



I D A H O

CITY OF DOVER – BUILDING AND PLANNING DEPARTMENT

699 Lakeshore Avenue, Dover Idaho • PO Box 115, Dover, ID 83825-0115 • (208) 265-8339 • FAX (208) 265-9035 • WEB <http://www.cityofdover.id.gov/>

**STAFF REPORT
DOVER CITY COUNCIL
FILE #VAR002-18, TRENBEATH**

PREPARED BY: Lisa Adair
Assistant Contract Planner, Ruen-Yeager & Associates
219 Pine Street
Sandpoint, ID 83864

PROJECT DESCRIPTION: Variances to allow for a 15-foot front yard setback, where 25 feet is required by city code, and a rear yard 10-foot setback, where 25 feet is required.

LOCATION: Lot 2A, Block 9, of Welty Addition Replat
133 Lakeshore Ave., Dover, ID
RP#: RPD048600902A0A

APPLICANT: Name: J. Michael Trenbeath Trust
c/o Michael and Delia Trenbeath
422 Michigan St., Sandpoint, ID 83864

PROPERTY OWNER: Same as applicant

APPLICANT REPRESENTATIVE: Martin Taylor, AICP
James A. Sewell & Associates, LLC
1319 N. Division
Sandpoint, ID 83864

DATE APPLICATION RECEIVED: October 15, 2018

HEARING DATE: Planning & Zoning Commission: January 3, 2019
City Council: February 14, 2019

LEGAL NOTICE PROVIDED: Newspaper notice: January 25, 2019
Mailed notice: January 29, 2019
Site posted: February 6, 2019

STAFF REPORT ATTACHMENTS: Application and exhibits
Written public comments
P&Z public hearing minutes

PROJECT SUMMARY:

The applicant is seeking to vary from the residential setback standards of Dover City Code to allow construction of a single-family dwelling and accessory dwelling unit (ADU) at 133 Lakeshore Avenue. The property is zoned Residential.

This file is being heard "de novo" or as a hearing anew by the Dover City Council. The Dover Planning and Zoning Commission recommended approval of the variance application on a 2-0 vote.

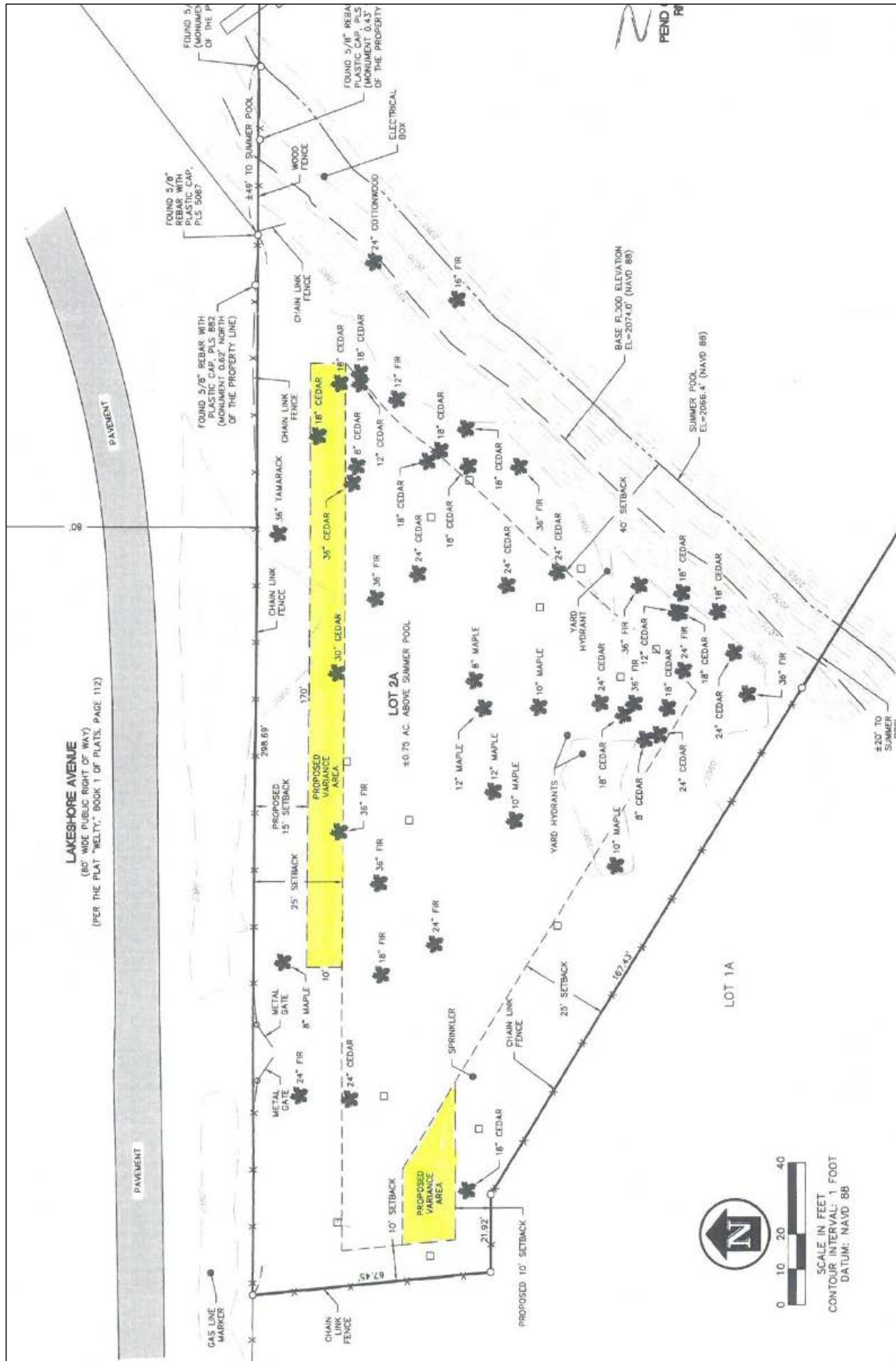
In the spring of 2018, the landowners requested the city planner provide an interpretation of the required setbacks for a future homesite so they could prepare for development of the lot. A written administrative decision dated March 15, 2018 concluded that the front yard is the property line along Lakeshore Avenue, where access is provided. The lot line directly opposite of this is the rear yard. The "bodies of water" setback would apply to the easterly lot line. The westerly lot line was determined to be the side yard. The landowner filed an appeal of the administrative decision (file #ADMIN008-18). On April 12, 2018, Dover City Council voted to affirm the staff decision. The earlier Council decision did not preclude the applicants from seeking the variances.

