



City of Dover
Board of Adjustment
April 16, 2025
V-25-01

Title: Property at 2 Westover Drive - Application for a Variance

Location: Northwest corner of Westover Drive and Northdown Drive

Address: 2 Westover Drive, Dover, DE

Owner: Jason and Page Bebout

Tax Parcel: ED-05-076.13-02.18.00-000

Application Date: March 14, 2025

Present Zoning: RM-1 (Medium Density Residence Zone)
Planned Neighborhood Design (PND)

Present Use: Single-family detached house

Proposed Use: Single-family detached house with above-ground swimming pool

Reviewed By: Ann Marie Townshend, AICP, Planning Consultant (Rossi Group)
Dawn Melson-Williams, AICP, Principal Planner

Variance Type: Area Variance

Variances Requested: Request has been made for a Variance from the requirements of *Zoning Ordinance*, Article 5 §1.114 to allow for the edge of the water containment portion of the pool to be 12 feet (less than the 15 feet required) from the side property line.

Note: This Review Report was initially prepared by staff of the Rossi Group (under a Planning Services contract with the City of Dover). The Report was completed with additional review and editing by the City's Planning Office.

Project Description

The property is located at 2 Westover Drive. A Request has been made for a Variance from the requirements of *Zoning Ordinance*, Article 5 §1.114 associated with a proposed above-ground swimming pool. The Variance Request seeks a reduction of the minimum setback from 15 feet to 12 feet from the side property line for the edge of the water containment portion of the swimming pool. The walkway surrounding the pool that is integrated with the pool structure is two-feet wide and will comply with the minimum setback of five feet required for associated

structures. The property is zoned RM-1 (Medium Density Residence Zone) and subject to the PND (Planned Neighborhood Design) as part of the Village of Westover PND. The owners of record are Jason and Page Bebout. Property Address: 2 Westover Drive, Dover DE. The Tax Parcel ID is ED-05-076.13-02-18.00-000

Property and Adjacent Properties: Zoning and Land Use

The property is zoned RM-1 (Medium Density Residence Zone) and subject to the PND (Planned Neighborhood Design) as part of the Village of Westover PND. The property survey (Exhibit F) lists the property as 11,043 SF+/- but the Applicant describes the property as a 10,018 SF Lot in the Exhibit D – Narrative. The property contains a single-family detached dwelling with attached garage. The adjacent properties on Westover Drive and Northdown Drive are zoned RM-1 and are lots with single-family detached houses. There are common open space areas to the northwest of the subject property, across Northdown Drive to the southeast, and across Westover Drive to the northeast. Townhouses on Trafalgar Drive are also located across Westover Drive from the subject property, adjacent to the common open space.

A Map Exhibit (Exhibit B) prepared by Staff is attached to this Report. It shows the subject property's location and the surrounding zoning. Map Exhibit C shows an aerial view of the area.

Code Citations

RM-1 (Medium Density Residence Zone)

The subject project area is zoned RM-1 (Medium Density Residence Zone). *Zoning Ordinance*, Article 3 §6 lists the permitted uses, conditional uses, and other provisions of the RM-1 zone. This section references that permitted uses include all uses permitted in the one-family residences zones as described in Article 3 §1. *Zoning Ordinance*, Article 3 §1.15 (b) allows for a pool that is incidental to the residential use and not operated for personal gain.

The property was developed as part of the Village of Westover Planned Neighborhood Design (PND). In the RM-1 zone for PND developments, the bulk standards for development are outlined in *Zoning Ordinance*, Article 4 §4.10. The subject lot complies with the requirements of this section.

Swimming Pools

Requirements for swimming pools are addressed in *Zoning Ordinance*, Article 5 §1.11.

Article 5, Section 1. - Supplementary regulations applying to residence zones

1.11 *Swimming* pools.

1.111 *Definition*. For the purposes of this section, swimming pools shall be defined as any pool, tank, depression, or excavation in or above ground, or other structure which shall cause retaining of water over a greater depth than 24 inches.

1.112 *Safety*. All swimming pools as defined in this section must conform to the requirements of Dover Code, Chapter 22—Buildings and Building Regulations.

1.113 *Placement*. Swimming pools shall be permitted to be established in the side and rear yard, but shall be prohibited from placement between the principal structure and the street.

1.114 *Setback*. The edge of the swimming pool, specifically referring to the edge of the water containment portion of the pool, shall be no less than 15 feet away

from all property lines. All associated structures, buildings, and pavement related to the swimming pool shall be no less than five feet away from all property lines.

Applicant's Proposed Project and Variances Requested

The Applicant has submitted a plot plan (Exhibit F) that shows the lot, location of the house and other improvements on the lot, and the proposed pool with the approximate dimensions and proposed setback from the property line. The Exhibit shows a 10-foot setback between the pool and the side property line. The pool is surrounded by a two-foot-wide walkway, leaving the water containment portion of the pool 12 feet from the side property line.

The Applicant described the project as follows (See Exhibit D for full text of narrative):

Project Background Information: My name is Jason Bebout and I'm writing this in hopes of getting a variance for the Zoning Ordinance in article 5- Supplementary Regulations of 1.114 setback for my Kayak Brand 12'x24' above ground pool with 6' end deck and 2' walk around deck. The 2100 square foot single family home is located at 2 Westover Drive on a 10,018 square foot corner lot in the subdivision of Village of Westover.

