



**Kent County Board of Adjustment
Meeting Notice and Agenda
555 Bay Rd.
Dover, DE 19901
Levy Court Chambers - Room 203
Thursday, January 22, 2026**

6:00 PM, BOARD OF ADJUSTMENT MEETING

Board Members will meet in the Levy Court Chamber; the public is welcome to attend.

Join the meeting via Webex by going to:

<https://kentcountyde.webex.com/kentcountyde/j.php?MTID=mad2cee7c8788a7fe3791f899bf057cab>

Or by phone, by calling 1-408-418-9388

Meeting number (access code): 2334 838 1458

I. Public Hearing Call to Order

Roll Call and Determination of Quorum

Introduction of Staff

The Pledge of Allegiance

Additions and/or Alterations to Agenda

Public Hearing Introduction

Statement by Counsel

Public Hearing

Receipt of testimony on the following applications in accordance with the procedures outlined below:

1. Reading of the Legal Notice and presentation of exhibits by the Planning Staff.
2. Testimony by the Applicant and others in favor of the application.
3. Testimony by those opposed to the application.

A-26-01 Douglas A. & Cyndi Jacobs (Owner: Douglas Albert Jacobs)
Tax Map No. 2-00-097.16-01-27.00-000

A-26-02 Berean Community Church, Inc.
Tax Map No. 5-00-172.00-01-45.00 & 45.01

II. Business Meeting Call to Order

Election of Officers

Minutes

Approval of the Business Meeting Minutes from the December 18, 2025 Meeting

Notices of Decision

A-25-33 Amy S. & George A. Lewis
Tax Map No. 8-00-127.00-01-42.00-000

A-25-34 John Potter (Owner: South Bowers Fire Co., Inc.)
Tax Map No. 5-00-143.00-01-50.00-000

A-25-25 Donna K. and Jeffery Scott Brennan Sr.
Tax Map No. 7-00-102.00-01-03.05-000

Old Business

New Business

Deliberation and Action on Applications Heard at the Public Hearing.

Adjournment

As a courtesy to other participants in this hearing, a maximum of five (5) minutes will be allotted to any person who wishes to provide testimony for any application or appeal. The Chairperson of the Board of Adjustment has the discretion to allow additional time if deemed to be necessary.

POSTING DATE: 01/15/26

POSTING TIME: 10:00 a.m.

POSTED BY: Jamie Fenske, Planner

TAKE DOWN: 01/23/26

29 Del.C. §10004(e)(2). The Agenda items as listed may not be considered in sequence. This Agenda is subject to change to include additional items including Executive Sessions or the deletion of items including Executive Sessions, which arise at the time of the meeting.



Item Cover Page

BOARD OF ADJUSTMENT AGENDA ITEM REPORT

DATE: January 22, 2026

SUBMITTED BY: Jesse Lindenberg, Planning Services

ITEM TYPE: Application

AGENDA SECTION:
Public Hearing

SUBJECT:
A-26-01 Douglas A. & Cyndi Jacobs (Owner:
Douglas Albert Jacobs)
Tax Map No. 2-00-097.16-01-27.00-000

ATTACHMENTS:
[A-26-01 Jacobs Staff Report](#)
[A-26-01 Jacobs Exhibit A](#)
[A-26-01 Jacobs Exhibit B](#)
[A-26-01 Jacobs Applicant Response](#)



DEPARTMENT OF PLANNING SERVICES

STAFF RECOMMENDATION REPORT

January 22, 2026

APPLICATION: A-26-01

APPLICANTS: Douglas A. & Cyndi Jacobs
714 Woodland Ave.
Eagleville, PA 19403

OWNER: Douglas Albert Jacobs
714 Woodland Ave.
Eagleville, PA 19403

ADDITIONAL CONTACT: Laura Simpson
1 Dorman St.
Harrington, DE 19952

PROPERTY LOCATION: N. Bay Dr.
Dover, DE 19901

NATURE OF REQUEST:

A-26-01 Douglas A. & Cyndi Jacobs (Owner: Douglas Albert Jacobs) seek a variance from the required 25' front setback to enable the construction of a dwelling (§205-216.A(1) of the Kent County Code). The property is located on the east side of N Bay Dr., approx. 0.45 miles north of Kitts Hummock Rd, southeast of Dover. Levy Court District: 3rd. Zoning District: AR. **Tax Map No. 2-00-097.16-01-27.00-000**

The applicants are requesting a front setback of 10' to enable the construction of a single-family dwelling.

I. STAFF RECOMMENDATION:

The staff has reviewed the information presented by the applicants and recommends that the Board strongly consider all public testimony in making their decision. The staff recommends **APPROVAL** of the variance based on the analysis of the four criteria from the applicants and staff as follows:

II. RESPONSE TO CRITERIA:

1. The nature of the zone where the property lies.

Applicant Response:
See attached.

Staff Response:

As shown on Exhibit A, the subject site is zoned AR (Agricultural Residential) outside the growth zone. The surrounding properties are also zoned AR. A single-family dwelling is a normal and expected improvement within the zoning district.

2. The character and uses of the immediate vicinity.

Applicant Response:

See attached.

Staff Response:

The character of the surrounding area is residential and natural. The parcels on the west side of N Bay Dr. are mostly vacant parcels that are primarily wetlands. However, a majority of the parcels along the east side of N Bay Dr. are improved with single-family dwellings. The lots are mostly narrow in width, about 50'-80', and several have been granted variances from the front setback.

3. Whether removal of the restriction on the applicant's property would seriously affect the neighboring properties.

Applicant Response:

See attached.

Staff Response:

The reduction of the 25' front setback to a 10' setback would not seriously affect neighboring properties. Most of the properties in the area have homes that are a similar distance or closer to their front property lines, so allowing the placement of a home 10' from the property line would place it in line with the other homes and would not block the line of site for the neighboring properties. Additionally, no objections have been received regarding the application.

4. Whether failure to remove the restriction would create unnecessary hardship or exceptional practical difficulty for the owner in relation to the owner's efforts to make normal improvements to the property. Economic hardship, standing alone, may justify granting an area variance and the inability to prove one's business or to stay competitive as a result of area limitations may qualify as a legitimate exceptional practical difficulty.

Applicant Response:

See attached.

Staff Response:

Failure to remove the restriction of the required 25' front setback would create an unnecessary hardship or exceptional practical difficulty for the applicant in relation to making normal improvements to the property. The DNREC Building Restriction line in the rear significantly reduces the buildable area on the property. This is why several of the adjacent parcels have received similar variances in the past. This parcel is also subject to an additional DNREC easement, which further reduces the buildable area.

This recommendation was made without the benefit of public testimony and is based on

the information presented when the application was received by the Department of Planning Services. The Board of Adjustment shall give considerable weight to public testimony received during the public hearing in considering its decision.

III. APPLICATION BACKGROUND INFORMATION:

- The applicants are requesting a variance from the required 25' front setback to enable the construction of a single-family dwelling with a deck that has a footprint of 43'x 41'. The applicants are proposing a front setback of 10'.
- The subject site is 0.141± acre in size and is currently unimproved.
- There has been one previous Board of Adjustment application on the subject site.
 - A-74-76 for a variance from the minimum 0.5-acre lot area, 100' lot width, 125' lot depth, 20' side setback, 50' aggregate side setback to permit the subdivision of the property into 61 residential lots. The Board granted approval of the request as proposed on June 20, 1991.
- There have been four other Board of Adjustment applications in the surrounding area similar to this request.
 - A-08-06, for a property located approximately 112' north of the subject site on N. Bay Dr., requesting a reduction of the 25' front and 10' side setbacks for the construction of a single-family dwelling on a parcel that is 60' wide. The Board granted approval to permit a 7' front setback and denied the request for the reduced side setback on March 20, 2008.
 - A-22-14, for a property located approximately 69' south of the subject site on N. Bay Dr., requesting a reduction of the 25' front and 10' side setbacks for the construction of a single-family dwelling on a parcel that is 55' wide. The Board granted approval of a 10' front and 7' side setbacks on May 19, 2022.
 - A-23-29, for a property located approximately 69' south of the subject site on N. Bay Dr., requesting a reduction of the 25' front and 10' side setbacks for the construction of a single-family dwelling on a parcel that is 55' wide. The Board granted approval of a 10' front and 7' side setbacks on October 19, 2023.
 - A-24-27, for the adjacent property to the north on N. Bay Dr., requesting a reduction of the 25' front and 10' side setbacks and an increase in the maximum impervious coverage of 25% for the construction of a single-family dwelling on a parcel that is 50' wide. The Board granted approval of a 10' front setback and a maximum impervious coverage of 35.7% and denied the request for the reduced side setbacks on July 18, 2024.
- DelDOT has the following comment:
 - N. Bay Drive has a functional classification of a local road. Local roads requires 30' of Right-Of-Way from the centerline of the road.
- The applicants are advised that, should the request be granted, a building permit shall be obtained prior to the commencement of construction. For more information, contact the Permitting Department at (302)744-2451 or the Planning Department at (302)744-2471 between 8:00a.m. and 5:00p.m.

ENC: Exhibit A
Exhibit B
Applicant Response



KENT COUNTY

Board of Adjustment

LOCATION AND ZONING MAP

A-26-01 Exhibit A

APPLICANT:

Douglas A. & Cyndi Jacobs

OWNER: Douglas Albert Jacobs

PRESENT ZONING DISTRICT:

AR (Agricultural Residential)

PROPOSED VARIANCE:

Variance from the required 25' front setback to enable the construction of a dwelling

PRESENT USE:

Vacant

PROPOSED USE:

Residential

LEVY COURT DISTRICT:

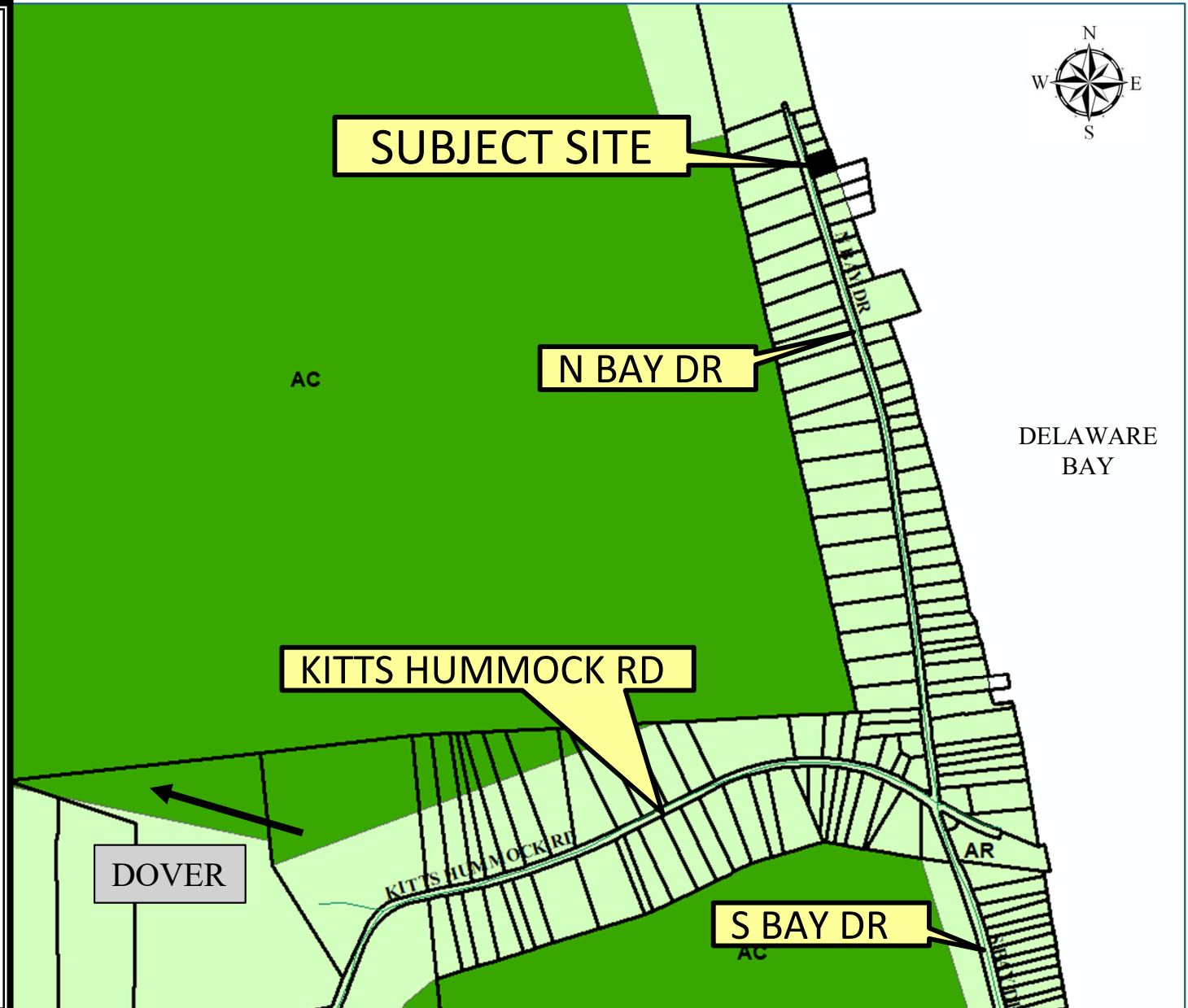
3rd - Angel

TAX MAP NO:

