



## DEPARTMENT OF PLANNING SERVICES

### NOTICE OF DECISION

**APPLICATION:** A-25-14

**APPLICANT/OWNERS:** Mir Hadelli  
5536 Doral Dr  
Wilmington, DE 19808

**PROPERTY LOCATION:** Delaware Ave. & Bombay Hook Ave.  
Smyrna, DE 19977

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

**MEMBERS PRESENT:** Brian Cusick, Chairperson  
Morgan Hudson, Vice-Chairperson  
Charlie Jones  
George Gallo, Jr.

### NATURE OF REQUEST:

**A-25-14 Mir Hadelli** seeks a variance from the required front setback of 40' and side setback of 15' to allow for the construction of a single-family dwelling (§205-216.A.(1) of the Kent County Code). The property is located on the northwest corner of Bombay Hook Avenue and Delaware Ave, northeast of Leipsic. Levy Court District: 1<sup>st</sup>. Zoning District: AR. Tax Map No. 1-00-005.10-02-02.00-000

The applicant is requesting a variance from the required front setback of 40' and side setback of 15' to enable the construction of a single-family dwelling. The applicant is proposing a front setback of 24' from the front property line on Delaware Ave. and 10' from the property line on Bombay Hook Ave., and a 10' side setback.

### SUMMARY OF EVIDENCE

1. The subject site is 0.11± acres and is currently vacant.
2. Ms. Sarah McGee, on behalf of the applicant, spoke in favor of the application.
3. Ms. McGee stated that the property is zoned AR and located in the Woodland Beach Community that has traditionally been used for beach cottages since the early 1900s. She stated that the variance would not affect the neighboring properties because they all would have also needed variances in order to be built.

4. Ms. McGee explained that the community has small lots, whose sizes would preclude building any structure if the current setbacks were applied. She stated that there is a hardship because nothing can be built on the lot without a variance.

### 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. Most of the surrounding properties are also zoned AR, though the properties to the southwest are split zoned AR and AC (Agricultural Conservation). A dwelling is a normal and expected improvement within the zoning district.
- (2) **The character and uses of the immediate vicinity:** The character of the surrounding area is residential and natural. The properties to the north, east, and southeast are improved with single-family dwellings. The properties to the northwest and southwest are vacant and largely covered with wetlands. Most of the parcels in the area are very small lots that do not meet the current code requirements for lot size and/or width. The parcels range from about 25'-100' wide and 80'-100' deep. None of the neighboring single-family dwellings meet the current setback requirements and several other parcels in the area have been granted variances for front and side setbacks.
- (3) **Whether removal of the restriction on the applicant's property would seriously affect the neighboring properties:** The reduction of the 40' front setback and 15 ft. side setback requirements would not seriously affect neighboring properties. As discussed above, many of the dwellings in the area do not meet the required front or side setbacks and several other properties have received variances. The property across Bombay Hook Ave. to the east received a variance to be 8' from the front property line. The property across Delaware Ave. to the south has received two variances from the front, the most recent of which granted a 10' front. The adjacent property to the north was permitted to replace a dwelling and maintain the legal nonconforming setbacks of a 7' front, 10' rear, a 2.6' side and a 10' side. The property north of this one also replaced the home and utilized existing nonconforming setbacks. The applicant's request for a 10' front, a 24' front and a 10' side is within the character of the area.
- (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 40' front setback and 15' side setback restrictions would create an exceptional practical difficulty for the owner to make normal improvements to the property. The lot is only 50' wide and 100' deep. It is also located on the corner, so there are two fronts. If the applicant was required to meet all the setback requirements, there would be no buildable area on the parcel. As detailed above, the other dwellings in the area are also located closer to the front and side property lines than allowed by the current regulations. The applicant's requested setbacks of 24' from the Delaware Ave. front property line and 10' from the Bombay Hook Ave. front and opposite side property lines are reasonable requests. These distances are within the character of the

area and in most cases provide more of a distance between the property lines and the dwelling than many others in the area.

**DECISION:** On a motion made by Mrs. Hudson and seconded by Mr. Gallo, the Board of Adjustment voted 4 in favor of the motion to grant **APPROVAL** of application A-25-14, thus granting a variance from the required front setback of 40' and side setback of 15' to enable the construction of a single-family dwelling 24' from the front property line on Delaware Ave., 10' from the property line on Bombay Hook Ave., and 10' from the side property line as shown on Exhibit B, attached hereto. The support of this motion was based on the public testimony, the staff recommendation, that the restriction creates a hardship for the owner, and that the requested setbacks are within character of the area.

**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, should the request be granted, a Building Permit shall be obtained prior to the commencement of construction. For more information, contact the Planning Department at (302)744-2471 and/or Permitting Department at (302)744-2451 between 8:00a.m. and 5:00p.m.
3. This variance will expire after ONE YEAR if a permit has not been submitted to the Division of Planning.

**KENT COUNTY BOARD OF ADJUSTMENT**

  
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Brian Cusick, Chairperson

DECISION FILED: 7/17, 2025