The pool is an all aluminum reinforced above ground pool that is being professionally installed; this will be freshly installed by licensed contractors from Leisure King pools and spas based out of Naples, Florida. It comes with its own fenced in attached non-slip aluminum decking and walkaround surface. The pool also comes with a Lifetime warranty and retractable ladder for easy access while pool is in use and can be stored/locked when pool is not in use and is guaranteed to last at least 30 years. The pool will also need to be bonded and grounded by an electrician to prevent any injuries.

The Applicant also provided a series of annotated Photographs; See Exhibit G.

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 responses are provided in Exhibit D – Written Narrative and Exhibit E – Email from Applicant Dated 3/28/2025 and listed below. The 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 Applicant does not mention the zoning of the property in the Narrative other than the property being a corner lot in the subdivision of Village of Westover.)*

Staff Response:

The subject property is zoned RM-1 (Medium Density Residence Zone) and developed as a residential lot. It is located in the Village of Westover PND that was developed under the Planned Residential Development (PRD) provisions which are now codified as the Planned Neighborhood Design (PND) in the *Zoning Ordinance*, Article 3 §24. The accessory use of a swimming pool is permitted within residential zones.

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

Applicant Response: The front of the house faces North towards Westover Drive, while the East side faces Northdown Drive, and the other is located to the West of the property at 4 Westover Drive.

Staff Response: The Village of Westover PND Neighborhood consists of single-family residences including single family detached dwellings, duplex units, and townhouse uses and there are also multi-family units in an apartment complex located further northeast in the neighborhood. Many of the dwellings include fenced yards with several including swimming pools. The accessory use of a swimming pool in a residential yard is compatible with the character of the immediate vicinity and the surrounding residential uses.

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

Applicant Response: There is a 6' vinyl fence surrounding my backyard, removal of restriction would not affect to the neighbor to the South of the property nor would it affect the neighbor at 4 Westover Drive.

Staff Response: As stated by the applicant, the above-ground pool will be located behind a six-foot-tall privacy fence that exists on the side property line. Based on an email from the applicant (Exhibit E) the total height of the above-ground pool, including the fence surrounding the pool deck, is seven feet. If the variance is granted, the pool deck fence which surrounds the pool deck would be ten feet from the property line and behind where

the vinyl privacy six-foot-tall fence is located. Therefore, it would not seriously affect the neighboring property at 4 Westover Drive. The location of the pool on the north side of the house at 2 Westover Drive is blocked by a privacy fence and a shed placement along the property line shared with the lot at 203 Northdown Drive.

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: Per article 9, Board of Adjustment section 2.11 area variance; there is a 3.5' wide paver walkway that is located 4' from my house along the West side of the yard that leads to the patio in the backyard. The total width of the side yard from the West property line to the chimney is 33'. The total width from the West property line to the paver walkway is 26'. There is also an air conditioning unit that sits 31' from the West property line. If I were to have the pool installed at the current water wall mark of 15', this would make the pool itself sit one foot onto the walkway resulting in the 2' walkaround deck on the East side of the pool 3' onto the paver walkway leaving me with a 4' clearance between the pool and the chimney and only 2' from the air conditioner unit. I am currently requesting a 3' variance for the water wall. That would make the walkaround deck 10' from the West property line. The water wall would start at 12', the ending water wall would be at 24', and the other side of the walkaround deck would end at exactly 26' leaving the full width of the paver walkway as a fully usable surface. If the restriction is not removed, this would result in the removal of the paver walkway and would reduce distance between house and pool decking.

Staff Response:

The *Zoning Ordinance* allows for swimming pools as an accessory use on residential lots. Article 5 §1.11 provides specific requirements for the placement of swimming pools on residential lots. The proposed swimming pool meets all of these criteria except for the required 15-foot distance for the water containment area from property lines. As proposed, the water containment would be 12 feet from the property line. In reviewing the applicant's submission, in particular Exhibit F, it is clear that the proposed pool location on the property is where it would provide the maximum distance from the property line. The existing features of a paver walkway and air conditioning unit adjacent to dwelling limit the ability to adjust the placement of the pool. If the Variance is not granted, the property owners likely would not be able to place the swimming pool on the property, creating a practical difficulty that could be identified as exceptional.

Variance Recommendations

Staff recommends approval of the Variance that would allow for the water containment portion of the swimming pool to be located 12 feet from the property line.

Staff recommends **approval** of the variance for reasons as follows:

- The *Zoning Ordinance* permits swimming pools accessory to residential uses within the residential zones. Therefore, the placement of the swimming pool is consistent with the zone and the surrounding residential neighborhood.

- The proposed placement of the swimming pool is in a location that requires a variance of only three feet, which is less than would be required if placed elsewhere on the lot. No other location on the lot could accommodate the required setback due to the corner lot configuration on the dwelling placement on the lot.
- The location of the swimming pool will not seriously affect neighboring properties and uses.
 - The swimming pool will be placed behind a solid (privacy) fence that is six feet in height. Additional, the above ground pool structure includes a fence around the pool deck area.
 - The adjacent structure (pool deck and fence) exceeds the minimum setback of five feet from the property line.
- If the variance is not granted, the property owner would likely be unable to place a swimming pool on the lot, creating the potential for an exceptional practical difficulty.

Advisory Comments to the Applicant

- If granted, the variance becomes 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 variance is granted, a Building Permit is required prior to the commencement of the construction/installation of the swimming pool. All other code requirements for the placement of the swimming pool must be met.
- 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
A	BOA Application Form	1
B	Zoning Map Exhibit (Staff)	1
C	Planning & Inspections View Map – Aerial Map Exhibit (Staff)	1
D	Applicant's Written Responses: Narrative	1
E	Email from Applicant Dated 3/28/2025	1
F	Plot Plan (Survey)	1
G	Photographs	8