ED-00-097.16-01-27.00-000

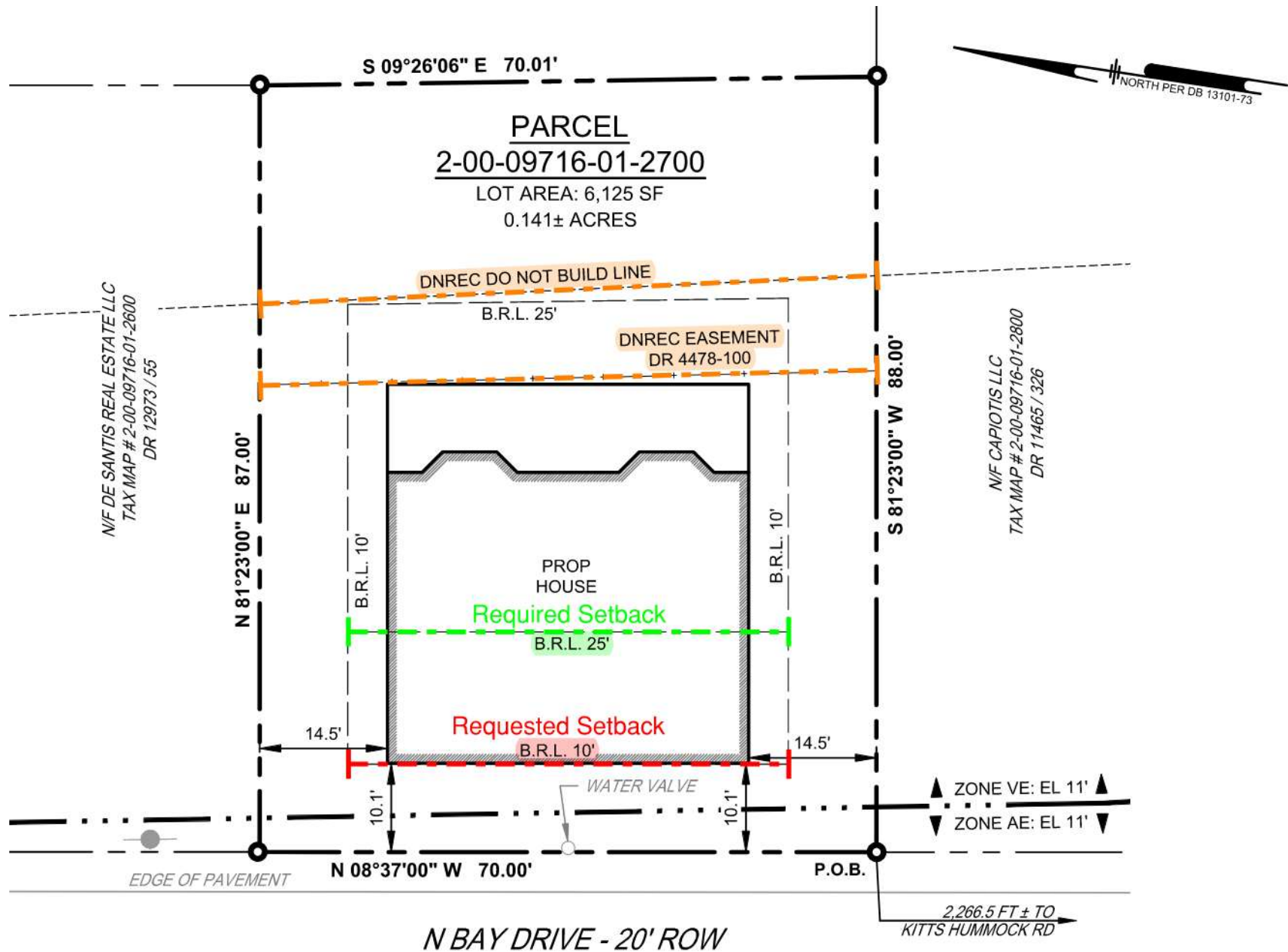
LOCATION:

Located on the east side of N Bay Dr., approx. 0.45 miles north of Kitts Hummock Rd, southeast of Dover



Application: A-26-01
Jacobs

Variance from the required 25' front setback to enable the construction of a dwelling



State Exceptional Practical Difficulty based on the following 4 criteria:

- 1.** The nature of the zone where the property lies; **2.** The character and uses of the immediate vicinity;
- 3.** Whether removal of the restriction on the applicant's property would seriously effect the neighboring properties;
- 4.** Whether failure to remove the restriction would create unnecessary hardship or exceptional practical difficulty for the owner in relation to the owner's efforts to make normal improvements to the property. Economic hardship, standing alone, may justify granting an area variance and the inability to prove one's business or to stay competitive as a result of area limitations may qualify as a legitimate exceptional practical difficulty.

With a recent easement placed on our property by DNREC and the U.S Army Corps of engineers, combined with the Kent county

front set back requirement of 25 feet, the buildable area of our lot is approximately 50 feet by 28 feet,

which would forces us to construct a home that is not consistent in size or design with neighboring properties.

We respectfully request that the front setback be reduced to 10 feet, which would expand the buildable are to roughly 50 by 43 feet. This adjustment would allow us to design and construct a home that is in keeping with the character of surrounding homes

and would maximize the investment would maximize the investment we wish to make in our Kent County Property.

This will be our premanent forever home. In Addition, several neighboring properties along Bay Ave have recevied approvals for similar variances reducing the setback to 10 feet. We are the requesting the same consideration so that our proposed home aligns appropriately within the existing neighborhood context. Thank you for your time and consideration.



Item Cover Page

BOARD OF ADJUSTMENT AGENDA ITEM REPORT

DATE: January 22, 2026

SUBMITTED BY: Jamie Fenske, Planning Services

ITEM TYPE: Application

AGENDA SECTION: Public Hearing

SUBJECT: **A-26-02** Berean Community Church, Inc.
Tax Map No. 5-00-172.00-01-45.00 & 45.01

ATTACHMENTS:
[A-26-02 Berean Staff Report.pdf](#)
[A-26-02 Berean Community Church, Inc. Exhibit A](#)
[A-26-02 Berean Community Church, Inc. - Exhibit B & C](#)



DEPARTMENT OF PLANNING SERVICES

STAFF RECOMMENDATION REPORT

January 22, 2026

APPLICATION: A-26-02

APPLICANTS/OWNER: Berean Community Church, Inc.
PO Box 187
Milford, DE 19963

ADDITIONAL CONTACT: Davis, Bowen & Friedel, Inc.
Chad Warren, P.E.
1 Park Ave
Milford, DE 19963

NATURE OF REQUEST:

A-26-02 Berean Community Church, Inc. seeks a variance from the perimeter and interior planting requirements for parking to enable the submission of a site plan revision (**§171-7A & B of the Kent County Code**). The property is located on the south side of Milford Harrington Hwy., approx. 850' east of Bloomfield Dr., west of Milford. Levy Court District: 4th. Zoning District: AC. **Tax Map No. 5-00-172.00-01-45.00 & 45.01-000**

The applicants are requesting a variance from the required perimeter and interior plantings for parking lots. They are seeking a variance from the required 3' tall parking perimeter landscape along the right-of-way (as shown in red on Exhibit B) and from the required 6' tall parking perimeter landscape along the northwest and southern proposed parking (as shown in blue on Exhibit B).

The applicants are also seeking a variance from the required parking interior plantings. The applicants are proposing 173 new parking spaces. They are required to incorporate 44 deciduous trees within the interior parking areas. The applicants have proposed 31 deciduous trees and are requesting a variance of 13 deciduous trees.

I. STAFF RECOMMENDATION:

The Staff has reviewed the information presented by the applicants and recommends that the Board strongly consider all public testimony in making their decision. The Staff recommends **DENIAL** of the variance, based on the analysis of the four criteria from the applicants and staff as follows:

II. RESPONSE TO CRITERIA:

1. The nature of the zone where the property lies.

Applicant Response:

The subject property is an existing church in operation zoned AC. The surrounding properties are also zoned AC and are a mix of residential and agricultural fields.

Staff Response:

As shown on Exhibit A, the subject site is zoned AC (Agricultural Conservation) outside the growth zone. Places of assembly and worship with supporting parking are permitted uses within the zone, contingent upon meeting bulk and area and planting requirements as set by the Zoning Code of Kent County.

2. The character and uses of the immediate vicinity.

Applicant Response:

The property to the west is a 20.5 acre previous horse farm that is also owned by the church. The subject parcel is bordered to the east by single family residences along the road frontage and agricultural fields for the remainder of the property line. Agricultural fields also border the property to the south. And to the north, across Milford Harrington Hwy are single family residences.

Staff Response:

The character of the surrounding area is residential and agricultural in nature. Properties in the near vicinity appear to be residentially developed with single family dwellings and accessory buildings. The properties to the east and south are utilized agriculturally. No properties in the immediate area have received parking landscape variances.

3. Whether removal of the restriction on the applicant's property would seriously affect the neighboring properties.

Applicant Response:

The proposed expansion of the existing parking lot where the variance is requested is to the west, towards the adjacent property owned by the church therefore the variance would not impact the other adjacent owners.

Staff Response:

Removal of the required perimeter and internal parking plantings may seriously affect neighboring properties. In addition to aesthetics, landscaping requirements support stormwater flow and drainage by allowing for greater absorption of rainwater and run off. The subject parcels and parcels to the west and south are completely located within the excellent recharge areas and the parcel to the east is mostly within the excellent recharge areas. Excellent recharge areas are the source for public drinking water in Kent County. Providing the required trees would minimize the impact on and reduce the risk of contamination to the excellent recharge areas. Plantings in the parking areas

help with water absorption of the otherwise asphalt area. Perimeter plantings also create a buffer to neighboring properties and the roadway from the site's impervious surface and vehicle headlights. Interior plantings interrupt the pavement expanse, reduce the heat island effect, and improve the visual appearance.

4. **Whether failure to remove the restriction would create unnecessary hardship or exceptional practical difficulty for the owner in relation to the owner's efforts to make normal improvements to the property. Economic hardship, standing alone, may justify granting an area variance and the inability to prove one's business or to stay competitive as a result of area limitations may qualify as a legitimate exceptional practical difficulty.**

Applicant Response:

The church is proposing to develop the rest of their 10-acre property and is proposing the construction of two parking lots, one being the expansion of the existing parking lot at the rear of the existing church, and the second being a completely new parking lot located at the middle of the property to serve a proposed athletic field. The variance is only being requested for the expansion of the existing parking lot that serves the church and is being requested so that the proposed expansion matches the existing parking lot.

