



City of Dover

Board of Adjustment

February 15, 2023

V-23-01

Location: 519, 527, 533, and 533A Kerbin Street, Dover DE

Applicant: Matthew Brown

Owner: Horizon Property Investments LLC

Tax Parcel: ED-05-077.09-05-41.00-000

Application Date: December 6, 2022

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

Present Use: Residential: 3 One-Family detached dwellings (single family homes) and Apartment Unit

Reviewed By: Julian Swierczek AICP, Planner II

Variance Type: Area Variance

Variances Requested: Allow for the reduction of the Minimum Required Lot Width for the R-8 Zone for 519, 527, and 533/533A Kerbin Street;
Allow for the increase in the Maximum Lot Coverage permitted in the R-8 Zone for 533/ 533A Kerbin Street.

Project Description

The Applicant is requesting an area variance from the Article 4 §4.1 of the *Zoning Ordinance* pertaining to the Minimum Lot Widths required, as well as the Maximum Lot Coverage permitted in the R-8 (One-Family Residence Zone). Specifically, a request is to allow for the reduction of the Minimum Required Lot Width for 519, 527, and 533/533A Kerbin Street and the Maximum Lot Coverage permitted for 533/ 533A Kerbin Street. This is to then allow for the Minor Subdivision of the existing parcel into three (3) new parcels for 519, 527, and 533/533A Kerbin Street respectively.

Adjacent Zoning and Land Use

There are four total buildings existing on the one parcel of land which the owner is intending to subdivide. Three (3) of the existing buildings (addressed as 519, 527, and 533) were built prior to 1954 and are utilized as one-family detached dwelling units (single-family homes). The building addressed as 533A is to the rear of the house at 533 and appears to have been originally built as an Accessory Building (Garage) prior to 1954 as well. This Accessory Building however is two-stories with storage on the first floor and a residential dwelling unit (apartment) on the second floor. It is unclear as to when these properties may have been consolidated, or if they were initially developed on an individual parcel of land. As this was established prior to the current zoning provisions of the City of Dover *Zoning Ordinance*, these buildings are considered legal non-conforming.

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 east side of Kerbin Street, south of East Water Street. 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).

The property immediately adjacent to the subject site to the south is also zoned R-8 and contains a one-family detached dwelling unit (single-family home). To the southwest of the subject site, running east-west is Elm Terrace, again zoned R-8 and containing a series of one-family detached dwelling units (single family homes). Immediately abutting the property to the north is a property zoned IO (Institutional and Office Zone) and containing a Professional Office Use, with the State Capital Complex lying north beyond that. Across Kerbin Street to the west is property again zoned IO and containing the Christ Episcopal Church and Cemetery. Properties to the north and west are also subject to the H (Historic District Zone); however, the subject property is not, nor are the R-8 zoned properties to the south and west.

Code Citations

R-8 (One-Family Residence Zone)

Table 1 below lists the Zoning Bulk and Parking Regulations for the R-8 zoning district which are found in *Zoning Ordinance*, Article 4 §4.1. Also provided are the bulk standards that are proposed with the potential minor subdivision to divide the parcel into three parcels (lots). The non-compliant Bulk standards highlighted:

	R-8	519 Kerbin St.	527 Kerbin St.	533/533A Kerbin St.
Minimum required:		Proposed	Proposed	Proposed
Lot area (sq. ft.)	8,000	10,854	9,356	9,265
Lot width (ft.)	70	66.5	62.94	61.80
Lot depth (ft.)	100	148.26	150.06	151.92
Front yard (ft.)	25	40.7	40.6	40
Minimum side yard (ft.)	10	12.9	12.9	*9.4
Total both side yards (ft.)	20	33	25.8	22.3

	R-8	519 Kerbin St	527 Kerbin St	533/533A Kerbin St
Rear yard (ft.)	30	70	77	70
Maximum permitted:				
Building height				
Stories	2 ½	1 1/2	1 1/2	1 ½ and 2
Feet	35	Not provided	Not provided	Not provided
Lot coverage	35%	20%	26%	44%

* It is noted that the 9.4 foot side yard setback from the house addressed as 533 Kerbin Street to the south property line is an existing legal non-conforming setback. The Minor Subdivision proposed would not increase the non-conformity of this setback, and it is consequently permitted to continue as such. To that end, the *Zoning Ordinance* Article 7 Section 1 states the following when evaluating a property for redevelopment which has non-conforming setbacks:

1.3 Normal maintenance and repair, structural alteration in, and moving, reconstruction or enlargement of a building which does not house a nonconforming use, but is nonconforming as to the district regulations for lot area, lot width, front yard, side yard, rear yard, maximum height, maximum lot coverage, or minimum livable floor area per dwelling is permitted if the same does not increase the degree of, or create any new nonconformity with such regulations in such building.

