierczek read the resolution into the record. (See attachment)

Mr. Senato moved to accept the Resolution into the record, seconded by Chairman Sheth. The Resolution was signed by the Chairman of the Board of Adjustment and the Director of Planning & Inspections.

Mr. Senato stated that he would like to express his gratitude in knowing Mr. Hufnal and serving with him on this Board of Adjustment for many years. He was diligent and he was fair. I was very honored and proud to have worked with him on the Board.

Chairman Sheth noted he tried to remember how many years of service, about 15 to 20. Mr. Keller stated that the resolution noted the time of service. Mr. Swierczek mentioned that Mr. Hufnal started the term in 2005. It was seventeen (17) years of service. Chairman stated that he has been serving for 31 years. Colonel Ericson, Mr. Keller, and Mr. Senato have been serving for 25 or more years, that is a long time.

OPENING REMARKS CONCERNING APPLICATIONS

Mr. Julian Swierczek (Planner II) stated that the meeting today will be conducted in accordance with the agenda. There is one (1) new application on the agenda under New Business. Each Application file will be read, and the floor will be opened for questions of the applicant by the Board and for public testimony. If the Board needs to consult the City Solicitor, they will recess to discuss legal matters. If the applicant must leave, they can contact the Planning Office at 736-7196 to learn of the Board's decision. A formal notice of the decision will be mailed to the applicants. Approved variances expire after one year if the approved project has not commenced.

All public notice for the new applications on this agenda was completed in accordance with Code requirements. The meeting agenda was posted in accordance with Freedom of Information Act requirements.

NEW BUSINESS

Applicant #V-23-01

One Parcel containing multiple addresses: 519, 527, 533, and 533A Kerbin Street. Horizon Property Investments, LLC has requested a variance from the requirements of Article 4 §4.1 of the *Zoning Ordinance* pertaining to the bulk standards for the R-8 (One-Family Residence Zone). Specifically, to allow a reduction of the Required Minimum Lot Width from 70 feet to 66.5 feet at 519 Kerbin Street; a reduction in the Required Minimum Lot Width from 70 feet to 62.94 feet at 527 Kerbin Street; and reduction in the Required Minimum Lot Width from 70 feet to 67.8 feet and an increase in the Maximum Permitted Lot Coverage from 35% to 44% at 533 Kerbin Street. This is to then allow for the subsequent Minor Subdivision of the current parcel into three

(3) separate parcels. The subject property is zoned R-8 (One Family Residence Zone). The Tax Parcel is ED-05-077.09-05-41.00-000. The owner of record is Horizon Property Investments, LLC.

Mr. Swierczek gave a summary presentation of the Application Request for a variance from the requirements of Article 4 §4.1 of the *Zoning Ordinance* pertaining to the bulk standards for the R-8 (One-Family Residence Zone). Specifically, to allow a reduction of the Required Minimum Lot Width from 70 feet to 66.5 feet at 519 Kerbin Street; a reduction in the Required Minimum Lot Width from 70 feet to 62.94 feet at 527 Kerbin Street; and reduction in the Required Minimum Lot Width from 70 feet to 67.8 feet, and an increase in the Maximum Permitted Lot Coverage from 35% to 44% at 533 Kerbin Street. This is to then allow for the subsequent Minor Subdivision of the current parcel into three (3) separate parcels.

Mr. Swierczek stated that there are four separate buildings 519, 527, 533 and 533A Kerbin Street. Three single family homes and an accessory building are all located on one parcel of land. They seem to have been built by the year 1954. The earliest property record we could find was dated to 1977 at which point all four (4) buildings were showing present on one single parcel. This has been the standing condition of the property for a good number of years. Without any variance request of course.

Mr. Keller asked regarding the second topic addressed of Character of the immediate vicinity and the contained uses therein. Within your presentation on page 6, second paragraph, there's a statement made about the Historic District Zone in which you note that the parcels immediately adjacent to the north and across Kerbin Street to the west are subject to the Historic District Zone, nor are the other residential properties similarly zoned R-8. I thought that perhaps this is a misstatement, and it should. Do you mean that the subject property is not subject to the Historic Zone?