Staff Response:

Failure to remove the requirement of parking perimeter landscape to the west, north, and south would not create an exceptional practical difficulty for the property owners in relation to making normal improvements to the property as the applicants could achieve the requirement by including a variety of materials including ground cover, shrubs, trees, hedges, fencing, and berming. Additionally, there are areas to the west, north, and south, shown on Exhibit B in red and blue, that could be planted, bermed, and/or fenced to meet the perimeter landscape requirements.

Failure to remove the requirement of parking interior plantings would not create an exceptional practical difficulty for the property owners. Interior plantings have been included in the proposed southern parking areas but not in the northern proposed parking areas. The applicants could add parking islands, planting areas at the end of parking rows, and/or parking strips separating the parking rows to the proposed northern parking areas to meet the required parking interior plantings.

This recommendation was made without the benefit of public testimony and is based on the information presented when the application was received by the Department of Planning Services. The Board of Adjustment shall give considerable weight to public testimony received during the public hearing in considering its decision.

III. ADDITIONAL INFORMATION:

- Currently parcel 45.00 is 20.455± acres and is improved with a single family dwelling and accessory structures. Parcel 45.01 is 10.045± acres and is improved with a church,

enclosed pavilion, and four sheds. The applicants are proposing a lot line adjustment to result in parcel 45.00 being $18.627\pm$ acres and maintaining the single family dwelling and associated accessory buildings and parcel 45.01 is proposed to be $11.777\pm$ acres and will be improved with the place of worship, sports field, campground, ministry housing, and parking.

- There has been one previous Board of Adjustment application on the subject site:
 - A-22-37, requesting a variance from the provision that only one detached sign is permitted. The Board denied the variance on 11/17/2022.
- There have been no Board of Adjustment applications in the surrounding area similar to this request.
- The applicants are advised that, should the request be granted, a conditional use with site plan application and building permits shall be obtained prior to the commencement of construction. For more information, contact the Department of Planning at (302)744-2471 and Division of Inspections and Enforcement at (302)-744-2451 between 8:00a.m. and 5:00p.m.

ENC: Exhibit A

Exhibit B – Perimeter Landscape Request

Exhibit C – Interior Landscape Request



KENT COUNTY

Board of Adjustment

LOCATION AND ZONING MAP

A-26-02 Exhibit A

APPLICANT/OWNER:

Berean Community Church, Inc

PRESENT ZONING DISTRICT:

AC (Agricultural Conservation)

PROPOSED VARIANCE:

Variance from the perimeter and interior planting requirements for parking to enable the submission of a site plan revision

PRESENT USE:

Church & Residential

PROPOSED USE:

Same

LEVY COURT DISTRICT:

4th - Scott

TAX MAP NO:

MD-00-172.00-01-45.00-000

MD-00-172.00-01-45.01-000

LOCATION:

Located on the south side of Milford Harrington Hwy., approx. 850' east of Bloomfield Dr., west of Milford.

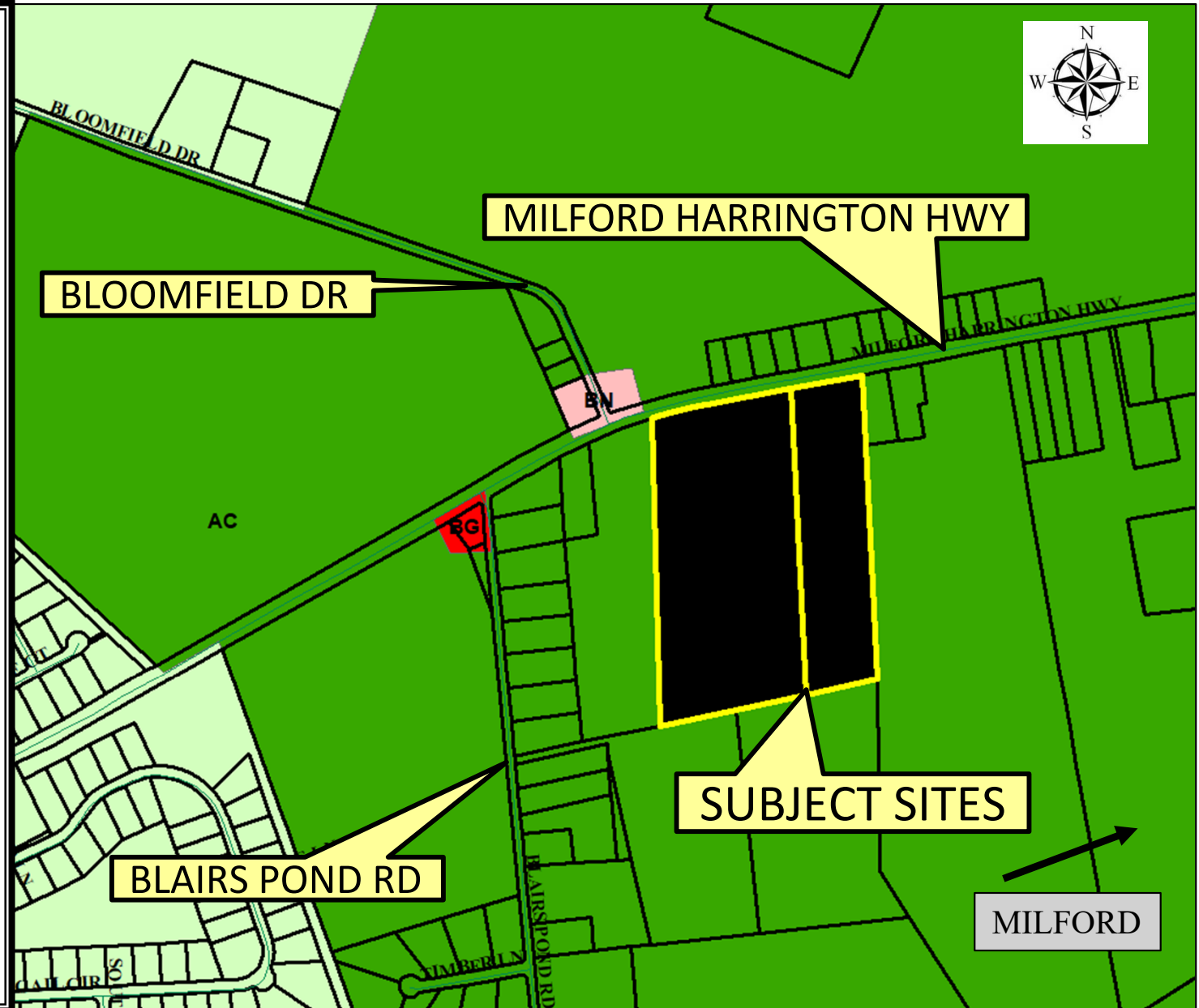


Exhibit B

Application: A-26-02
Berean Community Church, Inc

Variance from the perimeter planting requirements for parking to enable the submission of a site plan revision

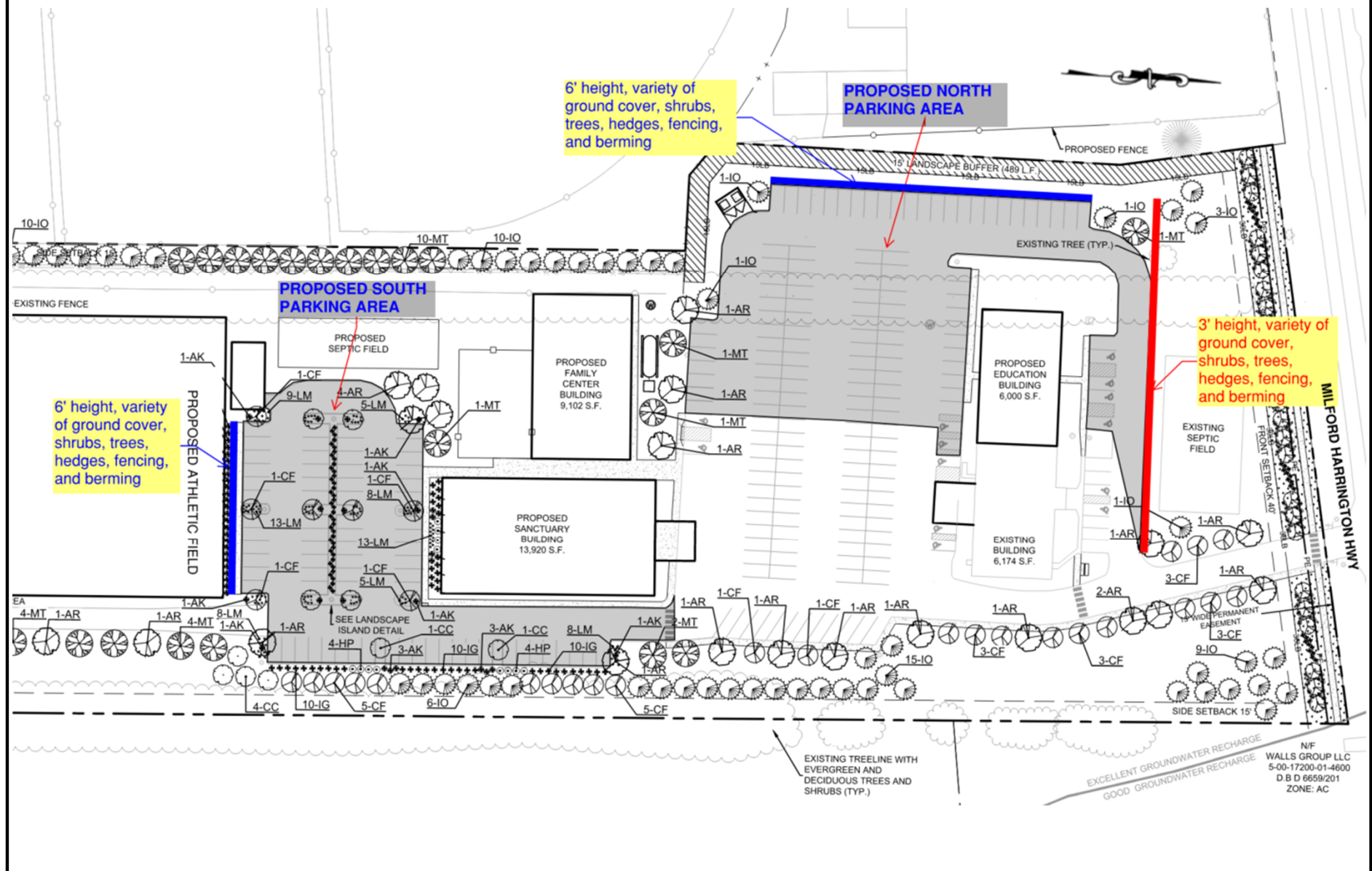
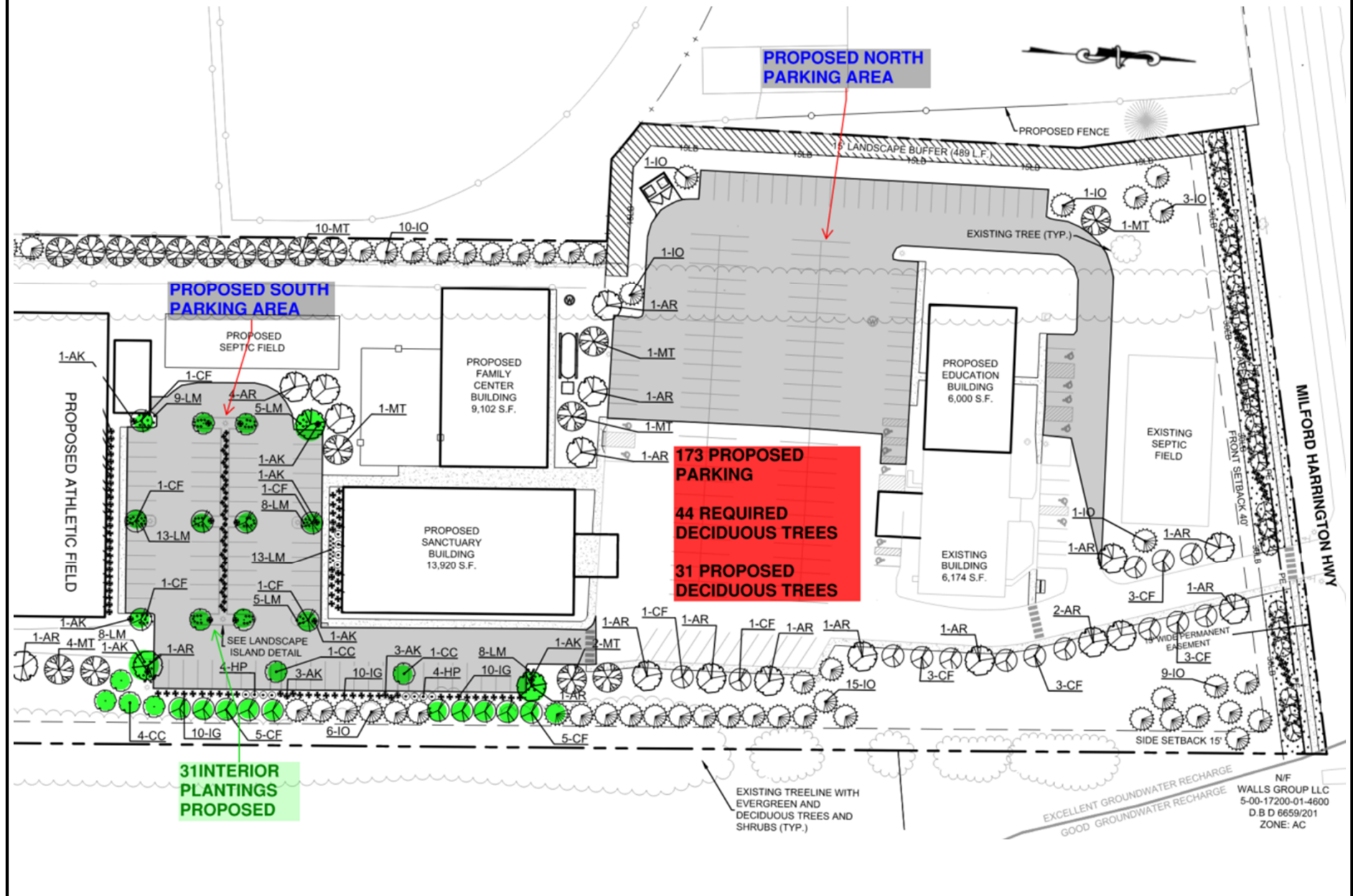


