KENT COUNTY LEVY COURT
555 Bay Rd Dover, DE 19901 (302) 744-2300 www.kentcountyde.gov

## DEPARTMENT OF PLANNING SERVICES

### NOTICE OF DECISION

**APPLICATION:** A-26-05

**APPLICANTS/OWNERS:** Gene A. & Christine M. Mullen
48 Oak Dr.
Smyrna, DE 19977

**PROPERTY LOCATION:** Underwoods Corner Rd.
Clayton, DE 19938

**DATE OF PUBLIC HEARING & DECISION:** March 19, 2026

**MEMBERS PRESENT:** Brian Cusick, Chairperson
Morgan Hudson, Vice Chair
Joan Denney
Temple Carter
Brauncy Jenkins
George Gallo, Jr.
Ethan Simpson

**NATURE OF REQUEST:**

**A-26-05 Gene A. & Christine M. Mullen** seek a variance from the requirement that a structure may not be used in whole or in part for residential purposes unless the lot in which it is located has an unobstructed ingress/egress easement to a public street that is at least 18' wide to enable the construction of a single-family dwelling **(§205-86.B(2)(b) of the Kent County Code).** The property is located approx. 477' west of Underwoods Corner Rd., approx. 1,107' south of Bryn-Zion Rd., north of Kenton. Levy Court District: 6th. Zoning District: AC. **Tax Map No. 3-00-035.00-01-52.00-000**

The applicant is requesting a variance to utilize an existing 16.5' wide access easement to construct a single-family dwelling.

### SUMMARY OF EVIDENCE

1. The subject site is 10.5246± acres in size.

2. Mr. Gene Mullen, applicant, spoke in favor of the application.

3. Mr. Mullen stated that the easement to the property was established during the '20s, when the lots were subdivided. He said that the easement was one rod length, 16.5', which was an old

surveying measurement used at the time. He siad that the property was purchased from Mr. Emerson in 1949 with the easement present and that based on old deeds, the owners were aware of it.

4. Mr. Mullen added that sometime in the '30s they changed the configuration of Underwoods Corner Rd. He said that this basically landlocked the Zimmerman property in front of his, and Zimmerman's deed does not show access to the easement.

5. Mr. Mullen said that his property is completely landlocked, and it is bordered to the north by the Holts farm and to the west/northwest by the Blackiston Wildlife area. He stated that the practical difficulty is that, without the easement, he would be unable to build and the property would be basically useless.

6. Mr. Mullen stated that he purchased the property in 2008. He explained that in 2010 the county issued him an Ag permit for a pole barn, in preparation to build the house. He said that he had several discussions with Leslie Persans, and that she approved the building with an understanding that he would construct it to residential accessory building code, and when the house was built, it would be changed over to an accessory building.

7. Mr. Mullen explained that on February 21, 2025, he had a major fire that destroyed the pole barn and several pieces of equipment, everything in the building. He said that he was going to build a modular home but decided to rebuild the pole barn and turn it into a barndominium. He added that this was for cost reasons and that it would be easier to put up a building and make it into a house.

8. Mr. Mullen stated that he needs the pole building to build the residence because he was going to build it himself, in the shop. He said that this didn't happen for personal reasons, but there is septic, electric, and everything for a residence. He added that the residence would be for them and that it would not be for any commercial use.

9. Mr. Mullen explained that he believes the 18' requirement was established by Levy Court in 1991. He said he didn't know why he wasn't aware of the change or why nobody made him aware of it. He stated that, if the variance isn't approved, he would still use the easement to access the property.

10. Mr. Mullen said that he didn't know why Levy Court changed the easement requirement to 18'. He said that he assumed it was because of fire and ambulance and emergency type, but that's obviously not the case because the night he had the fire there were 7 or 8 trucks sitting on the lane.

11. Mr. Mullen added that he built a standard turnaround in the back of the property, basically a 62' cul-de-sac. He stated this is the requirement for any subdivision, and that he built it at 62' so emergency vehicles could come in and drive right back out.

12. Mr. Mullen said that the infrastructure he installed was pretty expensive and that it would be a financial hardship if he had to change things or start over. He added that he didn't know if anyone was in opposition to the variance.

13. Mr. Fred Zimmerman, a neighboring property owner, spoke in favor of the variance.

14. Mr. Zimmerman stated that he recommended the Board give due consideration to Mr. Mullen's request regarding the more recent requirement of an additional 1.5' for an easement for residential use. He explained that he owns the 8.5-acre property east of Mr. Mullen's, which follows his property along the existing 16.5' easement all the way to the road.

15. Mr. Zimmerman stated that his property didn't used to require an easement, because it used to be right by the road. He explained that the road was changed to a more gradual curve, and he would now need an easement or access that he did not have.

16. Mr. Zimmerman said that he was going to put a house on the property a few years ago, but because he has not been able to get an easement or access, he has not been able to do so. He added that his property is only a small stone's throw away from the road, and he has not been restricted from getting onto it.

17. Mr. Ronald Emerson, a neighboring property owner, spoke in opposition to the application.

18. Mr. Emerson stated that he owns the property next to the applicant's, which the easement is located on. He said he has lived on the property his whole life, 73 years.

19. Mr. Emerson explained that his biggest concern is the traffic, that he has asked for a cut down on the traffic because there is too much and they go too fast. He added that he has spoken about it but gets no results. He said that before the fire, Mr. Mullen was building cabinets and stuff and basically running a business. He said that he told Mr. Mullen he didn't care about anything he did on the property if it didn't hurt him, but that he has hurt him and his family because they don't feel safe.

