



DEPARTMENT OF PLANNING SERVICES

NOTICE OF DECISION

APPLICATION: A-25-02

APPLICANT: Kevin & Patricia Allen
5871 Summit Bridge Rd
Townsend, DE 19734

OWNER: Brian A. & Chelsea Allen Chillas
3151 Millington Rd
Clayton, DE 19938

PROPERTY LOCATION: 3151 Millington Rd
Clayton, DE 19938

**DATE OF PUBLIC HEARING
& DECISION:** January 16, 2025

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

NATURE OF REQUEST:

A-25-02 Kevin & Patricia Allen (Owner: Brian A. & Chelsea Allen Chillas) 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**). This property is located on the north side of Millington Rd., approx. 0.31 mi. west of Longridge Rd./Blackiston Rd., west of Smyrna. Levy Court District: 6th. Zoning District: AR. **Tax Map No. 3-00-025.00-01-48.00-000**

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 83.12% (1,536 sq. ft. total size) of the 1,848 sq. ft. principal dwelling.

SUMMARY OF EVIDENCE

1. The subject site is 23.9 ± ac and is currently improved with a single-family dwelling and three detached accessory buildings.
2. Mr. Brian Chillas, property owner, spoke in favor of the application.

3. Mr. Chillas explained the proposed accessory dwelling is for his in-laws to live in.
4. Mr. Chillas detailed that they were working with a builder to construct the accessory dwelling and were told that the ADU could be 75% of the principal dwelling.
5. Mr. Chillas added that his in-laws will be helping to care for their children while he and his wife work.
6. Mr. Chillas explained that they paid the contractor approximately \$50,000 but have since taken legal action against them and are going to be going with another contractor.
7. Mr. Chillas stated that his in-laws have lived in their current home for many of years. They are looking for the proposed size to have room for themselves and all of their belongings and their animals, as well as to have room for his children when they are over there.
8. Mr. Chillas detailed that approximately 11 acres of the 24 acre parcel is cleared with a few trees here and there.
9. Mr. Chillas added that floorplans have already been designed for the proposed ADU.
10. Mrs. Patricia Allen spoke in favor of the application.
11. Mrs. Allen explained that she and her husband are looking to move to the parcel to help take care of their grandchildren and be there for each other.
12. Mrs. Allen detailed that they are moving from a two-story dwelling. They are proposing to have a craft room that will also function as a play room and will have a bed for the children to sleep. She added that the contractor mislead them and told them that they were able to have an ADU that is 75% of the main home.
13. Mrs. Allen explained that they paid for the materials upfront to help save costs.
14. Mrs. Allen detailed that the contractor was supposed to apply for permits in July but did not actually apply for the permits until October.

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). All adjacent parcels on the north side of Millington Rd are zoned AR. Parcels on the south side of Millington Rd are zoned AC (Agricultural Conservation). Accessory dwelling units 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, agricultural, and woodlands in nature. The parcels to the east and west are woodlands and agricultural. Parcels to the north and south 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 will not seriously affect neighboring properties. The proposed accessory dwelling unit will not be visible to the neighboring properties due to woodlands and wetlands on the subject property. A letter was submitted in support of the application. In addition, no objections were received from any of the surrounding property owners.
- (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 approve this request would create an exceptional practical difficulty for the applicants. The applicants have contracted with a builder and have drawn up a floor plan for the proposed. The proposed is not excessive in nature and does not exceed the size of the principal dwelling.

DECISION: On a motion made by Mrs. Hudson and seconded by Mr. Carter, the Board of Adjustment voted 7 in favor of the motion to grant **APPROVAL** of application A-25-02, thus granting a variance from the maximum size of an accessory dwelling unit of 50% of the floor area of the principal dwelling, to permit the construction of an accessory dwelling to be 83.12% (1,536 sq. ft. total size) of the 1,848 sq. ft. principal dwelling, as shown on revised Exhibit B, attached hereto. The support of this motion was based on testimony given, no impact to neighboring properties owners, the permitted 924 sq. ft. is not adequate living square footage, and the property is unable to be subdivided due to the existing frontage.