Exhibit C

Application: A-26-02
Berean Community Church, Inc

Variance from the interior planting requirements for parking to enable the submission of a site plan revision





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BOARD OF ADJUSTMENT AGENDA ITEM REPORT

DATE: January 22, 2026

SUBMITTED BY: Jamie Fenske, Planning Services

ITEM TYPE: Minutes

AGENDA SECTION:
Minutes

SUBJECT: Approval of the Business Meeting Minutes from the December 18, 2025 Meeting

ATTACHMENTS:
[Board of Adjustment Minutes - December 18, 2025](#)

KENT COUNTY BOARD OF ADJUSTMENT
BUSINESS MEETING MINUTES
December 18, 2025

The Business Meeting of the Kent County Board of Adjustment was held on Thursday, December 18, 2025, in Levy Court Chambers, Room 203, 555 Bay Road, Dover, Delaware, 19901.

CALL TO ORDER

The Business Meeting was called to order at 7:08 P.M.

ROLL CALL AND DETERMINATION OF QUORUM
INTRODUCTION OF STAFF

The following members were present:

Brian Cusick, Chairperson
Morgan Hudson
Temple Carter
Brauncy Jenkins
George Gallo
Joan Denney

Staff:

Jamie Fenske, Hearing Officer
Fred Townsend, Attorney
Mark Kennedy, IT Staff

APPROVAL OF THE MINUTES

On a motion made by Mrs. Denney and seconded by Ms. Carter, the Board of Adjustment voted unanimously to approve the minutes from the November 20, 2025, meeting.

APPROVAL OF THE NOTICES OF DECISION

On a motion made by Mr. Carter and seconded by Mrs. Denney, the Board of Adjustment voted unanimously to approve the Notice of Decisions for applications A-25-30 & A-25-31 from the November 20, 2025, meeting.

OLD BUSINESS

A-25-25 Donna K. & Jeffery Scott Brennan Sr. 7-00-102.00-01-03.05-000

On a motion made by Mr. Gallo, seconded by Mrs. Denney, the Board of Adjustment voted to **affirm** the County's decision for application A-25-25 for the following reasons:

- The County may lawfully impose farm animal limits in the AC zone, as spelled out by the opinion of Mr. Townsend.

Mrs. Hudson: I vote in favor of the motion based off the testimony that we heard from the County's attorney and all the other testimony that we heard back in October.

Mr. Carter: I vote in favor of the motion based on the testimony presented tonight and the testimony previously.

Mrs. Denney: I vote yes. I agree with the County's initial statements with regard to the property.

Mr. Gallo: I vote in favor of my motion based on previous discussion. The testimony we heard.

Mr. Cusick: I vote in favor of the motion based on the properties parcel information, which is listed as residential. As that property is physically, the physical attributes of that property are residential. I think failure to impose this section 205-34 really diminishes the purpose of the code here, just allowing residential properties to be able to keep poultry with no limitations. I think it is a risk here obviously with diseases and soil contamination and all that stuff.

The Board voted 5 yeas on a motion to **affirm** the County's decision for application A-25-25.

NEW BUSINESS

A-25-33 Amy S. & George A. Lewis 8-00-127.00-01-42.00-000

On a motion made by Mrs. Denney, seconded by Mr. Carter, the Board of Adjustment voted for **modified approval** for an existing Accessory Dwelling Unit size of 60% of the permitted floor area of the main dwelling unit for application A-25-33 for the following reasons:

- There is an exceptional practical difficulty present in the new owners not being aware of the existing problems on the property.
- The owners are willing to reduce the building size to be in compliance

Mr. Gallo: I'll vote in favor of the motion. I believe the applicant's representative testified that they would be able to make some changes to meet us halfway, so we're giving the minimal amount necessary for them to move forward with this ADU. They do have quite a bit invested in the property and the property existed as a shell prior to them owning it.

Mr. Jenkins: I vote in support of the motion for application A-25-33 for a couple of reasons. One, based on testimony that was given to us this evening in terms of making improvements and corrections on past failures, lack of permits, and just the fact that we are in a process of trying to compromise with the homeowners on the encroachment that exists with the code. We are giving up 10% and they are getting 10%.

Mrs. Hudson: I'm going to vote in favor of the motion based off the public testimony that we heard tonight. I believe this is a unique situation, there is a financial hardship on the applicant, and I believe removing the restriction does not seriously affect neighboring properties.

Mr. Carter: I vote in favor of the motion based on all the discussion and testimony tonight.

Mrs. Denney: I'm going to vote yes for the reasons stated as I made the motion.

Mr. Cusick: I vote in favor of the motion. I think per the testimony given tonight, and then the neighboring property letter of no [objection], that it is not impacting that property with an ADU on this on this property, just the unique characteristics of this property all come into play here with the rezoning that had to happen in the existing building. I think again, per testimony, just with the applicant willing to meet us meet us halfway here, I'm in favor. Thank you.

The Board voted 6 yeas on a motion for **modified approval** for an existing Accessory Dwelling Unit size of 60% of the permitted floor area of the main dwelling unit for application A-25-33.

A-25-34 John Potter (Owner: South Bowers Fire Co., Inc.) 5-00-143.00-01-50.00-000

On a motion made by Mrs. Hudson, seconded by Mr. Carter, the Board of Adjustment voted to **approve** a parking setback of 3 ft. from a residential property line for application A-25-34 for the following reasons:

- Public testimony.
- Approving the variance will not change the character of the area.
- No serious negative impact on neighboring properties.

Mr. Gallo: I'm going to vote no on the motion. There was a variance from the original setback requirements that was in the plot plan in 2009 and it was either

disregarded or ignored. The time to discuss those parking spots at that time was then, at that time. I'm going to vote no.

Mr. Jenkins: I vote yes in support of the motion for application A-25-34 primarily because of the testimony before us this evening and the fact that the parking lot that is in question has a wooded buffer, and it has been there since 2009. 16 years.

Mrs. Denney: I vote yes. I think it is necessary to support the function of this Volunteer Fire Department. I do not believe that it will have any effect on the neighboring properties whatsoever. We have no objections and it was posted like everything else is, yes.

Mr. Carter: I vote yes on the motion based on the testimony tonight and the fact that it's been in existence for 16 years without a problem.

Mrs. Hudson: I vote in favor per my motion.

Mr. Cusick: I vote in favor of the motion. No impact on neighboring properties. It is an existing parking lot that has been there for 16-18 years, so it's been there for a while. It has no impact on anyone that has been brought to our attention. Obviously, the hardship is there now, to have this owner make normal improvements to the property, much needed improvement on the property, for them to install a new sign.

The Board voted 5 yeas, 1 nay on a motion to **approve** a parking setback of 3 ft. from a residential property line for application A-25-34.

ADJOURNMENT

On a motion made by Mrs. Hudson, seconded by Mr. Carter, the Board voted unanimously to adjourn the Board of Adjustment Meeting of December 18, 2025, at 7:30 P.M.

Brian Cusick, Chairperson

Jamie Fenske, Hearing Officer

Respectfully submitted,
Adam Lyncha



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BOARD OF ADJUSTMENT AGENDA ITEM REPORT

DATE: January 22, 2026

SUBMITTED BY: Jesse Lindenberg, Planning Services

ITEM TYPE: Application

AGENDA SECTION: **Notices of Decision**

SUBJECT: **A-25-33** Amy S. & George A. Lewis
Tax Map No. 8-00-127.00-01-42.00-000

ATTACHMENTS:
[A-25-33 Lewis Notice of Decision](#)
[A-25-33 Lewis Exhibit B - Modified](#)



DEPARTMENT OF PLANNING SERVICES

NOTICE OF DECISION

APPLICATION: A-25-33

APPLICANTS/OWNERS: George & Amy Lewis
176 Ironmine Rd.
Felton, DE 19943

**DATE OF PUBLIC HEARING
& DECISION:** December 18, 2025

MEMBERS PRESENT: Brian Cusick, Chairperson
Morgan Hudson, Vice Chair
Joan Denney
Temple Carter
Brauncy Jenkins
George Gallo, Jr.

NATURE OF REQUEST:

A-25-33 Amy S. & George A. Lewis seek a variance from the maximum size of an accessory dwelling unit of 50% of the floor area of the principal dwelling unit to legalize an accessory dwelling unit (**§101-4.A. of the Kent County Code**). The property is located on the east side of Ironmine Rd., approx. 880' north of Sandtown Rd., west of Felton. Levy Court District: 6th. Zoning District: AR. **Tax Map No. 8-00-127.00-01-42.00-000**

The applicants are requesting a variance of 322 sq. ft. to utilize an existing accessory structure for an Accessory Dwelling Unit (ADU). The maximum size permitted is 50% of the floor area of the main dwelling unit. The main dwelling unit is 1,482 sq. ft., which would permit an ADU with a floor area of 741 sq. ft. The applicants are seeking approval for an ADU with a floor area of 1,063 sq. ft. (71.7% the size of the main dwelling unit).

SUMMARY OF EVIDENCE

1. The subject site is 1.884± acres and is improved with a single-family dwelling and multiple accessory structures. The proposed ADU is located in a rear portion of the garage, which has been converted to living space.
2. Ms. Audrey Ellen Wagamon, the applicant's realtor, spoke in favor of the application.
3. Ms. Wagamon explained that her clients purchased the property with the existing home and accessory structure and that the accessory structure did not have a permit. She stated that their previous realtor did not check on permits and that the owners now live in Florida,

so she is trying to make good on everything so they can sell the property.

