

**MINUTES AND WRITTEN DECISION OF THE  
BOARD OF ADJUSTMENT OF THE TOWN OF DAGSBORO**

**IN RE:**

APPLICATION OF Matthew and Karen Kern, 33262 Main Street, Dagsboro, DE, being Tax Parcel No. 2-33 11.00 13.00, for a variance of seven (7) feet from the Minimum Side Yard Setback Requirement of eight (8) feet for a distance of approximately thirty (30) feet (scaled) along the northerly boundary of the parcel to facilitate the construction of an addition to the existing non-conforming structure located in the TC-Town Center pursuant to Dagsboro Town Code Section 275-21 D. The variance request is pursuant to Section 275-52 of the Municipal Code of the Town of Dagsboro.

A meeting was held after due notice on Friday, May 11, 2018 at 6:00 p.m. at the Bethel Center, 107 Clayton Street, Dagsboro, DE. Boardmembers present at the hearing were: Chairperson Diane Carey, Vice Chairperson Marjorie Eckerd and Boardmember Janice Kolbeck. Robert Witsil, Esq. represented the Board. Building Official Cynthia Brought and Town Engineer Kyle Gulbronsen attended on behalf of the Town. At the commencement of the meeting, Mr. Witsil reviewed the Rules and Procedure of the Board of Adjustment and administered the Oath of Office to Boardmembers Carey and Eckerd. Thereafter, the public hearing for the application commenced.

**Nature of the Proceedings**

Pursuant to the Dagsboro Code Zoning Section 275-52 A (3), and in general accordance with the similar provisions of Section 327 of Title 22 of the Delaware Code, the Board of Adjustment shall have the following powers to:

Authorize, upon appeal in specific cases, such variance from the Zoning Chapter that will not be contrary to the public interest, where, owing to special conditions or exceptional situations, a literal interpretation of the Zoning Chapter will result in unnecessary hardship or exceptional practical difficulties to the owner of property, so that the spirit of the chapter shall be observed and substantial justice done, provided such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the Zoning Chapter or Zoning map.

### **Summary of the Facts and Evidence Presented at the Public Hearing**

The Board finds that the following facts are relevant and credible in reaching its determination. The Board's informational packet from the Building Official contained the original application and the following documents: Legal Notice; Application; copies of relevant portions of the above-mentioned Code and Statute sections; Archology survey of the Kerns' lot dated February 13, 2018; and correspondence from Eric Bodenweiser, President, BDM. .

At the commencement of the public hearing, Ms. Brought stated that proper notice was posted and advertised. Thereafter, Karen Kern testified that she and her husband are the owners of the above-mentioned property and that they intend to develop and expand the existing structure into a restaurant. The Kerns intend to extend the existing non-conforming structure, which encroaches approximately seven feet into the eight foot side yard setback on the northerly side of the property a distance of approximately thirty (30) feet (scaled) to add kitchen facilities for the proposed restaurant. The variance, according to Mrs. Kern, is necessary to allow for a straight line structure and to allow sufficient width and room for the restaurant addition. She stated that the addition would be in character with the existing structure and with the surrounding neighborhood.

Joe McComas, 33259 Main Street, Kathy Flowers, 31860 New St. ,Patrick Miller and Dana Miller, 33103 Main St. (work) and 31806 Waples St. (residence) ,Bradley Connor 32143 Canal St. and Patricia Rice, 33259 Main St., all spoke in favor of the application, stating that: the proposed addition that requires the variance is compatible with the character of the surrounding residential and commercial community: that there is a need for more business in town: that the addition would look “stupid” and be impractical if the variance requested was not granted and the proposed structure was required to meet the setback regulation: that the Kerns would suffer exceptional practical difficulty if the variance was not granted and that there are many setback exceptions in the vicinity of the Kerns’ property. Correspondence from Eric Bodenweiser, President, BDM in support of the application was read into the record.

No persons spoke in opposition to the application.

Thereafter, the Board, after a motion duly seconded, voted to close the public hearing.

### **Vote of the Board**


At the conclusion of the public hearing, a motion to approve the application was made by Boardmember Kolbeck and duly seconded. Boardmember Kolbeck voted to approve the granting of the variance, finding that the applicant had proven the requisite exceptional practical difficulty and/or unnecessary hardship in that if the variance was not granted, the resulting area of the kitchen addition would be so narrow and small that the workers would find it difficult to prepared food and function in the “bumped in” area. She stated that the Kerns would have a hardship if there were a fire and that it would be more difficult for the fire department to get to the “bumped in” area if the variance was not granted. Boardmember Eckerd voted in favor of the granting of the variance, stated that the proposed addition which requires a variance will not alter the essential character of

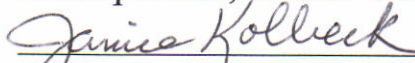
the surrounding community and that she agrees with the reasons for approving the variance stated by Boardmember Kolbeck. Chairperson Carey voted for the grant of the variance, stating that there would be exceptional practical difficulty experienced by the Kerns if the kitchen had to comply with the setback requirements and be narrower in width. She agreed with the reasons for granting the variance expressed by Boardmembers Kolbeck and Eckerd.


### **Decision of the Board**

In determining the application, the Board considered the reasonableness of evidence presented and the credibility of witnesses who testified. Having heard the testimony of the applicant and witnesses and the facts and arguments presented at the hearing, it is the Board's determination, as stated hereinabove by each member's reasons for their vote, that the applicants have proven the required standards for the granting of the variance. Accordingly, the variance is approved by a vote of three in favor of and none against the application.

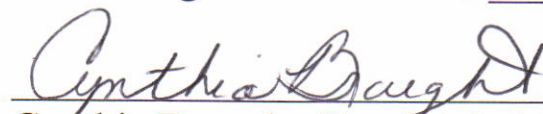
### TOWN OF DAGSBORO BOARD OF ADJUSTMENT

  
\_\_\_\_\_  
Chairperson, Diane Carey

  
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Janice Kolbeck, Boardmember

  
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Marjorie Eckerd, Boardmember

Filed with the Town of Dagsboro office this 18 day of May 2018.

  
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Cynthia Brought, Town Administrator