



DEPARTMENT OF PLANNING SERVICES

NOTICE OF DECISION

APPLICATION: A-25-15

APPLICANT: Peter & Elizabeth Darby
63 Lord Cir.
Clayton, DE 19938

OWNER: Andrew W. Willis
1200 Wheatleys Pond Rd
Smyrna, DE 19977

PROPERTY LOCATION: 1216 Wheatleys Pond Rd
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-25-15 Peter & Elizabeth Darby (Owner: Andrew J. Willis) seek a variance from the maximum size of an accessory dwelling unit of 50% of the floor area of the principal dwelling unit to submit an accessory dwelling unit application (**§101-4.A. of the Kent County Code**). The property is located on the east side of Wheatleys Pond Rd, approx. 0.27 miles north of Bryn Zion Rd, north of Kenton. Levy Court District: 1st. Zoning District: AC. **Tax Map No. 3-00-036.00-02-04.04-000**

The applicants are requesting a variance from the maximum size of an accessory dwelling unit of 50% of the floor area of the principal dwelling. The applicants are seeking to construct an accessory dwelling that is 67.9% (1,800 sq. ft. total size) of the 2,651 sq. ft. principal dwelling.

SUMMARY OF EVIDENCE

1. The subject site is 2.9 ± ac and is currently improved with a single-family dwelling and three detached accessory buildings.
2. Mr. Peter Darby, applicant, spoke in favor of the application.
3. Mr. Darby explained the proposed accessory dwelling is for his wife, children, and himself to reside in.

4. Mr. Darby detailed that his parents will help take care of his children while he and his wife works and are furthering their education.
5. Mr. Darby added that they are seeking the 1,800 sq. ft. so that each of their three children can have their own bedroom, and then have a play area and living area.
6. Mr. Darby explained that the proposed septic will be in the north west corner of the property.
7. Mr. Darby stated that they have not had plans drawn up at this point because they were seeking approval with the County first before making that investment.
8. Mrs. Virginia Licari spoke in favor of the application.
9. Mrs. Licari explained that she lives just south of the subject parcel. She added that her daughter is living with her and her husband in a 1,400 sq. ft. home and it is not enough.
10. Mrs. Licari detailed that she supports the variance application to bring community closer together.

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 **DENIED** of the requested variance.

- (1) **The nature of the zone where the property lies:** As shown on Exhibit A, the subject site is zoned AC (Agricultural Conservation). All adjacent parcels in the vicinity are similarly zoned AC. Accessory dwelling units are permitted improvements in the AC zoning district, provided they meet applicable structure setbacks, impervious coverage, and size requirements.
- (2) **The character and uses of the immediate vicinity:** The character of the surrounding area is residential and agricultural. The adjacent parcels on the east side of Wheatleys Pond Rd. are improved residentially and on the west side of Wheatleys Pond Rd. is agricultural.
- (3) **Whether removal of the restriction on the applicant's property would seriously affect the neighboring properties:** The removal of this requirement may seriously affect neighboring properties. Accessory dwelling units (ADU) shall not exceed 50% of the floor area of the principal dwelling unit so that they remain secondary to the principal dwelling unit. The proposed 1,800 sq. ft. accessory cottage would be 67.9% the size of the principal dwelling. Allowing the ADU to be 67.9% the size of the principal dwelling would appear to be two principal dwellings on the parcel. Per Kent County Code §205-400.B.(2), variances are not to be used to permit more than one dwelling unit on a property. Also, the subject parcel owners in November 2018 applied for a variance from the provision that there can be only one principal use or structure on a lot. On January 17, 2019, the Board granted a conditional approval to allow a variance from the provision that there can be only one principal use or structure on the lot with the conditions that the building used for the second use shall not be expanded or altered in any way, signage for any use of the property

shall be limited to that of a home occupation which allows no attached signage and a detached sign no larger than 6 sq. ft. or a height of five feet above grade, and no residential use may be approved as a second principal use on the property since §205-400.B.(2) specifically prohibits the Board from having the authority to permit more than one dwelling unit on a 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 remove the restriction to allow an accessory dwelling to be 67.9% of the principal dwelling would not create unnecessary hardship to the property owners in relation to making normal improvements to the property. The property owners would be permitted to construct a 1,325 sq. ft. accessory dwelling. For additional storage, the applicants could include an attached garage onto the ADU.

DECISION: On a motion made by Mr. Gallo and seconded by Mrs. Hudson, the Board of Adjustment voted 4 in favor of the motion to **DENY** application A-25-15, thus denying a variance from the maximum size of an accessory dwelling unit of 50% of the floor area of the principal dwelling. The support of this motion was based on denying the variance would not create an unnecessary hardship or exceptional practical difficulty, the proposed is larger than the code permits, and staff recommendation.

NOTES:

1. The applicants are 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 Building Permit shall be obtained prior to the commencement of any construction or renovation. For more information, contact the Division of Planning at (302) 744-2471 or the Department of Inspections and Enforcement at (302)744-2451 between 8:00 a.m. and 5:00 p.m.

KENT COUNTY BOARD OF ADJUSTMENT



Brian Cusick, Chairperson

DECISION FILED: 7/17, 2025