4. Ms. Wagamon added that the current owners altered the internal aspect of the building. She said they had an electrical inspection and made sure the septic system was brand new and expanded to cover the house and the extra living area, but they did not go through the county processes.
5. Ms. Wagamon stated that over the last six months she has been working through the county processes and understands all the steps they need to work through if the variance is approved. She explained that they retired the title for the mobile home and rezoned the BN portion of the property to AR, because the previous owner had a company that had trucks and did all of the improvements without permits. She added that the building is now just used for residential purposes, such as hobbies, storage, and cars.
6. Ms. Wagamon said that the proposed ADU space was for the owners' son. She explained that the land behind it is State land that will never be developed. She stated that the proposed ADU would provide no impact on the neighbors such as additional traffic or a physical outbuilding that is unattractive.
7. Ms. Wagamon added that they have had public notice signs up for each application and she has received phone calls each time. She said that when she explains what they are doing the neighbors say thank you and that it is so much better. She explained that she submitted an email from one of the immediate neighbors who stated that the proposed ADU has had no impact on her and that other neighbors agree that there has not been an issue with it.
8. Ms. Wagamon stated that there would not be a drastic hardship on the current owner, but that the value of the property would be less without the ADU. She explained that she finds that families are living together, be it a child who doesn't move out or elderly parents you are taking care of, and that it is really good to have this addition for those reasons.
9. Ms. Wagamon read the applicant's letter to the Board into the record.
10. Ms. Wagamon stated that the owner could remove the laundry room and possibly downsize the bedroom area to reduce the size of the living area. She said reducing the size of it would not highly impact the value. She explained that the living area has been there for about two years and that the homeowner does a lot of the work himself, so he could handle the renovations with a permit.

FINDINGS OF FACT & CONCLUSIONS OF LAW

Analysis of the four factors set forth in Board of Adjustment of New Castle County v. Kwik-Check Realty, Inc., 389 A.2d 1289, 1291 (Del. 1978), supports the **MODIFIED APPROVAL** of the requested variance.

- (1) **The nature of the zone where the property lies:** As shown on Exhibit A, the subject site is zoned AR (Agricultural Residential) outside the growth zone. The surrounding properties are similarly zoned AR, though there is a single property zoned BG (General

Business) south of the property (on Sandtown Rd.) and some properties zoned AC (Agricultural Conservation) further north and east. The property is permitted one ADU, provided the unit complies with all setbacks and other requirements outlined in Chapter 101 of the Kent County Code.

- (2) **The character and uses of the immediate vicinity:** The character of the surrounding area is residential and agricultural. A majority of the adjacent properties north and south of the subject property are improved with single-family homes and residential accessory structures. There are a few vacant parcels and farm fields to the west, as well as a farm field with a heavily wooded area to the east. There is also an approved ADU located two parcels south of the subject site.
- (3) **Whether removal of the restriction on the applicant's property would seriously affect the neighboring properties:** Removal of the size requirement for the proposed ADU is not likely to seriously affect the neighboring properties. The applicants converted the back portion of the existing garage, which has been on the property since the 1990's. It is located in the rear of the property, adjacent to state owned lands. A letter of support was received from an adjacent neighbor stating that the unit has had no impact on her and the other neighbors. Additionally, no opposition to the application was received and the office has received no complaints regarding an ADU on the property.
- (4) **Whether failure to remove the restriction would create unnecessary hardship or exceptional practical difficulty for the owner in relation to the owner's efforts to make normal improvements to the property:** Failure to partially remove the restriction would create unnecessary hardship for the property owners in relation to making normal improvements to the property. The owners have made significant investment in the property and requiring them to reduce the living space to 50% would be a financial hardship.

DECISION: On a motion made by Mrs. Denney and seconded by Mr. Carter, the Board of Adjustment voted 6 in favor of the motion to grant a **MODIFIED APPROVAL** of application A-25-33, thus granting a variance from the maximum size of an accessory dwelling unit of 50% of the floor area of the principal dwelling unit to allow an accessory dwelling unit that is 60% of the floor area of the principal dwelling unit, as shown on Exhibit B - Modified, attached hereto. The support of this motion was based on the public testimony, that the structure existed prior to the owners purchasing the property, that there is no impact to the neighboring properties, and that there is a financial hardship for the owner to reduce the living area to 50%.

NOTES:

1. The applicant is advised that any persons jointly or severally aggrieved by any decision of the Board of Adjustment may present to the Superior Court in and for Kent County a petition setting forth that such decision is illegal in whole or in part, specifying the grounds for the illegality. The petition shall be presented to the Court within 30 days after the filing of the decision in the office of the Board (9 Del. C. § 4918).
2. The applicant is advised that a Certificate of Use and a building permit shall be obtained for an Accessory Dwelling Unit. For more information, contact the Planning Office at

(302)-744-2471 and the Permitting Office at (302)-744-2451 between 8:00a.m. and 5:00p.m.

3. This variance will expire after **ONE YEAR** if a Certificate of Use and a building permit have not been submitted to the Division of Planning.

KENT COUNTY BOARD OF ADJUSTMENT

Brian Cusick, Chairperson

DECISION FILED: _____, 2025

Exhibit B - Modified

Application: A-25-33

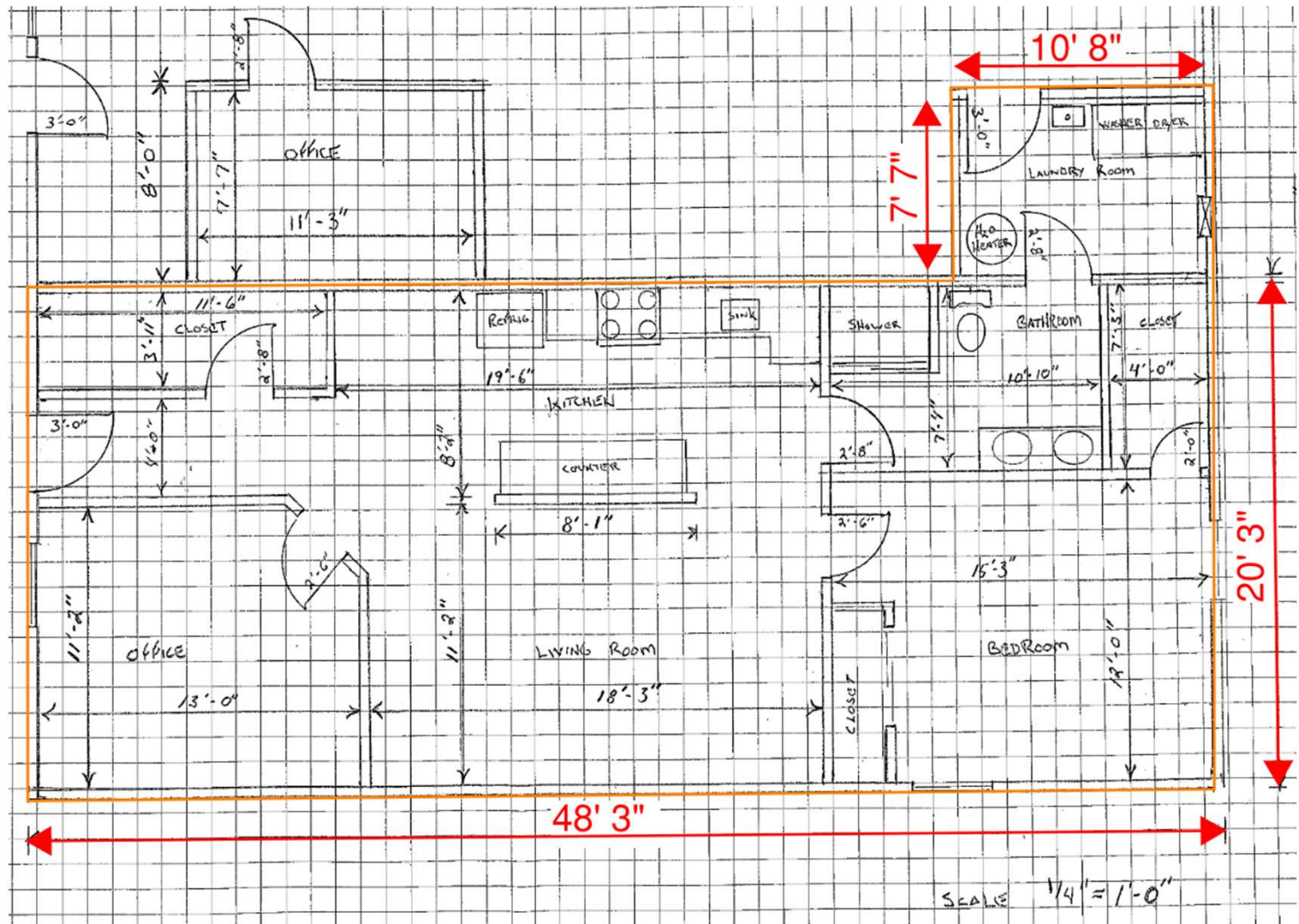
Lewis

Variance from the maximum size of an accessory dwelling unit of 50% of the floor area of the principal dwelling unit to legalize an accessory dwelling unit

Principal Dwelling = 1,482 sf

Permitted ADU = 741 sf (50%)

Variance Approved ADU Size = 889 sf (60%)



*Floor plan shows the requested square footage, not approved. Applicant can keep improvements up to 60% of the square footage of the main home.



Item Cover Page

BOARD OF ADJUSTMENT AGENDA ITEM REPORT

DATE: January 22, 2026

SUBMITTED BY: Jesse Lindenberg, Planning Services

ITEM TYPE: Application

AGENDA SECTION:
Notices of Decision

SUBJECT:
A-25-34 John Potter (Owner: South Bowers Fire Co., Inc.)
Tax Map No. 5-00-143.00-01-50.00-000

ATTACHMENTS:
[A-25-34 Potter Notice of Decision](#)
[A-25-34 Potter Exhibit B](#)



DEPARTMENT OF PLANNING SERVICES

NOTICE OF DECISION

APPLICATION: A-25-34

APPLICANT: John Potter
38 Valley Forge Dr.
Milford, DE 19963

OWNER: South Bowers Fire Co., Inc.
57 Scotts Corner Rd.
Milford, DE 19963

PROPERTY LOCATION: 57 Scotts Corner Rd.
Milford, DE 19963

**DATE OF PUBLIC HEARING
& DECISION:** December 18, 2025

MEMBERS PRESENT: Brian Cusick, Chairperson
Morgan Hudson, Vice Chair
Joan Denney
Temple Carter
Brauncy Jenkins
George Gallo, Jr.

NATURE OF REQUEST:

A-25-34 John Potter (Owner: South Bowers Fire Co., Inc.) seeks a variance from the required 15' parking setback from any residential property line to legalize existing parking (§171-6.B.(3) of the Kent County Code). The property is located on the northeast corner of Bennetts Pier Rd. and Scotts Corner Rd., east of Frederica. Levy Court District: 4th. Zoning District: AR. Tax Map No. 5-00-143.00-01-50.00-000

The applicant is requesting a variance of 12 ft. to allow parking 3 ft. from a residential property line. The required setback is 15 ft.

SUMMARY OF EVIDENCE

1. The subject site is 2.7309± acres and is improved with a firehouse, two accessory structures, and associated parking.

2. Mr. Jack Potter, applicant, spoke in favor of the application.
3. Mr. Potter explained that the Fire Company is looking to install a new sign and that is how they found out that the parking was too close to the property line. He stated that the parking lot has been there for approximately 10 years and that they are not looking to expand it.
4. Mr. Potter said that without the variance they would need to tear up 75 ft. of the parking lot, which would cause them to lose parking spaces. He added that the neighboring property belongs to the Webb family, that it is agricultural, and that there are woods and wetlands near the property line.

FINDINGS OF FACT & CONCLUSIONS OF LAW

Analysis of the four factors set forth in Board of Adjustment of New Castle County v. Kwik-Check Realty, Inc., 389 A.2d 1289, 1291 (Del. 1978), supports the **APPROVAL** of the requested variance.