With this variance application, the applicant is seeking a 15-foot front yard setback, where 25 feet is required, to allow construction of a single-family dwelling. Additionally, the applicant is seeking a 10-foot rear yard setback, where 25 feet is required, to allow for the construction of an accessory dwelling unit. The applicant notes the triangular-shaped lot creates an irregular building envelope. The applicant also notes that the curved slope and height of the shoreline would likely need significant slope stabilization.

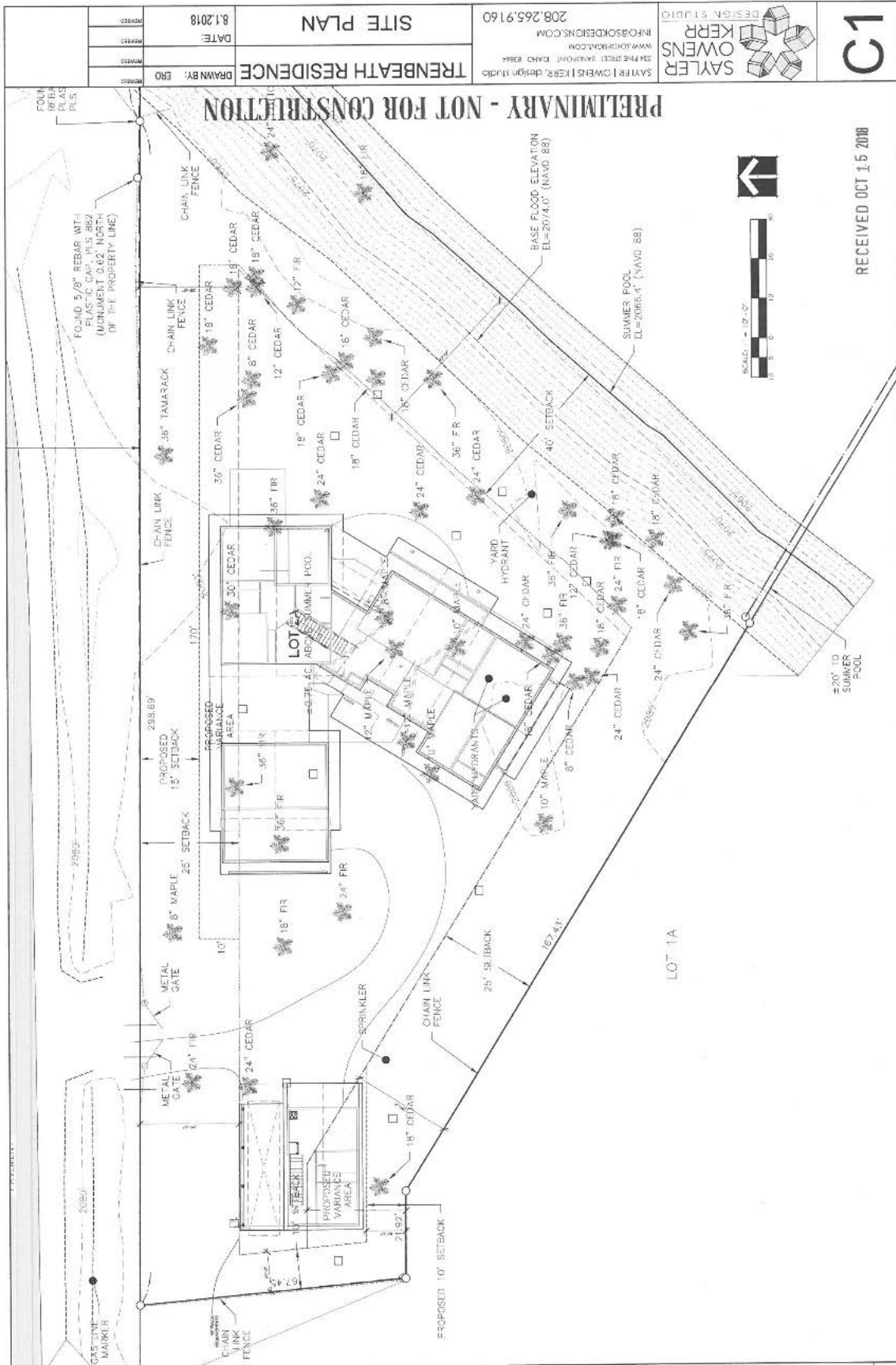
In regard to the requested front yard setback variance specifically, the applicant notes that the actual travelway of Lakeshore Avenue is at least 45 feet away from the proposed single-family dwelling. The right-of-way is 80 feet wide at this location. The applicant also desires to maintain the natural environment and protect as many trees as possible. They further explain that this will add privacy for the neighbor directly to the south of the property.



AERIAL OF VICINITY



REQUESTED FRONT AND REAR YARD VARIANCE AREAS



DATE:	R.1.2018
DRAWN BY:	ERO
PROJECT:	TREBEATH RESIDENCE
NO.:	
REVISIONS:	

SITE PLAN

208.265.9160

SAYLER | OWENS | KERR | design studio
 WWW.OWNSDESIGN.COM
 334 FINE STREET, SUITE 100, DAVIS, MISSISSIPPI 39230

SAYLER OWENS KERR
 DESIGN STUDIO

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RECEIVED OCT 15 2018

APPLICABLE CODES:

The following codes apply to this application:

