



City of Dover

Board of Adjustment

July 19, 2023

V-23-02

Location: 59 Sherwood Court, Dover DE

Owner: Jason and Joanna Francis

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

Application Date: June 6, 2023

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

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

Reviewed By: Julian Swierczek AICP, Planner II

Variance Type: Area Variance

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

Project Description

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

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

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

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

Adjacent Zoning and Land Use

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

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

Code Citations

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

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

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

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

Exceptional Practical Difficulties Tests

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

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

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

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

Review of Application

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

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

Applicant Response:

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

Staff Response:

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

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

Applicant Response:

“The immediate vicinity of the property is residential.”

Staff Response:

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

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

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

Applicant Response:

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

Staff Response:

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

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

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

4. Whether, if the restriction is not removed, the restriction would create unnecessary hardship or exceptional practical difficulty for the owner in his efforts to make normal improvements in the character of that use of the property that is a permitted use under the provisions of the *Zoning Ordinance*.

Applicant Response:

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

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

Staff Response:

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

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

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

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

Variance Recommendations

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

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

Staff Recommendations

Staff refers this variance with the following recommendations::

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

Advisory Comments to the Applicant

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

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

GUIDE TO ATTACHMENTS

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