- (1) **The nature of the zone where the property lies:** As shown on Exhibit A, the subject site is zoned AR (Agricultural Residential) outside the growth zone. The surrounding properties are similarly zoned AR. Public Service uses are permitted in this zoning district, and parking is permitted as part of this use when compliant with the requirements outlined in Chapter 171 of the Kent County Code.
- (2) **The character and uses of the immediate vicinity:** The character of the surrounding area is primarily residential, with some agricultural uses and some natural areas. A majority of the properties to the east, south, and northeast are improved with single-family dwellings and accessory structures. The property to the west, opposite Thompsonville Rd., and a few parcels further south/southeast are used for farm fields and chicken houses. The properties to the north/northeast are vacant and mostly consist of wooded wetlands.
- (3) **Whether removal of the restriction on the applicant's property would seriously affect the neighboring properties:** Removal of the setback requirement for the parking lot is not likely to significantly impact the neighboring properties. The parking area has been in place for at least 10 years and the portion of the adjacent property it abuts is wooded wetlands. Additionally, no opposition was received regarding the application.
- (4) **Whether failure to remove the restriction would create unnecessary hardship or exceptional practical difficulty for the owner in relation to the owner's efforts to make normal improvements to the property:** Failure to remove the restriction would cause an unnecessary hardship for the applicant, as the parking has been in place for over 10 years and removal of the area would reduce the number of parking spaces on the site.

DECISION: On a motion made by Mrs. Hudson and seconded by Mr. Carter, the Board of Adjustment voted 5 in favor, 1 opposed, of the motion to **APPROVE** application A-25-34, thus granting a variance from the required 15' parking setback from any residential property line to legalize existing parking that is 3' from the side property line, as shown on Exhibit B, attached hereto. The support of this motion was based on the testimony of the applicant, that the parking

has been in place for 16 or more years, that the area is located next to a wooded buffer, that no objections were received, and that requiring the removal of the area would be an unnecessary hardship for the owners.

NOTES:

1. The applicant is advised that any persons jointly or severally aggrieved by any decision of the Board of Adjustment may present to the Superior Court in and for Kent County a petition setting forth that such decision is illegal in whole or in part, specifying the grounds for the illegality. The petition shall be presented to the Court within 30 days after the filing of the decision in the office of the Board (9 Del. C. § 4918).

KENT COUNTY BOARD OF ADJUSTMENT

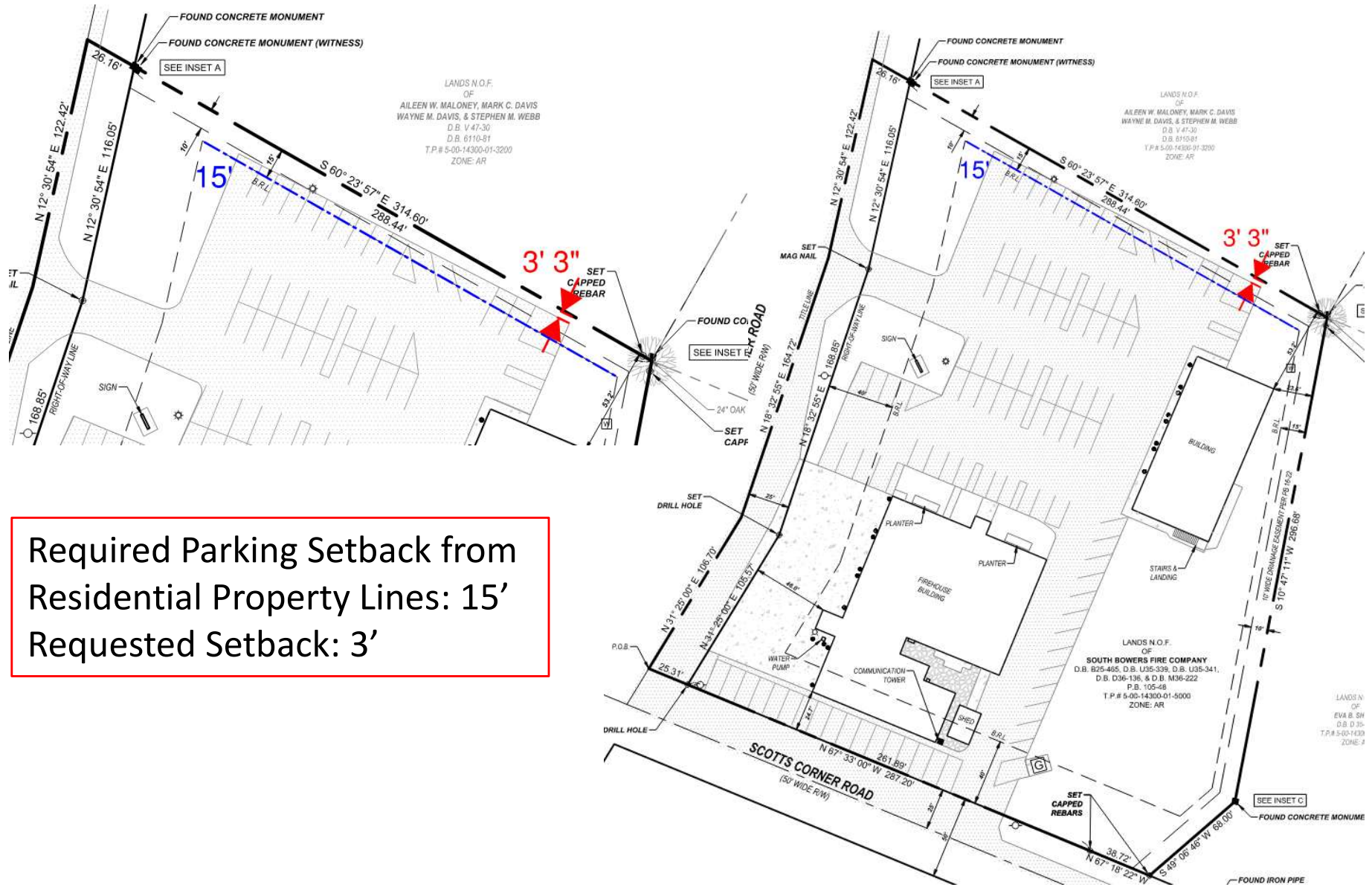
Brian Cusick, Chairperson

DECISION FILED: _____, **2025**

Exhibit B

Application: A-25-34
Potter (South Bowers Fire Co., Inc.)

Variance from the required 15' parking from any residential property line to legalize existing parking





Item Cover Page

BOARD OF ADJUSTMENT AGENDA ITEM REPORT

DATE: January 22, 2026

SUBMITTED BY: Jamie Fenske, Planning Services

ITEM TYPE: Application

AGENDA SECTION:
Notices of Decision

SUBJECT:
A-25-25 Donna K. and Jeffery Scott Brennan Sr.
Tax Map No. 7-00-102.00-01-03.05-000

ATTACHMENTS:
[A-25-25 Brennan - Notice of Decision](#)



DEPARTMENT OF PLANNING SERVICES

NOTICE OF DECISION

APPLICATION: A-25-25

APPELLANT/OWNER: Donna K. & Jeffery Scott Brennan Sr.
2442 Jebb Rd
Camden-Wyoming, DE 19934

**DATE OF PUBLIC HEARING
& DECISION:** October 16, 2025

DATE OF RECONSIDERATION: December 18, 2025

**MEMBERS PRESENT
OCTOBER 16, 2025:** Brian Cusick, Chairperson
Morgan Hudson, Vice Chairperson
Joan Denney
Temple Carter
George Gallo
Charlie Jones

**MEMBERS PRESENT
DECEMBER 18, 2025:** Brian Cusick, Chairperson
Morgan Hudson, Vice Chairperson
Joan Denney
Temple Carter
George Gallo
Brauncy Jenkins (recused)

NATURE OF REQUEST

A-25-25 Donna K. and Jeffery Scott Brennan Sr. seek an appeal of an administrative decision pursuant to §205-399 regarding the determination that the subject property does not meet the definition of a farm under **§205-54 of the Kent County Code**. The property is located on the southeast corner of Jebb Rd. and Dogleg Dr., west of Camden. Levy Court District: 6th. Zoning District: AC. **Tax Map No. 7-00-102.00-01-03.05-000**

SUMMARY OF TESTIMONY

1. Jamie Fenske, Planner for Kent County Planning Services, introduced the appeal.
2. Jeffrey Brennan Jr. explained that he is currently attending the University of Delaware for

a degree in education. He plans on using the poultry that they own to teach his students with hands-on experiences.

3. Mr. Jeffrey Brennan Jr. stated that they have had birds for the past four or five years. He added that they show the birds in the Delaware State Fair.
4. Mr. Connor Brennan detailed he is still in high school but his plans are to attend Del Tech and University of Delaware to major in ag business and then own his own poultry facility.
5. Mr. John Paradee submitted letters from Jeffrey Brennan Jr. and Connor Brennan's teachers.
6. Mr. Paradee stated that his primary argument is that the County has no legal authority to restrict agricultural uses on AC zoned properties per the Delaware Constitution. He added that the Planning Department's determination in this case is unlawful and discriminatory.
7. Mr. Paradee explained that the subject property 1.15 acre parcel is not located within a residential subdivision but rather in a rural area of Kent County, outside of the growth zone.
8. Mr. Paradee stated that the parcel is zoned AC, agricultural conservation, and under 205-53.B. of the County Code, agriculture is a first permitted use of the subject property. He added that 205-54 of the County Code defines agriculture as these uses include crop production and animal production. These uses also include any other agricultural use recognized by Delaware law. Animal production which is a first permitted use in the AC zoning district, is what the Brennans are doing at the subject property.
9. Mr. Paradee showed pictures of chicken hatchlings, turkeys, and chickens. He explained that they harvest and sell eggs from these birds. Mr. Paradee added that these are backyard flocks and they are common and lawful use of property in the AC zoning district within Kent County. He added that the Brennans are doing no different than what numerous other property owners are lawfully doing throughout the county.
10. Mr. Paradee detailed that backyard flocks must be registered with the Delaware Department of Agriculture in order to sell poultry or eggs or exhibit birds at any show. He explained that the Brennan flock is registered with the Delaware Department of Agriculture.
11. Mr. Paradee stated that there are 682 registered backyard flocks in Kent County and 585 of those 682 flocks are located on a parcel of land which is smaller than 10 acres and which also is the property owner's primary residence. He further detailed that the 682 registered backyard flocks in Kent County range from 1 to 11,000 birds and the average number of birds per flock is 44.
12. Mr. Paradee explained that the use the Brennans are conducting is no different than the agricultural uses being conducted on numerous neighboring properties.

13. Mr. Paradee showed pictures of properties with animals in the vicinity, listing their acreages, and property type per Kent County PRIDE.
14. Mr. Townsend questioned if there is any distinction or is it important for the Board to consider if the horses are for sale versus poultry being for sale.
15. Mr. Paradee responded that he does not believe it matters. He added that the only significance would be if they are offering the animals, or whatever they produce, like the eggs for sale, than you have to register with the Department of Agriculture. He explained that if you just want to have chickens or horses in your yard, than you do not have to register with the Department of Agriculture.
16. Mr. Paradee continued that the only significance of any sort of business activity is you have to register with the Department of Agriculture but in terms of the Kent County zoning ordinance, it makes no difference.
17. Mr. Paradee detailed that their legal argument is that Kent County has no legal authority to restrict agricultural uses on AC zoned properties. He added that agriculture is the only industry in Delaware that is protected from regulation by local government in the Delaware Constitution. Article II, Section 25 of the Delaware Constitution provides that the General Assembly may enact laws under which the county of Kent may adopt zoning ordinances limiting or restricting to specified districts and regulating buildings and structures according to their construction and the nature and extent of their use, other than agricultural purposes.
18. Mr. Paradee explained that this provision was interpreted in a case decided in 1994 by Judge Henley Graves, State v. Clark. Judge Henley Graves said that in Article II, Section 25 of the Delaware Constitution clearly prohibits the counties and municipalities from telling anyone to what agricultural uses they might put their agriculturally-zoned property.
19. Mr. Paradee stated that the County can regulate buildings and how far off the side, rear, and front yard they have to be and what types of materials they have to be constructed of to make sure they comply with building codes, even on AC zoned properties. He stated that the County can not tell someone, who owns agriculturally zoned property, what they can or can't do as long as it is for an agricultural purpose.
20. Mr. Townsend questioned what the extent of the case is about the use versus the structures.
21. Mr. Paradee responded that it is all about the use. He added that no one has said that the coupes or structures on my clients property violate any building code. All that they have been told is that they can't have those chicken coops on their property.
22. Mr. Townsend questioned if the chicken coop was constructed with a permit.
23. Mr. Paradee stated that he did not think that a permit is required. He added that to his understanding there is no violation or citation regarding the structures and that the

structures are in compliance. Mr. Paradee clarified that it is about the use and not the structure.