Mr. Swierczek said what would we do without you Mr. Keller. It is missing a "not" in that sentence. It should read, the subject property is not in the Historic District.

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

Representative: Mr. Matthew Brown, owner Horizon Property Investments, LLC

Mr. Brown was sworn in by City Solicitor Mr. Junge.

Mr. Brown stated that he represented Horizon Property Investments. I am the owner of this property. I don't have much to add besides what Julian has already presented to you. This is an existing property that was non-conforming. I've owned it for about 10 years. I did not develop it, obviously I was not around in 1954. I have a current tenant in the middle unit which is 527 Kerbin Street. The tenant has expressed interest in purchasing the property. I am entertaining the idea. The first step obviously is I needed to separate these properties. It is standard. If you look at the properties and if you drive by it looks like 3 separate properties. There's going to be no other

changes except for the imaginary property line between each property that becomes a permanent property line.

Ms. Warren stated that she sees the lot coverage is going from 35% to 44%, what is the coverage now? Mr. Swierczek replied, I believe that the lot coverage stated at present would pertain to the entirety of the parcel. Because there is no separate parcel for 533 Kerbin Street, we don't have the figure of that specific lot coverage. The 44% would apply once that parcel is created.

Mr. Brown stated that he believed that 44% was specific to 533 Kerbin Street because of the accessory building and the driveway size.

Mr. Swierczek replied that is correct. The plans note that the other two parcels are proposed to be under the maximum lot coverage requirement.

Mr. Keller questioned as he referred to the engineering plan sheet that was provided with notes, as you face the 3 dwellings on Kerbin Street, do you still own Horizon Property Investments LLC (parcel)? Mr. Brown replied yes sir, I still own that property. That property line which is already exists is already below the minimum setbacks (compliant).

Mr. Keller said Mr. Swierczek mentioned that it was already compliant. Does it not have the 70-foot frontage required? Is that correct? Mr. Swierczek asked again just to confirm that Mr. Keller was asking regarding the property further to the south of 533 Kerbin Street. I'm not sure of the existing lot coverage on that property. We only looked at the subject parcel in regard to the variance request. The frontage requirement is 70-feet and that's why we are here today to reduce it for the 3 lots in question, correct? Mr. Swierczek replied correct. The status of that property if it were not to meet the 70-feet as an existing condition, it would again be considered legal nonconforming for that property.

Mr. Keller mentioned that it sparked the question in my mind as to why not perhaps you were seeking a variance on the frontage of all 4 lots.

Mr. Brown stated that the one that's already separated is either compliant or existing. We're not proposing to move the existing property line between the building on the right and the 4th one. It is already existing; so, we didn't see the need to move it.

Mr. Keller mentioned that there is no structure on it. Mr. Brown stated that there is a single-family home on that property.

Mr. Keller questioned, the one on the extreme right? Mr. Brown replied yes, that the one on the extreme right which shows on this is just an adjacent property.

Mr. Keller said that's a vacant lot. Mr. Brown replied no sir, there's a house on the lot. Mr. Keller said okay. Mr. Brown said there's a home on that lot right now.

Mr. Keller mentioned that it came to my attention because on Exhibit A it does show a structure, but it does not show that as being within the subject property limitations as shaded in yellow. When I saw the Site Plan, I thought well it doesn't have a dwelling on that also or not.

Mr. Brown stated that the Site Plan just shows the adjacent properties. We are talking about the one on the right but the one on the left also currently has an office building that's not shown on the Plan. It just shows the outline of the property. Since we were not asking for any changes to that property, we did not do any engineering specs on it or anything.

Mr. Keller mentioned that it was an unsigned Site Plan that was not signed. I didn't know what the circumstance was with that. Mr. Brown replied understood.