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 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

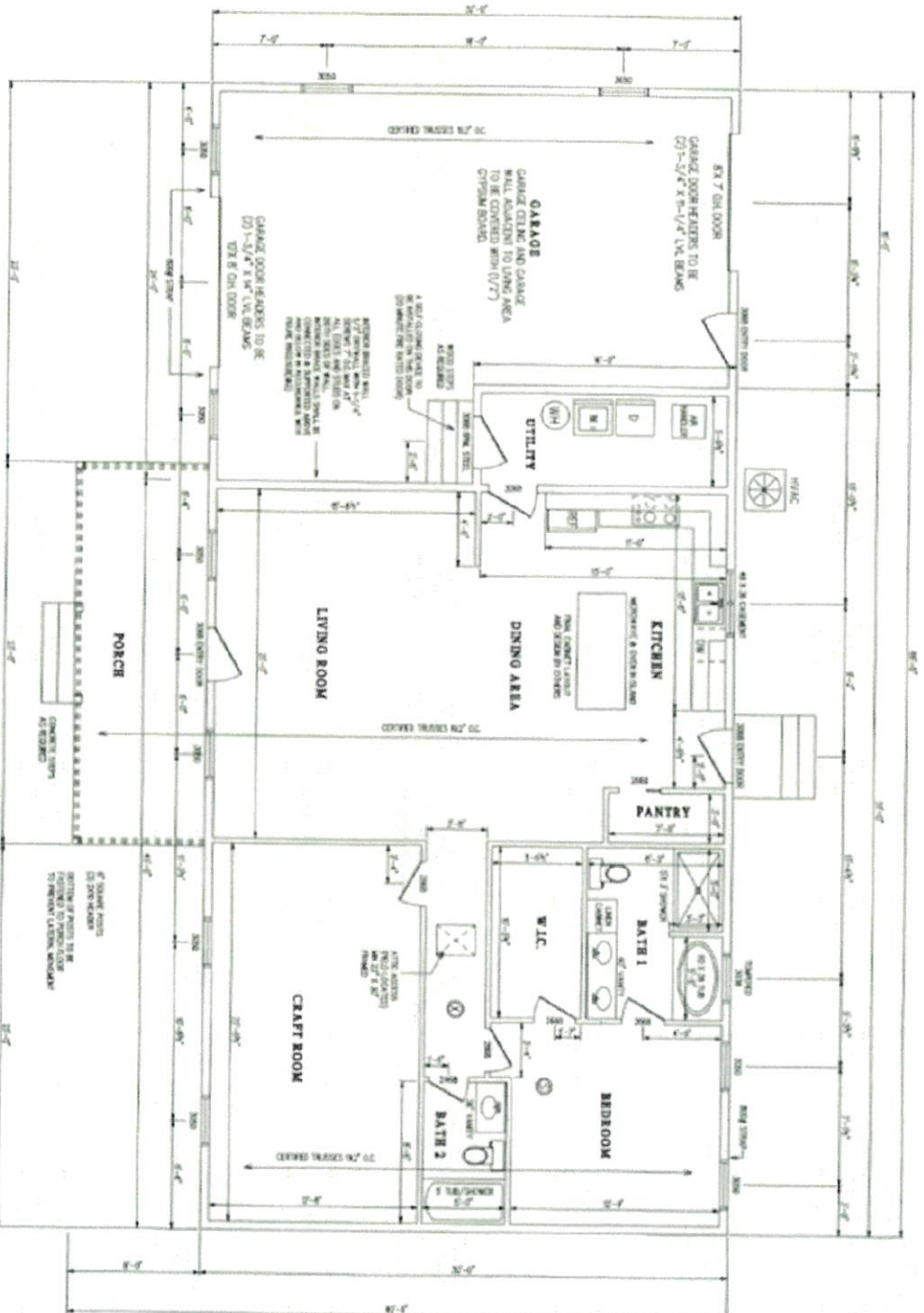
DECISION FILED: February 20, 2025

Exhibit B

Application: A-25-02
Allen (Chillas)

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

Principal dwelling :
1,848 sq. ft.
Proposed ADU:
1,536 sq. ft. (83.12%)
Permitted ADU:
924 sq. ft. (50%)



8' CEILING HEIGHT

WINDOWS ARE MIN VINTL DR (LOW 7")
WINDOW AND DOOR HEADERS TO BE (2) 2X10S