24. Mr. Paradee explained that General Assembly made sure that it was incorporated into Chapter 49 of the Delaware Code, that no zoning regulations shall apply to any land, building, greenhouse, or other structure proposed to be devoted to any agricultural use.
25. Mr. Paradee stated that Kent County Code says that crop production and animal production are first permitted uses as is any other agricultural use recognized by Delaware law. The definition of farm in §205-54 of the Kent County code is irrelevant to this case. He adds that this section of the code defines a farm as a parcel of land to be primarily used for agricultural purposes.
26. Mr. Paradee stated that a property does not need to qualify as a farm under the county code in order for the property to be used for agricultural purposes. He added that if it did, then all of the backyard flocks, horses, chickens, goats, and sheeps would all be illegal because those examples shown are not farms, they are properties that are single family residence properties that have animals on them.
27. Mr. Paradee stated that you don't have to be a farm to engage in agricultural. He added that §205-53.B. provides that AC zoned properties may be used for any agricultural use, which includes animal production and any other agricultural use recognized by Delaware law. He detailed that the Brennan's property does not need to qualify as a farm in order to engage in animal production because you don't have to be a farm in order to engage in agricultural uses.
28. Mr. Paradee stated that if the subject property can not be utilized for animal production because it is not primarily used for agricultural purposes, then no owner of any AC zoned property in Kent County could make any agricultural use of their property when the Planning Department concludes that the agricultural use is secondary to the residential use.
29. Mr. Paradee stated that determining if a property fits the definition of a farm in the code is subjective. He added that if it is concluded that if what the Brennans are doing doesn't fit in the code then all backyard flocks and all other backyard agriculture, on an AC zoned property that has a primary use as residential must be shut down. He added owners of AC zoned properties would be required to demonstrate that any agricultural use was the primary use on the property to continue.
30. Mr. Paradee adds that he contends that the Planning Department's interpretation and application of the code violates the Delaware constitution and is discriminatory and unlawful. He explained that AC zoned properties can lawfully have agricultural use on their property without being a farm and the subject property having to qualify as a farm for the proposed use is lawful agricultural use of their property when so many others are doing the exact same thing.
31. Mr. Paradee stated that without qualifying the subject property as a farm would subject the

applicants to a different standard and disparate treatment to others who are operating similarly and it's a violation of the Delaware constitution and a violation of the right to equal protection under the law.

32. Mr. Paradee stated that backyard flocks are very common and lawful on AC zoned properties throughout Kent County and what the applicants are doing is no different than what many others are doing lawfully. He added that Kent County has no legal authority to restrict agricultural uses on AC zoned properties.
33. Mr. Paradee provided a document from the Department of Agriculture that shows that the Brennan property is registered with the Department of Agriculture.
34. Ms. Donna Brennan, property owner, spoke in favor of the application.
35. Ms. Brennan explained that when she received the violation from Kent County, she made multiple calls to determine how to make it right. She added that she was advised by the Department of Planning that she had to register her flock as a farm by submitting proof that she could potentially make \$1,000 or more a year, which she submitted.
36. Ms. Brennan specified that the violation was for having more than 5 chickens a rooster and wasn't because of any structure on the property. She added that she did not want to be classified as a farm and does not consider herself a farm.
37. Ms. Brennan stated her sons are pursuing future roles and leadership in the agriculture sector. She added that they moved to Kent County to support their ambitions. She explained that when they bought their house it was zoned agriculture conservation and they were informed that they would be able to do what they are doing because they are not in an HOA and not in a development.
38. Ms. Brennan stated that the subject property has potential to serve as a foundation for their dreams enabling them to cultivate poultry but also participate in programs that elevate their status as Future Farmers of America.
39. Mr. Paradee added that this area is not a residential subdivision, there is no subdivision plan, and there was no zoning approval. He added these are all homes constructed on County roads, with no HOA, and no subdivision. He explained they are all AC zoned properties.
40. Mr. Paradee stated, in regard to State v. Clark, the County can regulate the structures but they can't tell the property owner that they can't make that use. He explained the County can regulate size, setbacks, construction materials consistent with the building code, and all other zoning requirements but they can't tell the property owner they can't make that use of the property.
41. Mr. Paradee stated that if the Brennan's only had five chickens and no roosters, then we would not be here. He added that this provision doesn't apply to their property, so they are

not limited to five.

42. Mr. Jeffrey Brennan stated that it's hard to do the business they are trying to implement with just five birds. He added with five birds they would get five eggs a day and that's not even half of a carton of eggs. He explained that for his degree he needs over \$10,000 invested along with more than 300 total hours invest into it, and five birds is not going to be enough to accomplish that. He specified that the \$10,000 is only the money invested; such as feed, runs, buying the birds, coops, and everything that goes into the birds.
43. Ms. Lisa Hatfield represented Kent County Planning Department.
44. Ms. Hatfield stated that the appeal is about the Planning Department's decision that this property does not qualify as a farm. She added that the appeal filed states "the Kent County Planning Department has denied our submission to have a parcel of land labeled a farm". She added that if the property is not found to be a farm then it limits how many chickens they can have but that is not what is before the Board.
45. Ms. Hatfield explained that the violated issued did address the setback. She stated that the Planning Department indicated on the violation that there were roosters, more than five chickens, and the coops on the property did not meet the setback requirements.
46. Ms. Hatfield stated that the response to the violation from the Brennans was "what can we do?" and they were told if it was designated a farm than they could have more birds and so they filed that application, which was denied.
47. Ms. Hatfield stated that this particular area is developed with approximately 25 single family homes, each one approximately a one-acre lot next to one another. She added that the subject property is surrounded by four houses to the right, six houses to the left, three houses behind. She detailed that these are the people that are listening to the birds and are smelling those birds everyday.
48. Ms. Hatfield stated that if this were a farm than it would qualify for my birds, but there is a reason that there's a designation limiting the number of birds in a residential area, and that is noise and smell.
49. Ms. Hatfield stated that the Kent County Code defines a farm as a parcel of land that is primarily used for agricultural purposes, and the key word is "primarily". She added that primarily is commonly defined as for the most part. She explained that you would need to use your land for the most part for an agricultural use.
50. Ms. Hatfield stated that the property is zoned residential and it's owned residential. She added the Planning staff doesn't disagree that the proposed use is agricultural but it is not the primary use and if it's not the primary use than it doesn't fit the definition of a farm under the Kent County Code.
51. Ms. Hatfield showed pictures of the parcel from Zillow showing a back porch, fire pit, and

regular grass to be cut. She showed pictures from Google Earth showing a coop in the back left corner with a back porch and a place to have a fire.

52. Ms. Hatfield detailed that the map shows the plot division and how clustered the homes are. She added that there are 25 homes on the left upper portion and another neighborhood in the right lower portion.
53. Ms. Hatfield explained that the property is zoned AC, Agricultural Conservation, but it is coded as a residential property because that's what it is used for. She added that Agricultural Conservation district by code is a district that is reserved for agricultural uses but also low density residential. She explained that this property is low density residential and the comprehensive plan confirms that this was the purpose of this property. She stated that the most recent comprehensive plan states that areas of large scale residential development are not encouraged but if they happen in the agricultural areas they are to be low density, hence the one-acre lots.
54. Ms. Hatfield stated that on average in Kent County a farm is 200 acres and the median size is 40 acres. She detailed the subject parcel is one acre.
55. Ms. Hatfield stated that the Planning Department does not deny that this is a permitted use. She added that they are not prohibited from an agricultural use and that they can have chickens but they are limited to five birds.
56. Ms. Hatfield explained that property violations in Kent County are driven by complaints. She added that there is a code that has to be complied with whether or not everyone else is or not. She explained that we don't know what properties the appellant has brought up are legal farms, if they have violations, or how many animals they have, but all of that is irrelevant for the subject appeal application.
57. Ms. Hatfield stated that §205-34 limits the amounts of birds on a residential property which is the reason the applicants want a farm designation. She added that §205-34 states that a residential property can have no more than five birds, they have to be registered, there has to be at least four feet for every animal they have, they have to be setback, odors can't be discernible from across property lines, and roosters are not permitted.
58. Ms. Hatfield stated that a property is either primarily residential or primarily agricultural but you can only have one primary use per lot. She added that it is important to be designated one or the other which will then determine the number of birds that can be on a lot.
59. Ms. Hatfield stated that there are some provisions in the case law and the code that says you can't regulate some items. She added that the Planning Department is not saying that they can't have chickens. They are allowed to have chickens as it is a permitted use.
60. Ms. Hatfield stated that in respect to State v. Clark, Judge Graves held that you cannot tell anyone what agricultural uses they can do but the provision allows the counties and municipalities to regulate all other zoning matters, not just building permits. She added

that the use is not being denied in this application.

61. Ms. Hatfield explained that 9 Del. C. §4901(b) provides that notwithstanding subsection (a), the broad delegation of zoning power allowed to Kent County in 9 Del C. §4901 density, population, setbacks, no zoning regulation shall apply to any land, building, greenhouse, or other structure proposed to be devoted for any agricultural use. She added that the next sentence of the code begins with for purposes devoted to this subsection any land, building, greenhouse, or structure shall be deemed to be devoted to agricultural use if (1) the land, building, greenhouse, or structure is assessed pursuant to § 8335 of this title, and they do not qualify under that because the burden of proof is on the appellant and they have made no indication that they fall under this section of the code. The next requirement would be (2) the land, building, greenhouse, or structure is within an agricultural preservation district pursuant to Chapter 9 of Title 3, and that requires 200 acres or a waiver to be allowed into the preservation district. The (3) requirement would be the person who leases or otherwise controls the land is required to implement a nutrient plan or agricultural waste management plan and we have no evidence of either of those being submitted. The next requirement (4), the building or greenhouse is devoted and meets the needs and qualifications for payments under compensation pursuant to a soil conservation program with an agreement with the federal government. No evidence of that has been submitted. The last requirement (5) states that the land, building, or structure is a farm market or roadside stand, which may be true, but all five requirements must be met.
62. Ms. Hatfield stated if the use is not devoted to agriculture and it does not meet the five requirements then it falls under subsection A and Kent County can indeed regulate the agricultural conservation district.
63. Ms. Hatfield stated that the subject property is a primary residence where the parents have jobs outside of the home and the children have a hobby in the backyard.
64. Ms. Hatfield stated that the only question before the Board is if the subject property is a farm or not. She added that there is enough information provided by the state code from the case law that the Board is permitted to regulate how many birds. She explained that your code can't stop them from using it for chickens but you can regulate how they use if for chickens and that is what is being done. They are permitted to have five birds and a coop provided it is set back property.
65. Ms. Hatfield stated the five birds restriction applies because it is a residential use property. She added that the code does not differentiate by zones, it differentiates by the purpose, residential versus farm.
66. Ms. Hatfield stated that the pictures that were shown are not relevant as we do not know what the number of animals are, what the property owner's applied for, or what the use it.
67. Ms. Hatfield read the appeal application "The Kent County Planning Department has denied our submission to have a parcel of land labeled as a farm." She added that the reason supporting the appeals reads "The decision not to classify the parcel as a farm is

currently under formal appeal. This designation is believed to be inconsistent with the Kent County Zoning Code and does not adequately consider the property's unique characteristics or the surrounding area. I have provided documentation demonstrating a projected income of over \$1,000 per year, which supports our classification of the property as a farm in accordance with Kent County regulations. I respectfully request the opportunity to articulate the importance of maintaining our ability to raise poultry, as it directly impacts my son's pursuit of a Future Farmers of America state degree and the American Degree. Thank you for your attention to this matter."