Colonel Ericson questioned if the property was in compliance with 70-feet before you decided to make these separate properties. Mr. Brown replied that they were all one large property so that was well over 70-feet, but it had 3 separate single-family homes on the one property. What we are proposing is to reduce the one property into the 3 lots to make them single family homes on individual lots.

Colonel Ericson mentioned that he understood. Otherwise, if you didn't do this, you couldn't sell the homes, but you'd have to get the entire package as is. Mr. Brown replied correct. I am a firm believer in home ownership, don't get me wrong, even though I am a landlord. If I have a tenant that is interested in purchasing the property, I would prefer to sell it to the tenant over an investor. As it stands right now, the only thing I could do is sell it to an investor and it would remain a rental property indefinitely.

Mr. Senato mentioned the property to the left and to the right, I believe it's the center house that's potentially being sold. Mr. Brown replied that's correct. It is potentially the one that the tenant has shown interest in purchasing. The other ones may eventually. If the tenants choose to buy it, I will actually entertain it. The plan right now is to continue to hold on to it till there's an interest. If one day, there is an interest and there's the potential to put it up for sale, which most likely at that point would be owner occupied.

Mr. Senato suggested to Mr. Chairman that this looks good to me. That's about the only choice he has; and so, I think affirmative on this request. I suggest we go to the vote.

Mr. Brown thanked the Board for their time and the Planning Office, especially Mr. Swierczek, as he walked me through this. It was something new for me, so I appreciate all the effort and time he put into it. Thank you.

Chairman Sheth opened the public hearing.

Chairman Sheth closed the public hearing after seeing no one wishing to speak.

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

Colonel Ericson moved to approve variance application V-23-01 based upon the Staff Reports and the testimony given. The motion was seconded by Mr. Senato. The motion unanimously carried 5-0.

Chairman Sheth mentioned to Ms. Warren that she did good on her first meeting and thanked her for her participation.

The meeting was adjourned by Mr. Senato and seconded by Mr. Ericson at 9:56 A.M.

Sincerely,

Maretta Savage-Purnell
Secretary



City of Dover

Board of Adjustment

July 19, 2023

V-23-02

Location: 59 Sherwood Court, Dover DE

Owner: Jason and Joanna Francis

Tax Parcel: ED-05-076.20-01-24.00-000

Application Date: June 6, 2023

Present Zoning: R-8 (One Family Residence Zone)

Present Use: Residential: One-Family detached dwellings (single family homes)

Reviewed By: Julian Swierczek AICP, Planner II

Variance Type: Area Variance

Variances Requested: Allow for the reduction of the Minimum Required Lot Size for the housing of chickens from 10,890 SF to 10,018 SF per *Zoning Ordinance*, Article 3 § 1.15 (e)(i).

Project Description

The Applicant is requesting an area variance from the requirements of Article 3 § 1.15 (e)(i) of the *Zoning Ordinance* pertaining to the Minimum Lot size required to house domestic chickens. Specifically, the request is to allow for the reduction of the Minimum Required Lot Size required for the keeping of chickens for individual domestic purposes from 10,890 SF to 10,018 SF for 59 Sherwood Court.

This Application has been submitted stemming from a Citation issued (Exhibit C) by an Officer of the City of Dover Code Enforcement Department. Specifically, Citation #23-2192 was issued noting that the keeping of Chickens would not be permitted on this subject lot (59 Sherwood Court), as it is under the required minimum of 10,890 SF (the Citation notes the property area as 10,018 SF).

In response, the Property Owner had initially submitted information with the intent of appealing the Citation. With this, the Property Owner submitted a map Exhibit (Exhibit D, page 4) referencing that their property was 11,137.5 SF; however, it is noted that they include in this calculation areas of the adjacent right-of-way along New Burton Road, which is not legally part of their property. Therefore, it would not qualify towards any calculation for the size of their actual property.

