

Department of Land Use
NOTICE OF DECISION

REFERENCE: Application 2010-0644-A DATE DECISION FILED: November 9, 2010

APPLICANT: **Ward and Taylor/BA Real Estate Services LLC.**

PUBLIC HEARING DATE: October 28, 2010 DATE OF DECISION: November 4, 2010

REQUESTED: Area variances to permit the conversion of a residence to an office in a commercial zoning district: **1)** to permit a Landscape Surface Ratio (LSR) of 30 percent (35 percent minimum LSR) **2)** to permit a lot area of .21 acre (1-acre minimum lot area); **3)** permit 50-foot lot width (100-foot minimum lot width); **4)** to maintain a shed 1.5 feet from the side lot line and 6.5 feet from the side and rear lot lines (20-foot side and rear yard setbacks); **5)** to permit 8 parking spaces (12 parking spaces required); **6)** to construct fire stairs 8.5 feet from the side lot line (20-foot side yard setback); **7)** to maintain existing paving at 19 feet and to construct new paving 2 feet from the Greenbank Road right-of-way (25-foot paving street yard setback); and **8)** to maintain existing paving at 0 feet from the northerly and southerly side lot lines (5-foot paving side yard setback).

713 Greenbank Road Parcel Number 08-039.10-246 Zoned CR CD 9

The Board of Adjustment may grant a variance from the area or dimensional or other requirements of the New Castle County Unified Development Code [hereinafter "UDC"] where it finds the applicant or property owner is experiencing exceptional practical difficulty, rather than routine difficulty, in complying with the specific provisions of the UDC applicable to the subject property.

The Applicants appeared through Fran Applebaum and Gerald J. Proffitt, Esq. and presented the following: The Applicant has requested a number of variances to convert a residence, which is commercially zoned, to commercial use. The dwelling at the subject property was constructed in 1983 and served as the home of the operators of the abutting day care center. The dwelling was subsequently illegally converted to commercial use without permits and without zoning approval. Now, the current occupant, a realty company, would like to legally occupy the structure with the required variances. Two variances were previously sought for the abutting day care center 1979-5340-A and for an expansion in 1985 – 1985-7114-A. The requested variances resulted from applying the current commercial zoning restrictions to the property, which was originally permitted solely for single-family residential use. The requested relief is significant but is compatible with the mixed commercial and residential character found in the vicinity of Greenbank Road and Kirkwood Highway, and that the requested relief will be unlikely to adversely affect surrounding properties. During rebuttal the Applicant indicated that he had not objection to placing a parking barrier between his property and Ms. Broadbent's property.

Public comment was invited by the Board. Lisa Broadbent appeared and expressed concern regarding variance number **8**) to maintain existing paving at 0 feet from the northerly and southerly side lot lines (5-foot paving side yard setback). Ms. Broadbent owns the property on the south side of the subject property. Ms. Broadbent was concerned that patrons from the subject property would use her driveway to make a U turn and requested that a parking barrier be placed between her lot and the Applicants lot. The neighbor on the north side of the property signed an affidavit in support of the variances.

The Department of Land Use recommended that the Board approve the requested variances.


DECISION

The Board votes to **grant** the: “Area variances to permit the conversion of a residence to an office in a commercial zoning district: **1**) to permit a Landscape Surface Ratio (LSR) of 30 percent (35 percent minimum LSR) **2**) to permit a lot area of .21 acre (1-acre minimum lot area); **3**) permit 50-foot lot width (100-foot minimum lot width); **4**) to maintain a shed 1.5 feet from the side lot line and 6.5 feet from the side and rear lot lines (20-foot side and rear yard setbacks); **5**) to permit 8 parking spaces (12 parking spaces required); **6**) to construct fire stairs 8.5 feet from the side lot line (20-foot side yard setback); **7**) to maintain existing paving at 19 feet and to construct new paving 2 feet from the Greenbank Road right-of-way (25-foot paving street yard setback); and **8**) to maintain existing paving at 0 feet from the northerly and southerly side lot lines (5-foot paving side yard setback).”

The requested variances will unlikely adversely affect surrounding properties as the variance is consistent with the character of the surrounding neighborhood. The land itself is burdened by restrictions of the UDC, rather than the landowner being burdened personally thereby. “A literal interpretation of the zoning law results in exceptional practical difficulties of ownership.” Kwik-Check Realty, Inc. v. Board of Adjustment of New Castle Cty., 369 A.2d 694, 698 (Del. Super. 1977), *aff’d* 389 A. 2d 1289 (Del. 1978).

By granting the variance, and removing the restriction, the neighboring properties will not be seriously affected. If the variance was denied, and the restriction not removed, “the restriction would create...exceptional practical difficulty for the owner in relation to his/her efforts to make normal improvements on the character of that use of the property which is a permitted use under the use provisions of the ordinance [involved].” Board of Adjustment of New Castle Cty. V. Kwik-Check Realty, Inc., 389 A.2d 1289, 1291 (Del. 1978). The granting of this variance will not cause substantial detriment to the public good, nor will it substantially impair the intent and purpose of the zoning code.