68. Sharilyn Hummel, 2476 Jebb Rd, spoke on the application.
69. Ms. Hummel stated that she acknowledges that she believes the Brennan's intentions have been sincere. They moved from New Castle under the impression that the subject parcel was agricultural land but they were misinformed.
70. Ms. Hummel stated that [she and] the Brennans live in a six-lot residential subdivision. She added that the applicants initially contacted the agriculture department which allowed them to register 60 birds but she questioned how it is possible to approve 60 birds without confirming the property compliance with the local zoning laws especially when it is a one-acre residential lot.
71. Ms. Hummel questioned why the zoning check is not required to approve the process before granting permission for all of the birds. She additionally asked if there has been any follow up or any health inspections to ensure the birds are properly cared for and if they are being checked for carrying diseases and how that could affect neighboring flocks.
72. Ms. Hummel stated that the property is zoned AC which is primarily residential where they are located and does not allow farming and commercial operations of this kind on a one-acre lot.
73. Ms. Hummel stated that the Brennans did inform some of the neighbors about their plans. She added that after the zoning request was denied the Brennans continued to buy and sell birds and build additional coops that has caused ongoing disruptions to noise, odors, and general nuisance threatening our peaceful residential nature of the neighborhood.
74. Ms. Hummel stated that when the zoning rules are ignored or sidestepped the consequences affect more than just one household.
75. Ms. Hummel stated that there are coops on the property line, a structure over the septic drain system, and the operation continues even after it was denied. She added that they are basically running a business on a residential lot.
76. Ms. Hummel stated that the business can't disrupt your neighbors, alter the residential character of property, you can't operate a retail business from your home, you can't create increased traffic, and you can't employ outside help. She added that what is happening is not just a zoning violation, it doesn't even meet the standards of a home-based business.

77. Ms. Hummel stated that she does not think that Caesar Rodney FFA would ever support violating zoning laws to advance agricultural education. She added that they teach responsibility, structure, and proper animal care.
78. Jeff Iverson, 2504 Jebb Rd., spoke on the application.
79. Mr. Iverson stated that his property is 150' from the Brennan property. He added this area was subdivided into one-acre residential lots with no farm animals as per our original deed restrictions.
80. Mr. Iverson stated that the property is presently housing at least 60 poultry. He added that according to a conversation with Jeff Brennan, and he acknowledged 60.
81. Mr. Iverson stated that this is producing a major fly, rodent, and odor issue in the neighborhood. He added that most of the houses on that road are probably half a million dollars or more and this is creating a real problem if the Brennans have at least 60 poultry plus roosters. He stated that allowing a farm status on this residential property would have an adverse effect on neighboring property values.
82. Mr. Iverson stated that the deed restrictions say the entire area is restricted to residences and buildings to be used in connection with the same. He added that keeping of livestock or farm animals on said premises is forbidden with the exception of pets.
83. Mr. Iverson stated that the intent of the area is residential and he wants to keep it that way.
84. Wilbur Myers, 21 Milbourn Manor Dr., spoke on the application.
85. Mr. Myers stated that he also owns the lot directly west of the subject parcel. He added that all of these properties were restricted. He explained that he helped develop these properties through the years.
86. Mr. Myers stated that he has been there for more than 20 years and they need some protection from something like this happening. He added that they have no problem with 5 birds and no roosters. If someone wants a couple of chickens that is fine. He added he is probably four properties down to the southwest and can hear his birds, roosters, and turkeys.
87. Mr. Myers stated that he also has a problem with all of the birds there polluting our water system. He explained that they have shallow wells. He added that the stream runs 290' directly west of his property, parallel with his property and all of that water goes into Issacs Branch.
88. Senator Dave Lawson spoke on the application.
89. Senator Lawson stated that there is a neighborhood to be considered. He added that he was

raised on a farm and knows how far the smell goes when the chicken manure is spread, and it goes for miles. He detailed that he believes there is a rule that once you spread the chicken manure it must be disked in within 72 hours.

90. Senator Lawson stated that the code requires four square feet per bird. He added that he does not see that with the turkeys or other birds, the pens look pretty tight.
91. Senator Lawson stated that the applicants came from a county which was highly populated and thought they were moving to an agriculture area but they moved into a residential area. He added that he would like the Board to deny the request for the Brennan's and their property being classified as a farm.
92. Debbie Beatty, 4 Milbourn Manor Dr., spoke on the application.
93. Ms. Beatty stated that they moved to Camden-Wyoming in 2019 due to the nice quiet neighborhood with great neighbors where everyone keeps their property neat and tidy. She added that they have 60 chickens and turkeys that they know of, not including the baby chicks in the garage, five dogs, and indoor birds.
94. Ms. Beatty stated that the roosters are loud. She added that people within 0.7 of a mile of 60 backyard poultry could face the health concerns primarily related to pathogens and respiratory issues from airborne dust and bioaerosols.
95. Ms. Beatty stated that she would like a quiet nationhood to stay quiet without the excessive noise, odor, predators, rodents, airborne illness, and the potential to decrease our property values.
96. Ms. Beatty stated that if the applicants are approved to be a farm, this will probably open up a can of worms. She added that they are very nice people but they wanted a farm and bought a house in a residential area.
97. Mr. Townsend stated that deed restrictions are private contractual restrictions that are not enforceable by the County.
98. Mr. Paradee stated that the County's presentation is off point, the issue is not whether this property is a farm. The issue is whether an agriculturally zoned property is permitted to conduct agricultural uses and under the code it is.
99. Mr. Paradee stated that Ms. Brennan was told that she needed to qualify as a farm, and it is his position that is wrong, but that is why the application submitted requested to be designated as a farm.
100. Mr. Paradee stated that the code sections that lists the permitted uses includes crop production and animal production and it does not say that you have to be a farm. He added that all of the pictures that he showed are AC or AR zoned properties that would have to get rid of their animals.

101. Mr. Paradee stated that he objects to any testimony from any neighbors who can't demonstrate they have legal standing. He added that this controversy erupted based on a neighbor complaint and that the testimony from the public is essentially about noise, odor, and it's unsightly. He stated these are not basis under the county code to deny the applicants a lawful agricultural use.
102. Mr. Paradee stated that the code says this property is zoned AC and is an agricultural property. He added this property is not a subdivision. It was once one parcel that was subdivided but is not a recorded subdivision.
103. Mr. Paradee stated that if the property were in a residential subdivision inside a municipality or inside the growth zone than none of this could happen there and the code talks about the prohibitions in context of residential properties.
104. Mr. Paradee stated that the second provision of §205-34 says no more than five such animals, it doesn't say chickens, shall be permitted on a residential lot. He added that means a residentially zoned lot and that makes sense that you wouldn't want to have chickens, horses, goes, cows, and pigs on a residentially zoned property in Kent County or a municipality.
105. Mr. Paradee showed pictures of parcels and stated that they have more than five animals.
106. Mr. Paradee stated that the subject property is not a residential lot. He added that it's true that it has a residence on it because residences are permitted in the AC zoning district but the subject property is agriculturally zoned. He explained that the property is not a part of a residential subdivision.
107. Mr. Paradee stated that the neighbors may not like what's next to them, but they live on AC zoned properties that are outside of the growth zone, in very rural western Kent County.
108. Mr. Paradee stated that agriculture is the most revered industry in Kent County.
109. Mr. Paradee stated that the subject property does not need to qualify as a farm and that farms are permitted in the AC zone and so is animal production and crop production without being a farm.
110. Mr. Paradee stated that Department of Agriculture has no problem with the use being conducted on the subject property and it is in compliance with all of their regulations.
111. Mr. Paradee added that the applicants have erected a 6' fence around the property, up to 40' from the road. He added that they are trying to do what they are allowed to do and be good neighbors.
112. Mr. Paradee stated that the property is not a farm, and the County was right that they are not a farm. The staff's determination that it is not a farm is correct and they agree with

that. He added that he told his client that the County was right that they are not a farm but they don't need to be a farm. He stated that they are asking the Board to acknowledge that they don't need to be a farm in order to do what they are doing.

113. Mr. Paradee stated that you can not tell the applicant they can't have chickens or that they can only have 5 chickens, but you can tell that the chicken coops must comply with County Code. You can't tell them what use they can make, what agricultural use, if their property is zoned agriculture, but they do have to comply with everything else about the County Code including setbacks. He added that his client moved the coops and do comply with setback requirement.
114. Mr. Paradee stated although they have a house on the property, their property is an agricultural property. He added that houses being pretty close together doesn't make it residentially zoned property, it's an agriculturally zoned property.
115. Mr. Paradee stated the question is, what is the zoning of the property? The zoning is AC. It is not residential and it is not a recorded, recognized, residential subdivision from the perspective of the County Code.
116. Mr. Paradee stated half acre lots or smaller in the AC zoned with a house on them are zoned agricultural and could have an agricultural use. He added they would be limited physically if the lot is so small you can't plant a lot of crops and you can't put a lot of animals on it. He added that this section doesn't apply to AC properties at all.

DECISION OF THE BOARD

The applicant's appeal was heard at the October 16, 2025 Kent County Board of Adjustment Meeting and reconsidered at the December 18, 2025 Board of Adjustment Meeting. Reconsideration was mutually agreed upon by the parties and granted to address the outstanding issue of whether the County is authorized to determine that an AC zoned parcel was primarily residential in use and subject to restrictions on agricultural uses, specifically limits on the number of animals permitted on a residential lot. The Board's two-part decision on the appeal follows.

At the October 16, 2025 Board of Adjustment Meeting the Board voted on the requested relief strictly expressed in application A-25-25, a reversal of the County's determination that the subject property did not constitute a "farm" as such term is defined in Kent County Zoning Code §205-54.

On a motion made by Ms. Hudson and seconded by Mr. Gallo, the Board of Adjustment voted six (6) in favor with one member absent, to deny the appeal and thereby affirm the County's determination that the subject property does not meet the definition of a farm.

As justification for its decision to affirm the County's interpretation of the definition, the Board cited testimony, argument, observation, and that the County is authorized to impose conditions

upon uses in the AC zoning district. The Board’s decision acknowledges that the County may classify properties in accordance with their primary use; that properties are restricted to one primary use; and that properties in the AC district may be classified as residential if that is their primary use. Furthermore , it is not unreasonable to restrict the number of animals on a residential property. Given the characteristics of the subject property, it cannot be classified as a farm. And importantly, the applicant acknowledged during presentation that subject property is not a farm.

At the December 18, 2025 Board of Adjustment Meeting the Board voted on an arguably unresolved issue raised by the applicant in application A-25-25.

On a motion made by Mr. Gallo and seconded by Ms. Denney, the Board of Adjustment voted five (5) in favor, with one (1) member absent, and one (1) member recusing, to deny the appeal and uphold the County’s position that the County may lawfully impose farm animal limits on residential properties in the AC zone.

As justification for its decision to affirm the County’s interpretation, the Board cited argument from the attorneys and testimony from the October Board of Adjustment Meeting, that the subject property’s proper classification is “residential”, that the property’s primary use is residential, and that the physical attributes of the property are residential. Consequently, the poultry restrictions of §205-34 should be imposed on the property.

In making its decision, the Board recognized that residential uses are expressly permitted in the AC zone; that the County is authorized to classify an AC zoned property as residential and thereby subject it to restrictions applicable to residential uses. The Board rejects the notion that all AC zoned parcels are primarily agricultural and not subject to regulations of agricultural uses.

Brian Cusick, Chairperson

Dated _____, 2026

Morgan Hudson, Vice Chair

Dated _____, 2026

Joan Denney

Dated _____, 2026

Temple Carter

Dated _____, 2026

George Gallo

Dated _____, 2026

NOTE:

§ 205-403 of the Code provides that any person jointly or severally aggrieved by any decision of the Board of Adjustment may present to the Superior Court in and for Kent County a petition setting forth that such condition is illegal in whole or in part and specifying the grounds for the illegality. The petition shall be presented to the Court within 30 days after the filing of the decision in the office of the Board (9 Del. C. § 4918).