The Applicant has also submitted a print-out from the Kent County Levy Court website (Exhibit E) with property information, referencing a lot size of 0.243 acres, or 10,585 SF. Aerial Imagery appears to show that this property was developed prior to the year 1961, with the property being shown as vacant in 1954. As such, the City does not possess any documentation that references the real property size of the lot that is addressed as 59 Sherwood Court. Older Tax Parcel Mapping available to the Planning Office, shows this property's dimensions to be 114.59' (S) x 82.64' (W) x 135' (N) x 88.85' (E), with the east property line accounting for the rounded section that borders the adjacent cul-de-sac. Planning Staff therefore believes the real property area to be 10,585 SF as referenced by the Kent County information provided but is referencing the reduction 10,018 SF per the initial Citation.

Adjacent Zoning and Land Use

The property is 10,585 SF, is zoned R-8 (One Family Residence Zone) and is located within the overall Sherwood Subdivision. The properties adjacent to the north and south, as well as across Sherwood Court to the east are all similarly zoned R-8 (One-Family Residence Zone) and contain one-family detached dwellings (single family homes). The property abuts the right-of way of New Burton Road to the west (rear). Across New Burton Road is a parcel zoned C-1A (Limited Commercial Zone) and containing several commercial/ retail uses.

A Zoning Map Exhibit (Exhibit A) prepared by Staff is attached to this Report. It shows the subject property location and surrounding zoning. The property is located on the west side of Sherwood Court, south of the intersection with Janeka Lane. The subject property is zoned R-8 (One-Family Residence Zone) which permits the use of the properties for one-family detached dwelling units (single-family homes).

Code Citations

With the R-8 (One Family Residence Zone), the *Zoning Ordinance* provides the provisions for the keeping of chickens as an accessory use. See *Code* excerpt below:

Zoning Ordinance Section Article 3 § 1.15 Accessory uses, limited to the following:

- (e) Keeping of chickens for individual domestic purposes subject to the following restrictions:
 - i. Keeping of chickens shall not be permitted on lots smaller than 10,890 square feet in lot area.
 - ii. No more than five (5) chickens shall be permitted on a residential lot.
 - iii. Chickens shall be registered with the Delaware Department of Agriculture.
 - iv. Chickens shall be penned in a coop that shall be at least four (4) square feet per chicken.

- v. All chicken coops shall be located in a rear yard and shall be a minimum of 20 feet from side and rear property lines.
- vi. Any odor associated with the chickens shall not be discernable from property lines.
- vii. Keeping of roosters shall be prohibited.
- viii. Any lot with chickens shall either comply with these requirements by June 1, 2016 or remove the chickens.

Exceptional Practical Difficulties Tests

Zoning Ordinance, Article 9 §2 dictates the specific powers and duties of the Board of Adjustment with regard to granting variances. Specifically, the Board must determine:

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

Review of Application

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

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

Applicant Response:

"The property in which the zone lies is residential."

Staff Response:

The subject property is zoned R-8 (One-Family Residence Zone) and the use of the property as a one-family detached dwelling is permitted. The keeping of chickens for domestic purposes is permitted as an Accessory Use in this Zone, provided the property meets certain conditions.

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

Applicant Response:

“The immediate vicinity of the property is residential.”

Staff Response:

The property is within the overall Sherwood Subdivision. The properties immediately adjacent to the subject site to the north, south, and across Sherwood Court to the east are all zoned R-8 as is the subject property. Similar to the subject property, the adjoining properties also all contain one-family detached dwellings.

The property abuts New Burton Road to the west (rear). Across New Burton Road to the west is a parcel zoned C-1A (Limited Commercial Zone) containing a mix of commercial/ retail uses.

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

Applicant Response:

“The existence of the chickens does not burden or negatively effect neighboring properties. There is a Letter from one of our immediate neighbors (49 Sherwood Court) (Exhibit F) accompanying this variance request which speaks to this criteria.”

Staff Response:

Planning Staff acknowledges that a Letter of Support has been submitted by a neighboring property owner which speaks in favor of the Applicant keeping Chickens on the property. However, it is further noted that the initial Code Enforcement Violation was issued after a complaint was submitted anonymously by a neighboring property owner regarding the presence of chickens on the property.