- Title 12, Chapter 3, Process, application content and decision-making for applications requiring public hearings;
- Section 12-6-4, Table A, Zone District Standards;
- Title 12, Chapter 8, Variances

PROPERTY DESCRIPTION:

- A. Site acreage and description: 133 Lakeshore Avenue, Welty Addition Replat Block 9 Lot 2A, 1.932 acres
- B. Access: Lakeshore Avenue, public right-of-way
- C. Services: Dover City sewer and water services, Independent Highway District road maintenance, Avista Utilities electrical service, Selkirk Fire District fire protection.
- D. Environmental features: The site is located immediately adjacent to the Pend Oreille River. Portions of the property are located within the special flood hazard area, though the application states the proposed building sites will be entirely outside the regulated 100-year floodplain and above base flood elevation. Bonner County GIS shows a slope of less than 15% and no streams present on this site.
- E. Surrounding uses and densities:

COMPASS	COMP PLAN DESIGNATION	CURRENT ZONING	USES/DENSITIES
Site	Small Lot Single-Family Traditional	Residential	Residential
North	Small Lot Single-Family Traditional	Residential	Residential uses, 0.3 – 1.6 acre lots
South	Small Lot Single-Family Traditional	Residential	Residential uses, 2.5 acre lot
East	Pend Oreille River	Pend Oreille River	Pend Oreille River
West	Small Lot Single-Family Traditional	Residential	Residential uses, 0.3 – 2.5 acre lots