It is also noted that the Minor Subdivision would propose to maintain 533 and 533A (containing a One-family detached dwelling unit (single-family home) and Apartment respectively) on one single Lot. To that end, the *Zoning Ordinance*, Article 3 Section 1 notes the following:

1.1 *Uses permitted.* In a one-family residence R-20, R-15, R-10, R-8 and R-7 zones, no building or premises shall be used and no building or part of a building shall be erected or altered which is arranged, intended or designed to be used, in whole or in part, for any uses except the following:

1.12 One-family detached dwellings, not to exceed one such dwelling per lot.

Additionally, the *Zoning Ordinance* Article 12 - Definitions provides the definitions for a series of terms as follows:

Dwelling, detached: A dwelling having no walls in common with other dwellings or with nonresidential uses.

Dwelling, one-family: A permanent dwelling unit placed on a permanent foundation and designed and intended for use by only one family. One-family dwellings shall not include manufactured homes or mobile homes but shall include modular homes constructed to the standards of the Dover Code of Ordinances, Chapter 22—Buildings and Building Regulations.

Dwelling unit: A building or entirely self-contained portion thereof containing complete housekeeping facilities for only one family, including any domestic servants employed on the premises, and having no enclosed space (other than vestibules, entrance or other hallways or

porches) or cooking or sanitary facilities in common with any other dwelling unit. A boarding[house] or roominghouse, convalescent home, dormitory, fraternity or sorority house, hotel, inn, lodging, nursing, or other similar home, travel trailer, recreational vehicle, or other similar structures or vehicles shall not be deemed to constitute a dwelling unit.

Apartment: A dwelling unit, within a building with other uses and/or dwelling units, that is intended for use as a residence by an individual or a single family.

The property currently contains four (4) dwelling units on an individual lot. Additionally, one such unit does not meet the above definition of a one-family detached dwelling unit, and by definition is therefore considered to be an apartment. The Minor Subdivision is proposing to reduce the number of Dwelling Units to one per Lot with the exception of two (2) units per Lot for the proposed lot at 533 and 533A Kerbin Street. This overall is decreasing the degree of non-conformity. Additionally, the apartment use on the southernmost property would be an established Legal Non-conforming Use.

The *Zoning Ordinance* also includes provisions requiring a setback for Accessory Buildings of 5 feet. The houses addressed as 519 and 527 Kerbin Street both contain Accessory Buildings (Sheds) to the rear of the main buildings, which conform to these requirements as found in Article 5, Section 1.

Applicant's Proposed Project

The Applicant has submitted a Site Plan Drawing (Exhibits B), indicating the proposed Minor Subdivision were this Area Variance Application to be approved. The Applicant had met with Planning Staff prior to the Plan submission to discuss the Project proposal. Planning Staff generally finds the Variances requested to be the least necessary to accomplish the subdivision of the property into three (3) separate properties.

If the area variance is granted, the proposed Minor Subdivision will still be subject to a separate application for a Planning Commission Review Process as per the *Land Subdivision Regulations*. Were Planning Commission Approval to be granted, the Applicant would still need to obtain Final Record Plan Approval, and subsequently have the Minor Subdivision Recorded with the Kent County Recorder of Deeds.

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 is currently zoned R-8. There is no request to change zoning. The property is currently 3 single family homes on one parcel. To the south and west are single family homes zoned R-8. To the north and east are buildings in the IO."

Staff Response:

The subject property is zoned R-8 (One-Family Residence Zone) and the use of the proposed properties to maintain the existing one-family detached dwellings is permitted. The Accessory Building with the apartment unit addressed as 533A Kerbin Street is considered legal non-conforming. The R-8 zone is predominantly a residential zone.

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

Applicant Response:

"The properties to the south and west are single-family homes typical of the properties included within this request. The buildings to the North and East are government and business."

Staff Response:

Staff notes that the properties to the south and along Elm Terrace to the west are similarly zoned R-8 and appear to have been largely developed in approximately the same time period as single-family homes.

The property across Kerbin Street to the west is the zoned IO (Institutional and Office zone) and is the location of Christ Episcopal Church. This is a large parcel containing a cemetery and is otherwise largely wooded. The historic Church is located somewhat to the center of the overall site.