Planning Staff otherwise would generally agree with the Applicant that the keeping of chickens on the property would not seriously effect neighboring property owners. The Zoning Ordinance establishes provisions for the keeping of chickens, wherein it states that the keeping of no more than four (4) domestic chickens is a permitted use within the R-8 Zone on properties of 10,890 SF or greater. The difference between that minimum lot size requirements and the actual property size is negligible.

It is however noted that the *Zoning Ordinance* (as cited on page 2 of this Report) does additionally require that when chickens are to be kept for domestic purposes, no more than five (5) chickens may be kept, Chickens shall be penned in a coop that shall be at least four (4) square feet per chicken, and all chicken coops shall be located in a rear yard and shall be a minimum of 20 feet from side and rear property lines. While the other provisions of the *Zoning Ordinance*, Article 3 Section 1.15(e) appear to have been met, it is unclear as to whether these three provisions are also being met. There is no permit submission on file for the construction of a coop on the property, and the Applicant has not submitted information attesting to any details of a coop.

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 Response:

“The chickens are therapeutic for us, and especially for my 2 autistic children who love to care for them and just enjoy being around them. They are a relaxing presence when sitting outside with them, and we enjoy taking care of them. Some of the chickens even ask to be pet; they walk close and ruffle their feathers open so that we’ll pet them. There is a Letter from my doctor (*Exhibit I) accompanying this variance request which speaks to this criteria.”

*A Letter has been submitted by the Applicant from their Doctor as referenced by the Applicant Response to Criteria Question #4. However, Planning Staff has withheld this document from Public Record out of concerns of privacy for the applicant, and in compliance with HIPA.

Staff Response:

Staff acknowledges both the therapeutic and apparent emotional benefits that the keeping of chickens has provided the property owner. However, the test here is to determine whether or not granting the Variance as requested would create unnecessary hardship or exceptional practical difficulty for the owner in their efforts to make normal improvements in the character of that use of the property.

For this particular situation, there are two primary concerns here; Firstly, Whether the prohibition of the use of the chickens given the applicant’s statements that they are therapeutic for their 2 autistic children, would create unnecessary hardship; and secondly, whether the provision of therapeutic or emotional benefit by way of the keeping of chickens is considered a normal improvement in the character of the use of the property.

Regarding the first question, from a Planning Staff perspective, it is not clear whether there are other outlets available to the Applicant that would provide emotional or therapeutic relief other than the keeping of chickens on the property. The *Code* is silent on whether the prohibition of chickens for this particular family on this particular lot in this particular circumstance would qualify as an unnecessary hardship.

Regarding the second question, the keeping of chickens is an allowed accessory use in the R-8 zone as described above and per Section Article 3 § 1.15 along with its requisite requirements. These requirements as they related to the property could be considered normal improvements. .

Variance Recommendations

Planning Staff notes that while there is some conflicting information as to the actual area of the lot subject to this Variance Request, the most specific information publicly available would attest to the square footage of the subject property being no more than 10,585 SF (It is noted that an actual survey of the property has not been submitted). This is short of the minimum 10,890 SF (0.25 acres) required per the *Zoning Ordinance* in order to allow for the Accessory Use of keeping chickens for domestic purposes. Information submitted by the Applicant claiming that they should qualify based on an estimated Lot Area of 11,137.5 is invalid because, even if the property owner maintains land in an adjacent right-of-way (grass area between fence and paved shoulder of the roadway), this does not constitute legal ownership of this adjacent land. Furthermore, the difference between the required minimum area of 10,890 SF and the property area as determined by the Planning Staff of 10,585 SF is 305 SF. While still short of the required minimum lot area 10,890 SF, this discrepancy is negligible.

Planning staff finds that the use of the chickens is allowed as an accessory use and the required improvements for the keeping of chickens could be considered a normal improvement to the character of the use of the property. However, it is unclear whether the aspect of the prohibition of the use of chickens for this particular family on this particular lot in this particular circumstance would create an unnecessary hardship.