20. Mr. Emerson stated that his wife and granddaughter have dogs and that they all like to go out and walk the dogs, and that they don't know the people coming on their property. He said that it has gotten so bad that he has had to start stopping people to get them not to speed. He added that Mr. Mullen's speed has been okay, but not other people's.

21. Mr. Emerson said that his son lives on the property behind his and next to Mr. Mullen's, and that he is concerned about the gunfire. He said that at one time Mr. Mullen had the Town of Smyrna and the police department at his property getting their recertification and then there was a gun club coming out.

22. Mr. Emerson explained that one of his concerns was that the easement doesn't leave much room because they don't have much space. He said that it's 25' from the corner of the house to the property line, and that they wanted to put up a deck.

23. Mr. Emerson stated that his concern is safety and that once the house is there, there will be a workshop, and it will get worse. He explained that he has thought about putting in speed humps, but that it just seems like another job he has to do when he already put up speed limit signs, and it would be punishing himself since he also uses the road. He said if the speeding continues, he

won't have a choice.

24. Mr. Emerson said there can be anywhere from five to 24 cars coming in in a day and that they also come out. He added that it is sporadic, some days there would be five cars and some days seven, but the most was 24 when there was a gun club.

25. Mr. Emerson explained that somebody damaged his pole building with a vehicle, that he fixed it himself, but he went to Mr. Mullen about it to ask him to cut down on the traffic. He said that Mr. Mullen said it was his property not Emerson's, which is the point when he didn't want to talk to Mr. Mullen anymore. He added that it is why he is not supporting the variance, because it affects him too much.

26. Mr. Emerson stated that the 16.5' easement was in the original 1943 deed from when Malcolm Jarrell sold the property to his father. He said that the easement is only for Mr. Mullen's property and that it was never used until he bought it. He said that the Jarells used to go through the woods on Mr. Zimmerman's property to access the property.

## 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 AC (Agricultural Conservation) outside the growth zone. The surrounding properties are also zoned AC. A single-family dwelling is a normal improvement within the zoning district.

(2) **The character and uses of the immediate vicinity:** The character of the surrounding area is agricultural and residential. The adjacent property to the north is largely used for farm fields, though it also is improved with a single-family dwelling and several accessory structures further north. The property to the west (and further south) is part of the Blackiston Wildlife Area and is primarily wooded wetlands. East of the subject site is another heavily wooded parcel, which is currently vacant, and a parcel used for farm fields. The properties to the south of the subject site are all residential, and each is improved with a single-family dwelling and accessory structures. While the other residences in the area have frontage on the roadway, half of them utilize very narrow drives for access (approximately 10-13'). As such, the 16.5' proposed access easement would fit within the character of the area.

(3) **Whether removal of the restriction on the applicant's property would seriously affect the neighboring properties:** Removal of the restriction is not likely to seriously affect the neighboring properties. A residential dwelling is a normal improvement for the district and the use itself will largely be blocked from the view of adjacent parcels due to the wooded nature of the lot. The variance itself is only for access to the property, which is through an existing access easement located on the adjacent property to the south. The easement has been used by the applicant to access the property for several years. Construction of a home on the property may slightly increase the frequency or consistency of trips on the easement. However, this is not likely to pose a significant impact to neighboring properties. The access runs near only two adjacent properties, one of which is entirely wooded and vacant. The other property also uses the same access, and no objections to the application have been received.

(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 would create an exceptional practical difficulty and unnecessary hardship for the applicant in relation to making a normal improvement on the property. The parcel is landlocked and cannot be developed without an access easement, which creates a practical difficulty. There is an existing access easement for the property that is 16.5' wide. The required easement width of 18' is intended to provide sufficient room for two-way vehicle travel. For example, the standard width of a parking space is 9', or half of the 18' width requirement, and the county code also requires 18' of pavement as the minimum width for two-way private roads. While the existing access easement is 1.5' short of the required width, it is still wide enough to provide extra room if two cars need to pass. Although, it may be possible for the applicant to coordinate with the adjacent properties to increase the size of the easement, the 1.5' variance requested is very minimal and the easement has been used by the applicant to access the property for several years. As such, requiring him to increase the size at this point would represent an unnecessary hardship.

**DECISION:** On a motion made by Mrs. Denney and seconded by Mrs. Hudson, the Board of Adjustment voted 7 in favor of the motion to grant **APPROVAL** of application A-26-05, thus granting a variance from the requirement that a structure may not be used in whole or in part for residential purposes unless the lot in which it is located has an unobstructed ingress/egress easement to a public street that is at least 18' wide to enable the use of an existing 16.5' easement for the construction of a single-family dwelling, as shown on Exhibit B, attached hereto. The support of this motion was based on the staff recommendation, public testimony, that the request is minimal, that expansion of the easement would be a financial impact, and that there is an exceptional practical difficulty for the owner that the property would be landlocked without the easement.

**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 a permit shall be obtained prior to the commencement of any construction. For more information, contact the Permitting Office at (302)-744-2451 between 8:00a.m. and 5:00p.m.

3. This variance will expire after **ONE YEAR** if a building permit has not been submitted to the Division of Planning.

**KENT COUNTY BOARD OF ADJUSTMENT**

**Brian Cusick, Chairperson** **DECISION FILED:** 4/16, **2026**