



DEPARTMENT OF PLANNING SERVICES

NOTICE OF DECISION

APPLICATION: A-24-53

APPLICANT/OWNER: Jeffrey A. & Diane Q. Gebert
6 Sunnybrook Ct
Stratford, NJ 08084

PROPERTY LOCATION: 275 N Bay Dr.
Dover, DE 19901

**DATE OF PUBLIC HEARING
& DECISION:** December 19, 2024

MEMBERS PRESENT: Brian Cusick, Chairperson
Morgan Hudson, Vice-Chairperson
Joan Denney
Temple Carter
Brauncy Jenkins
Charlie Jones
George Gallo, Jr.

NATURE OF REQUEST:

A-24-53 Jeffrey A. & Diane Q. Gebert seek a variance from the required 40 foot front setback to enable construction of a dwelling (**Sect. 205-82, Item B(1) of the Kent County Code**). The property is located on the west side of N. Bay Dr. (Co. Rd. 415), 0.3 mile north of Kitts Hummock Rd., east of Dover. Levy Court District: 3rd. Zoning District: AR. **Tax Map No. 2-00-097.16-01-11.00-000**

The applicants are requesting a variance from the 40' front setback on a non-subdivision street to construct a 1,314 sq. ft. dwelling. The applicants are requesting a setback of 10 ft., which would require a variance of 30' from the 40' setback.

SUMMARY OF EVIDENCE

1. The subject site is 0.5976 ± ac and is currently vacant.
2. Mr. Jeff Gebert, property owner, spoke in favor of the application.
3. Mr. Gebert explained that they obtained a variance for the same 10' front setback request in July 2023. However, his wife has been hospitalized 5 times since December 2023 and the variance expired.

4. Mr. Gebert stated that this request is no different than the one they asked for in July 2023.
5. Mr. Gebert detailed that he and his wife originally wanted to build a home here for a vacation home but their plans changed in 2022. He added that they had house plans drawn up that will fit on the parcel with the waiver to allow a 6' wetlands buffer and 10' front setback.
6. Mr. Gebert explained that they are looking for the variance to be able to sell the property with an approved variance that will allow the new owners to be able to build on the property.
7. Mr. Gebert detailed that the previous owners were granted a 9' front setback and his request is 10', 1' greater than.
8. Mr. Matthew Tonn spoke in opposition of the application.
9. Mr. Tonn stated that he lives 2 or 3 houses to the north of the subject property.
10. Mr. Tonn explained that the road is very narrow and the home on the other side is very close to the road. He added that he is concerned about trucks and safety vehicles getting down the road.
11. Mrs. Sancia Tonn spoke in opposition of the application.
12. Mrs. Tonn stated that she has lived in the area for approximately 6 years and there have been significant changes.
13. Mrs. Tonn explained that there were other variances in the area that have been granted variances from the front setbacks as well.
14. Mrs. Tonn detailed that recently there was flooding on the road for weeks.
15. Mrs. Tonn stated that new homes will increase the damage to the roads.

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). Surrounding properties along N Bay Drive are similarly zoned AR, while the adjacent property to the rear of the subject parcel is zoned AR and AC (Agricultural Conservation). Single family dwellings are permitted improvements in the AR 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 along N. Bay Drive at Kitts Hummock Beach and agricultural/natural to the west, with the Delaware Bay to the east. The parcels to the north and south are vacant, while those on the eastern side of N Bay Drive are improved with single family dwellings and accessory buildings.
- (3) **Whether removal of the restriction on the applicant's property would seriously affect the neighboring properties:** The removal of this requirement would not seriously affect neighboring properties. There are several homes in the area which are located closer than the required 40' front setback, including the two properties to the east. Most of the existing dwellings that do not maintain the required 40' front setback are legal non-conforming, though six of the dwellings have approved variances to be closer to the front property line. Having homes closer to the road in this area will not impact traffic or views, as it is a low-density 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 restriction of the 40' setback from N. Bay Dr. would create an unnecessary hardship for the owner in relation to making normal improvements on the property. On February 9, 2006, the Regional Planning Commission granted two waivers from Chapter 187 to allow construction of a dwelling on the property to be situated six feet from the delineated wetlands line. A front setback of 40' and the reduced wetlands buffer of 6' allows a building envelope of less than 6' at its widest point. In November 2023 the Planning Director granted a waiver to reduce the wetlands buffer to 6'. This creates a practical difficulty for the applicants as it does not provide a sufficient building envelope to construct a reasonable sized dwelling on the property. Based on a review of the property history, the previous dwelling (demolished in 2005) was located on the property line. Two previous variances were also granted for the property to reduce the front setback. On January 19, 2006 the Board approved a 9' front setback and on July 20, 2023 the Board approved a front setback of 10'. Both variances expired, as no dwelling was built within one year of approval. The current proposal is the same as the July 20, 2023 approved variance. Imposing the 40' front setback will create an additional hardship and practical difficulty for the owner who is trying to make a normal improvement to the property.

DECISION: On a motion made by Ms. Hudson and seconded by Mrs. Denney, the Board of Adjustment voted 7 in favor of the motion to grant **APPROVAL** of application A-24-53, thus granting a variance from the 40' front setback on a non-subdivision street to construct a 1,314 sq. ft. dwelling 10' from the front property line, as shown on Exhibit B, attached hereto. The support of this motion was based on testimony given, staff recommendation, and the request fits in the character of the area.


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 applicants are advised that a Building Permit shall be obtained prior to the commencement of construction. Please include a copy of this Notice of Decision with the permit application so the permit reviewer knows a variance was granted. 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.
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



Brian Cusick, Chairperson

DECISION FILED: 1/17, 2025

Exhibit B

Application: A-24-53
Gebert

Variance from the required 40 ft. front setback to enable the construction of a single-family dwelling