The properties immediately abutting the subject site to the east are also zoned IO, and are largely undeveloped, containing an access drive to utility facilities operated by the City of Dover. Immediately adjacent to the north is a property again zoned IO and containing a

professional office use. Further to the north is the Capital Complex serving the offices and administration for the State of Delaware.

It is noted that the parcels immediately adjacent to the north and across Kerbin Street to the west are subject to the H (Historic District Zone). The subject property is subject to the H Zone, nor are the other residential properties similarly zoned R-8 and containing single-family homes to the south and west.

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

Applicant Response:

"If this request is approved, there would not be any noticeable changes viewed by the surrounding properties. These homes already function as single-family houses and currently maintain the property lines that are proposed."

Staff Response:

Staff agrees with the Applicant that, were these variances to be approved, there would not be any noticeable changes for the surrounding properties. The subject property appears to have been developed at approximately the same time as other properties in the area on Kerbin Street and Elm Terrace. As such, the subject site contains one-family detached dwelling units (single-family homes) that are much in keeping with the surrounding homes. No physical changes to the buildings or structures are proposed. These Variance requests are only to allow for the subdivision of the property; and if granted, would have no visible impact to the property or surrounding properties.

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 intent of the request is because 2 of the 3 current tenants have expressed interest in purchasing the property. The applicant is willing to entertain the sale which would not be possible within the current configuration of being one parcel. The properties are currently maintaining the proposed property line. The properties already have separate address compliant with the tax assessor's office. This would just make it official and all conditions are existing."

Staff Response:

Staff finds the character of this property to be unique. The earliest information Planning Staff found regarding property boundaries pertaining to the subject site date to 1977 which shows the current configuration of all three (3) houses, and one (1) Accessory Building located on one (1) parcel. This parcel in turn appears to have the same property boundaries as today.

As such, this property is again considered legal non-conforming in its current form. However, as the Applicant has indicated, current residents may be interesting in purchasing these homes. The Applicant would be unable to sell these houses individually without first subdividing the land.

The property does not meet the minimum specifications to subdivide the lot to meet the bulk standards of the R-8 (One-Family Residence Zone) as found in Article 4, Section 4.1 of the *Zoning Ordinance*. Variances for the Minimum Width of a parcel in the R-8 Zone for 519, 527, and 533/533A Kerbin Street, as well as the Maximum Permitted Lot Coverage for 533/533A Kerbin Street would need to be first approved by the Board of Adjustment in order to allow for consideration of the Minor Subdivision.

Planning Staff finds that the situation constitutes an unnecessary hardship, as without the Variance being approved, they would be unable to subdivided and consequently would not be able to sell the houses individually.

Variance Recommendations

Planning Staff notes that the properties have existed in their current format since at least 1977 if not earlier. This property is unique in that it appears that all three one-family detached dwelling units (single family homes) were either developed as such, or their respective properties were consolidated prior to Records available to Planning Staff. The Applicant has noted that there is interest on the part of the current tenants to purchase these homes. The Minor Subdivision would be necessary to establish 519, 527, and 533/533A Kerbin Street as their own respective properties, thereby allowing the sale of each unit individually. Planning staff finds that the Applicant has demonstrated the Practical Hardship; they would incur by not having these Variances granted.

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

- The *Zoning Ordinance* permits legal-nonconforming uses and setbacks to continue, provided the degree of non-conformity is not increased. The proposed development is reducing the overall number of dwelling units per lot from 4 to 2. This applies to 533/533A Kerbin Street only, as 519 and 527 Kerbin Street are each to be compliant with the maximum permitted one dwelling unit per lot.
- The physical character of the property is not proposed to change. No expansion of existing structures, nor additional structures, are to be added.
- The property is largely cohesive with the surrounding neighborhood in character, and this is not to change. The three main buildings are to continue their use as one-family detached dwelling units (single family homes), with the fourth structure (533A Kerbin Street) largely conforming to the bulk standard provisions for an Accessory Building.

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 variances are granted, the Applicant must still obtain appropriate Plan approval for the Minor Subdivision of the Property, which may be achieved through an application and review process involving the Planning Commission. Once the Minor Subdivision Plans achieve Final Plan Approval, the Applicant would be responsible for submitting said Plans to the Kent County Recorder of Deeds for Recordation.
- 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	Site Plan (Applicant)	1
D	Photographs of Site (Applicant)	1