Staff Recommendations

Staff refers this variance with the following recommendations::

- The *Zoning Ordinance* provides a specific square footage (10,890) square feet as a minimum threshold for a property in the R-8 Zone to be allowed to keep chickens for domestic purposes. Records note the property as being no more than 10,585 SF. The Property Owners claims of an actual property size of 11,137.5 SF are invalid as they are including areas of the public right-of-way which are legally not part of the subject property. However, the difference between the required minimum area of 10,890 SF and the property area as determined by the Planning staff of 10,585 SF is 305 SF which while still short of the required area is negligible.
- The use of chickens is allowed as an accessory use and the required improvements for the keeping of chickens would create is considered a normal improvement to the character of the use of the property.
- Given this particular family circumstance as described above, on this particular lot, and that the area difference in question is negligible, Planning Staff believes an argument can be made that an unnecessary hardship could be created if the use of chickens were not allowed on this particular property.

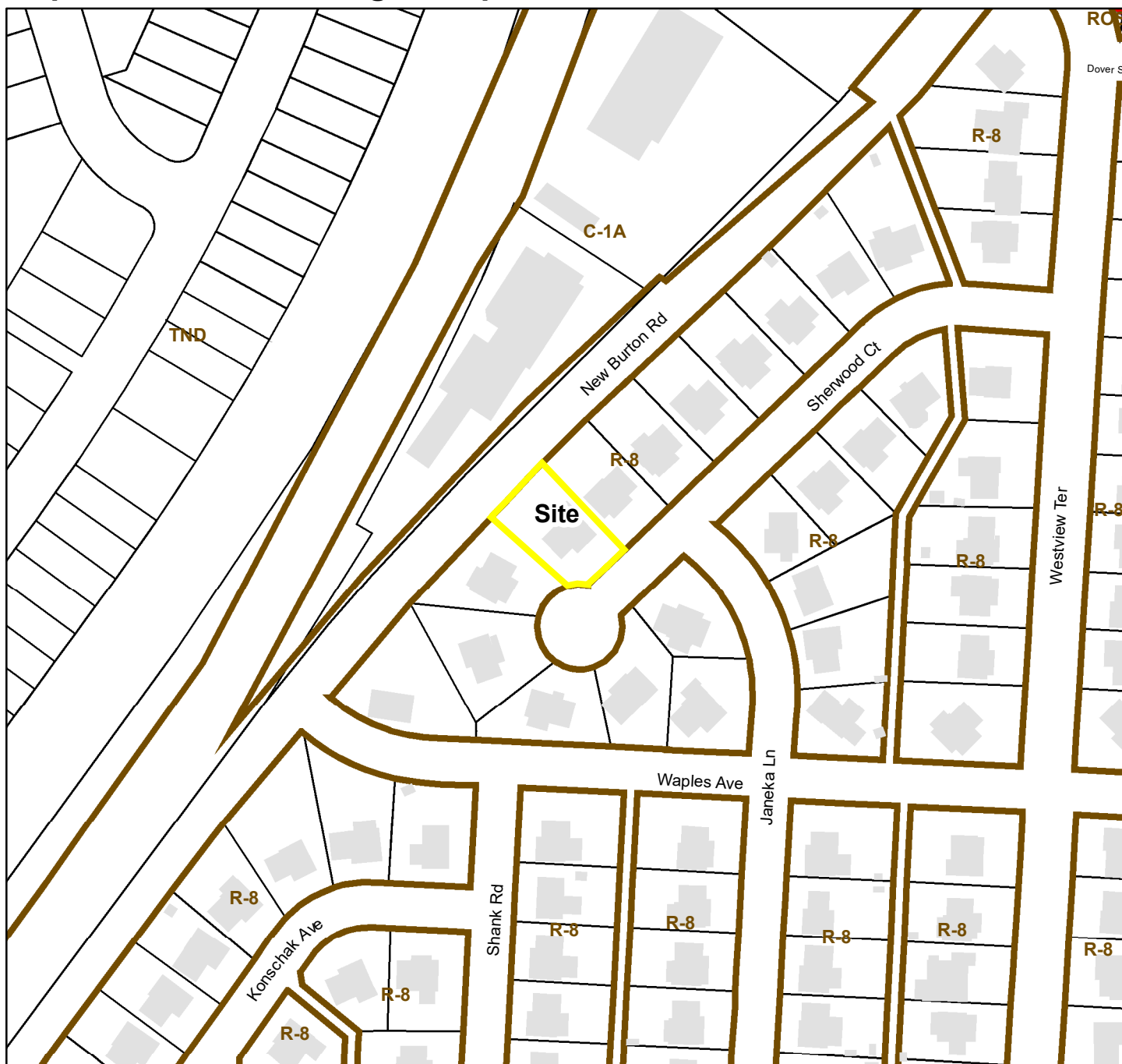
Advisory Comments to the Applicant

- If granted, variances become null and void if work has not commenced within one (1) year of the date the variance was granted. At present there is no provision for extension.

- If the requested variance is granted for the reduction of the minimum required lot area, the Applicant would still have to comply with the other provisions for the keeping of chickens.
- The Applicant should be aware that whenever the Board of Adjustment denies an application for a variance, such application for a variance, or an application on the same property, which is substantially similar, shall not be accepted for reconsideration by the Board of Adjustment sooner than one year from the date of denial (*Zoning Ordinance*, Article 9 §3.8).

GUIDE TO ATTACHMENTS

Exhibit	Description/Author	# Pages
	BOA Application Form	1
A	Zoning Map Exhibit (Staff)	1
B	Applicant's Written Responses	1