VOTE: 6-0 (Grant: Burt, Ciabattoni, Collins, Hudson, McCann, and Whalen)

BOARD OF ADJUSTMENT
OF NEW CASTLE COUNTY

David H. Burt
Chair

NOTE: Variances are neither building permits nor Certificates of Occupancy. Appropriate permits must be obtained from the Division of Development and Licensing prior to construction or establishment of the use. This decision should be kept in a safe place with the property deed. This decision may be appealed to the Superior Court by any person aggrieved by it within 30 days of its filing in the office of the Board of Adjustment.

NOTE: A variance becomes void if the variance is not put into effect within two (2) years of the filing date of this decision.

PUBLIC HEARING DATE: October 28, 2010
COUNCILMAN DISTRICT: 9

ZONING: CR

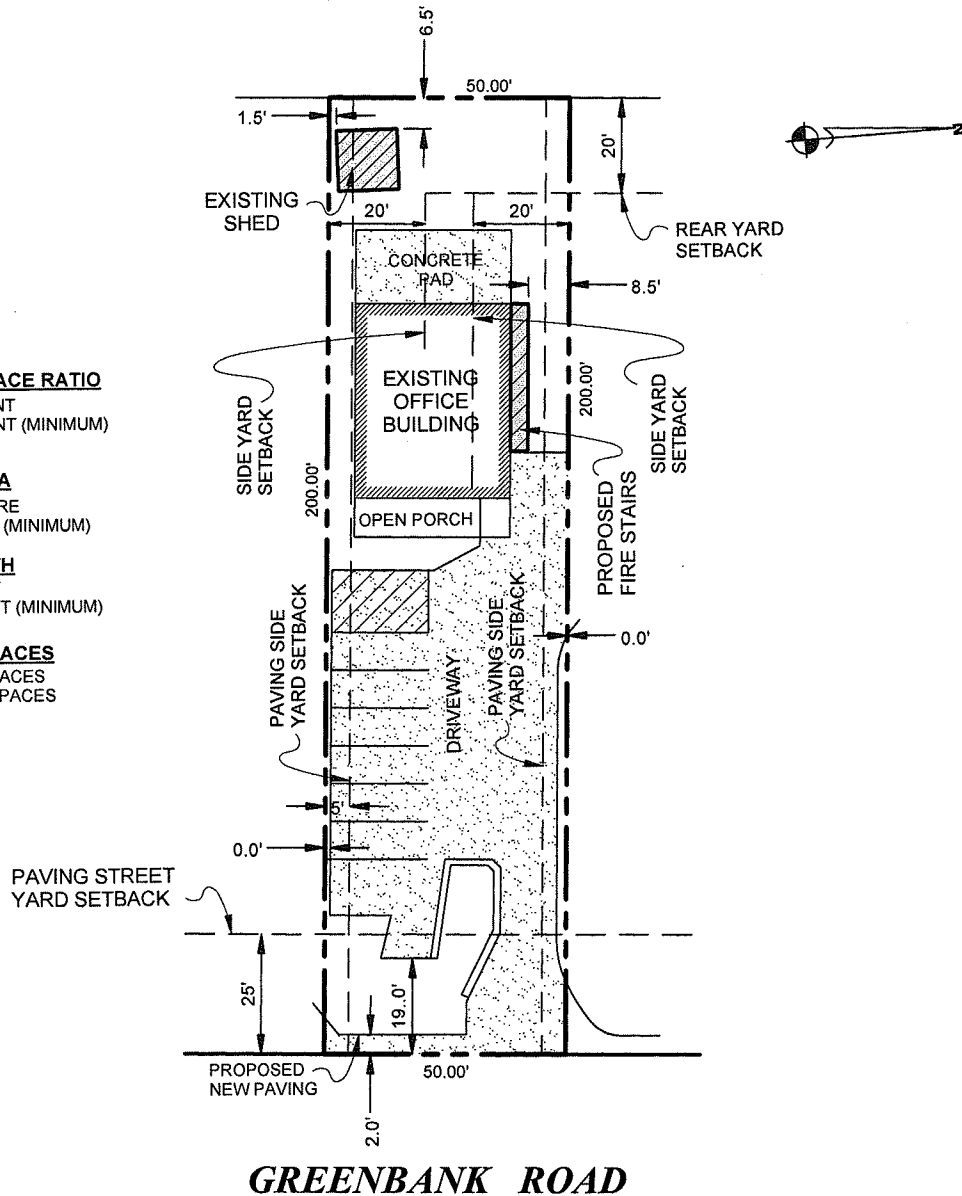
APP. NO. 10-0644-A
TAX PARCEL: 08-039.10-246

LANDSCAPE SURFACE RATIO
PROVIDED: 30 PERCENT
REQUIRED: 35 PERCENT (MINIMUM)

LOT AREA
PROVIDED: 0.21 ACRE
REQUIRED: 1-ACRE (MINIMUM)

LOT WIDTH
PROVIDED: 50-FOOT
REQUIRED: 100-FOOT (MINIMUM)

PARKING SPACES
PROVIDED: 8 SPACES
REQUIRED: 12 SPACES



BOARD OF ADJUSTMENT NEW CASTLE COUNTY, DELAWARE

Applicant:
Address of Subject Property:

Ward and Taylor/BA Real Estate Services LLC.
713 Greenbank Road
Wilmington, DE 19808

Applicant seeks: VARIANCE:

Various

DECISION:
DATE OF DECISION:

SCALE: 1" = 40'