AGENCY COMMENTS:

The city issued a request for public agency review and comment on the proposed variance on October 25, 2018. The agencies contacted and their comments are as follows:

- Selkirk Fire District: Selkirk Fire & Rescue Chief Ron Stocking replied that the fire district has no issues with the proposed variance.
- City of Dover Water and Sewer: City Engineer Brett Converse replied that the city sewer and water lines would not be negatively impacted.
- Dover City Engineer: Dover City Engineer Jay Hassell replied that he has previously visited the site and has no comments on this application.
- A request for comment was also sent to Avista Utilities and Independent Highway District. Comments were not received from either agency at the time of this report.

PUBLIC COMMENTS:

Three written public comments had been submitted to the record prior to the Planning and Zoning public hearing. One objects to the variance request as an adjoining neighbor. The other two comments are in favor of the request.

During the Planning and Zoning public hearing on January 3, 2019, one person testified in favor of the proposed variance with six people testifying against. The oral public comments are included in the meeting minutes from the January 3, 2019 Planning and Zoning Meeting and are attached to this report.

Two written public comments have been submitted to the record since the Planning and Zoning public hearing at the time of this report. Both object to the variance request. All written public comments submitted at the time of this report are attached.

STANDARDS REVIEW:

Zoning standards	Evidence of record
<p>12-6-4, Table A, Zone District Standards: Front yard setback, Residential district, is 25 feet. Rear yard setback, Residential district, is 25 feet.</p>	<p>A portion of the proposed single-family dwelling will not meet the required 25-foot front yard setback. A variance is requested to allow construction of the home within 15 feet of the front property line. Additionally, a portion of the proposed accessory dwelling unit will not meet the required 25-foot rear yard setback. A variance is also requested to allow construction of the accessory dwelling unit within 10 feet of the rear property line.</p>

Standards for Review by Governing Bodies (DCC 12-8-3) "A variance shall not be granted unless the city council makes specific written findings of fact based directly on the particular evidence presented to it which supports all of the following conclusions:"	Findings, Based upon evidence of record
<p>A. Special conditions and circumstances exist that are peculiar to the land, structures, or buildings in the same district.</p>	<p>The application states that the lot as replatted created a triangular shaped building envelope. Due to this lot's irregular shape and position between Lakeshore Avenue and the Pend Oreille River, it is subject to a 25' front yard setback, and both a 25' rear yard setback and a 40' waterfront setback. Bonner County Assessor data shows a lot area of 1.932 acres including property that is currently under water. When setbacks are applied to the portion of the lot above the artificial highwater mark (summer pool), a building area of approximately 12,674 square feet remains. This is approximately 15% of the total lot area. The applicant notes that the triangular shape and the slope on the waterfront side is a factor that limits where a home can be placed within the buildable area.</p>

Standards for Review by Governing Bodies (DCC 12-8-3) "A variance shall not be granted unless the city council makes specific written findings of fact based directly on the particular evidence presented to it which supports all of the following conclusions:"	Findings, Based upon evidence of record
<p>B. A literal interpretation of the provisions of this title would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of Dover's zoning regulations.</p>	<p>The variance is being requested to allow additional building envelope to accommodate a house, an accessory structure, and on-site parking, all of which the applicant states are a common right for properties in the Residential zone.</p>
<p>C. Special conditions and circumstances do not result from actions of the applicant.</p>	<p>The property was replatted on 9/15/10 (Instrument 798666). The applicants acquired the property on 12/29/17 (Instrument 916328), after the replat. Consequently, the application states, the applicants did not create the irregularly shaped building envelope.</p>
<p>D. Granting the variance will not confer on the applicant any special privilege that is denied by Dover zoning regulations to other lands, structures, or buildings in the same district.</p>	<p>The applicant states that development of a single-family dwelling and accessory structure is a common right for properties in the Residential zone. Both are uses that are permitted outright in the Residential zoning district.</p>
<p>E. Granting the variance is not in conflict with the public interest.</p>	<p>The applicant states that the requested variances are the minimum necessary to develop the subject property with a house and accessory structure. The proposed house will be more than 45 feet away from the travelway of Lakeshore Avenue as shown on the site plan submitted with the application. The applicant also notes that a granting of this variance will allow them to protect many of the trees currently on the property and those trees will provide added privacy for the southern neighboring property. City of Dover Water and Sewer reviewed the file and responded that the city sewer and water lines would not be negatively impacted. Selkirk Fire and Dover City Engineer both responded that they had no comments on the file.</p>