C	Copy of Initial Code Violation	1
D	Initial Applicant Response to Violation	4
E	Property Information per Kent County	1
F	Neighbors Letter of Support	1
G	Letter from Dept. of Agriculture regarding Registration of Flock	1
H	Copy of Poultry Registration Card	1
I	Letter from Patient Doctor (redacted)	2



Title: Lands of Francis
 Addresses: 59 Sherwood Court
 Parcel IDs: ED-05-076.20-01-24.00-000
 Zoning: R-8 (One-Family Residence Zone)
 Owners: Jason M. & Joanna L. Francis
 Date: 7/13/2023

Legend

- Subject Property
- Dover Boundary
- 2012 Buildings
- Zoning
- Dover Parcels
- Kent County Parcel



0 100 200 400 Feet

To Whom it May Concern,

In response to Case number 23-00002192, Violation 714, we appeal for the violation to be dismissed.

1. Article 3.

a. Section 1.E

- i. Lot Size - The lot size is objectively large enough for 5 chickens. We also believe that the lot measurements are incorrect. More details below.
- ii. Number of chickens - We have 5 chickens. Not an issue.
- iii. Registered - Done. Not an issue. *Reg.# 3572*
- iv. Coop size - larger than required. Not an issue.
- v. Odor - None. You should have received a letter from our closest neighbor (49 Sherwood Ct) to that effect. Not an issue.
- vi. Roosters - We don't have a rooster. Not an issue.

All that remains is property size. Councilman Bill Hare has been kind enough to inspect our land and the footprint of the chicken coop and is equally baffled that we would be penalized because of square footage. Further, I believe the property measurement to be incorrect.

Per Kent County Online Mapping - Public Site, we measured our square footage. We measured our property up to the edge of New Burton Rd. Why? We were told that we own that land beyond the fence and in fact we are responsible for the upkeep of that land. We've actually been fined in the past because of insufficient mowing of the land beyond our fence.

First, here is our property (designated as '24') without my measurements:



Note the sq footage at the bottom-right of this picture: 11,137.5 sq feet. Also, this doesn't include the strips of land between the sidewalk and the street. When all land that is ours is properly included, we have enough square footage.

Thank you for your consideration,

Jason and Joanna Francis
59 Sherwood Ct
Dover, DE., 19904



Next is our land with measurements beyond the fence to include the land that is part of our lot.

Chickens in Dover!

To billh2323@comcast.net <billh2323@comcast.net>

Good afternoon,

My name is leashia Harmon. I am located at 49 Sherwood Ct. My neighbors recently acquired chickens and I wanted to reach out to someone about it. Joanna mentioned that someone wants her to get rid of them, but I promise you it isn't me! I have enjoyed going into my own back yard and being able to watch and share in the growth with my own children. The chickens are a Peaceful addition to the neighborhood. They don't have any noticeable odor and they definitely aren't a bother. Please don't make them get rid of them.

If you have any questions for me please let me know. It would be a great loss if they had to remove their chickens.

Thank you,

leashia

About my chickens

To billh2323@comcast.net <billh2323@comcast.net>

I drew this on the Kent County website regarding the size of my property. When we bought the house we were told that we own the land that is beyond the fence that borders New Burton road. When you include that strip of land beyond the fence we have more than enough property for the chickens as shown in the bottom right hand corner of the attached map. We are responsible for the upkeep of that strip of land and we get fined if we let the grass grow too long so it wouldn't make sense for that to not count as our property.

Thank you,
Joanna Francis



DELAWARE DEPARTMENT OF
AGRICULTURE

2320 SOUTH DUPONT HIGHWAY
DOVER, DELAWARE 19901
AGRICULTURE.DELAWARE.GOV

TELEPHONE: (302) 698-4500
TOLL FREE: (800) 282-8685
FAX: (302) 697-6287

Dear Delaware Poultry Owner:

Thank you for registering your flock with the Delaware Department of Agriculture. Your poultry registration will be very valuable in case of a disease outbreak. Enclosed is your Delaware Poultry Registration card. Please keep this card for your records.

Delaware poultry owners must be registered in order to sell poultry at sales such as Dill's Auction, or to exhibit birds at any show or fair. If you do sell or exhibit poultry, you will need to carry your card with you to verify that your flock is registered with the Department of Agriculture.

Thank you again for your cooperation and continued support of Delaware Agriculture.

Regards,

Dr. Karen M. Lopez, DVM, MPH, Dipl. ACVPM
State Veterinarian

VIOLATION: 714
DESCRIPTION: 714 CHICKEN/ROOSTER
LOCATION: REAR YARD

QUANTITY: 1
DATE: 4/21/23

Item 4.

NARRATIVE :

VIOLATION DETAIL

PAGE 2

CASE NUMBER 23-00002192
PROPERTY ADDRESS 59 SHERWOOD CT

NARRATIVE :

REMOVE ALL CHICKENS/ROOSTERS FROM PROPERTY. KEEPING CHICKENS SHALL NOT BE PERMITTED ON LOTS SMALLER THAN 10,890 SQUARE FEET. YOUR LOT IS 10,018 SQUARE FEET.

ORDINANCE DESCRIPTION :

ARTICLE 3. - DISTRICT REGULATIONS
Section 1. - One-family residence zones [(R-20, R-15, R-10, R-8 and R-7)].
(e) Keeping of chickens for individual domestic purposes subject to the following restrictions:
i. Keeping of chickens shall not be permitted on lots smaller than 10,890 square feet in lot area.
ii. No more than five (5) chickens shall be permitted on a residential lot.
iii. Chickens shall be registered with the Delaware Department of Agriculture.
iv. Chickens shall be penned in a coop that shall be at least four (4) square feet per chicken.
v. All chicken coops shall be located in a rear yard and shall be a minimum of 20 feet from side and rear property lines.
vi. Any odor associated with the chickens shall not be discernable from property lines.
vii. Keeping of roosters shall be prohibited.
viii. Any lot with chickens shall either comply with these requirements by June 1, 2016 or remove the chickens.

CORRECTIVE ACTION REQUIRED :

Make all necessary corrections to ensure the keeping of chickens is in accordance with code.