STAFF ANALYSIS:

Both Idaho Code (§67-6516) and Dover City Code require applicants to demonstrate that an undue hardship exists based upon site characteristics and that the granting of the variance is not in conflict with the public interest. In addition, the city code requires the governing body to confirm the variance is not a special privilege, that the special circumstances were not created by the applicant, and denial of the variance would deny the applicant of rights commonly enjoyed by other properties. The application sites the irregular shape of the lot as the basis for this variance request. The irregular shape was not due to the applicant's actions as the property was platted prior to purchase by the applicant. The conditions of approval address protecting the public interest by obtaining an encroachment permit. No public agencies have advised of any adverse effects due to the variance request. The application provides sufficient evidence of

an undue hardship not created by the applicant and that granting of the variance is not in conflict with the public interest.

DRAFT MOTIONS FOR GOVERNING BOARD:

MOTION TO APPROVE: I move to approve this variance, File #VAR002-18 for a 15-foot front yard setback, where 25 is required by city code, and a 10-foot rear yard setback, where 25 feet is required by city code, finding that it is in accord with the general and specific standards of the City of Dover, as enumerated in the findings and standards table above. I further move to adopt the following reasoned statements and conditions of approval (as written or as amend as follows...). The actions to be taken to obtain the variance is to complete the conditions of approval as adopted.

MOTION TO DENY: I move to deny this variance, File #VAR002-18 for a 15-foot front yard setback, where 25 is required by city code and a 10-foot rear yard setback where 25 feet is required by city code, finding that it is not in accord with the general and specific standards of the City of Dover because [READ REASONED STATEMENTS AND SPECIFY WHAT STANDARDS THE APPLICATION FAILS TO FEET AND WHY]. I further move to adopt the following reasoned statements: [READ STATEMENTS, SPECIFYING WHICH FINDINGS SUPPORT APPROVAL OF THE FILE AND WHICH FINDINGS SUPPORT DENIAL.] The actions that could be taken to obtain approval are to:

1. Submit a new application that meets the standards of the City of Dover; or
2. Pursue such remedies as provided for in Title 67, Chapter 65, Idaho Code.

REASONED STATEMENTS:

The staff report and subsequent evidence of record and received at the hearing provide the basis for the findings and reasoned decision. Based upon the findings, the following reasoned statements are adopted by the Dover City Council:

1. The proposal was reviewed for compliance with the Dover City Code Section 12-8-3, Standards for Variance Review. The proposal **IS/IS NOT** in accord with the applicable standards, based upon the evidence of record enumerated in the findings above and based upon the specific conclusions as follows: [IF THE PROPOSAL IS NOT IN ACCORD, SELECT THE STANDARDS IT FAILS TO MEET.]
 - A. Special conditions and circumstances exist that are peculiar to the land, structures, or buildings in the same district.
 - B. A literal interpretation of the provisions of this title deprives the applicant of rights commonly enjoyed by other properties in the same district under the terms of Dover's zoning regulations.
 - C. Special conditions and circumstances do not result from actions of the applicant.
 - D. Granting the variance will not confer on the applicant any special privilege that is denied by Dover zoning regulations to other lands, structures, or buildings in the same district.
 - E. Granting the variance is not in conflict with the public interest

CONDITIONS OF APPROVAL:

1. The approved site plan is the controlling document for the requested variance. Construction of the home and accessory dwelling unit shall be in substantial compliance with the site plan, as approved by the City Council. Any proposed modifications to the location of the home and accessory dwelling unit that are not in substantial compliance with the approved variance and site plan are subject to the modification procedures and standards of Dover City Code, Sections 12-3-17 and 12-3-18.
2. The variance is valid for two (2) years from the date of the written decision. This variance shall expire unless a building permit has been issued and construction initiated in reliance upon the variance prior to the expiration date. An extension, not to exceed two (2) years, may be requested, provided the request is received and the City Council has acted upon it prior to the expiration date. (Dover City Code 12-8-6)
3. Prior to construction of the encroachment onto the city right-of-way or any installations or alterations to the city utilities and stormwater conveyances adjacent to or onto the subject property, the applicant shall obtain encroachment permit approval from the city.
4. Prior to issuance of the variance, the applicant shall pay any remaining fees associated with the processing of this application, in accord with the adopted fee schedule of the City of Dover.