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**CITY OF DOVER, DELAWARE**

**BUILDING ZONE ORDINANCE  
DECISION**

**CENTURY ENGINEERING, INC.**

Case No. V-13-13

Dover, Delaware

Date: November 20, 2013

Applicant: Kent County Levy Court  
State of Delaware

Decision of the Board of Adjustment on the Appeal (or application)  
of: --

STATEMENT OF FACTS

This property is located at Horsepond Road and Starlifter Avenue owned by Kent County Levy Court and the State of Delaware who are the Applicants. The property is zoned IPM/AEOZ (Industrial Park Manufacturing/Airport Environs Overlay Zone) - Noise Zones B, C, and D, and the present use consists of vacant lots and Civil Air Terminal. In its application, the Applicants requested two variances but at the hearing abandoned the variance sought for Zoning Ordinance Article 5, Section 16, to remove on-site tree planting, preservation, and mitigation requirements. Thus, the sole variance sought by Applicants is Zoning Ordinance Article 5, Section 7.5, to allow a 9.0 foot fence within front, side, and rear yards and to allow the use of barbed wire adjacent to a residential zone. Article 5, Section 7.5, regarding fences limits the maximum height of 4 feet above the ground when situated within front yard areas and 8 feet above the ground when situated within side and rear yard areas. Fence material commonly referred to as "barbed wire" and/or "razor wire" or any similar material shall be prohibited along property lines which adjoin residential zones.

In considering the request for the variance, the Board considered the nature of the zone in which the property lies which is the IPM (Industrial Park Manufacturing Zone) and is industrial in nature. It is also in the AEO Zone (Airport Environs Overlay Zone), Noise Zones B, C, and D. The proposed use of the property is consistent with these zones.

The Board considered the character of the immediate vicinity and the contained uses therein. The Board noted that the property to the north is zoned IPM and is currently vacant; on the south side of Horsepond Road lies Dover Brook Meadow Residential Subdivision; on the west side of Starlifter Avenue lies Kent County Industrial Park, a fully developed industrial park that houses various manufacturing facilities; and on the east side is Dover Air Force Base, a fully developed securitized military installation, so the property is located between Dover Air Force Base and the Kent County Aeropark so that the proposed use is compatible with surrounding uses and while there are residential properties

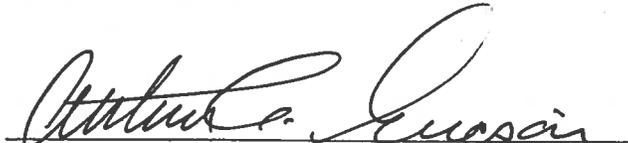
located nearby, the Dover Air Force Base is the most significant presence in the area.

Next, the Board considered whether if the restriction upon Applicants' property were removed, would such removal seriously affect neighboring properties and uses. The Board noted that the proposed fence would be tying into the existing fence line along the property line shared with the Dover Air Force Base which is currently 9 feet in height, and the surrounding properties north of the subject property and to the west of Starlifter Avenue have current uses as industrial parks so that the height of the fence would balance into current demographics in the surrounding area.

Finally, the Board considered whether if the restriction were not removed, would the restriction create unnecessary hardship or exceptional practical difficulty for the owner in its efforts to make normal improvements in the character of the use of the property that is a permitted use under the provisions of the Zoning Ordinance and the Board noted that not approving the variance for the height of the fence and use of barbed wire would prevent construction of the project. The unique circumstances relating to the need for security around the Civil Air Terminal and Dover Air Force Base presents an exceptional practical difficulty because without the variance to allow a 9 foot fence with barbed wire would prohibit the improvements being constructed. This is a unique circumstance that is peculiar to this specific use and property.

#### DECISION

The Board voted unanimously with Chairman Sheth recusing himself from voting but those members voting favorably being Mr. Senato, Mr. Hufnal, Colonel Ericson, and Mr. Keller. The Board concluded that the height and the barbed wire of a 9 foot fence surrounding the property would be consistent with the requirements of Dover Air Force Base and that unique security issues related to Dover Air Force Base posed an exceptional practical difficulty as the Civil Air Terminal is dependent upon the infrastructure of the Dover Air Force Base in order to operate. Without the proposed fence, the project would not comply with security requirements and would not be feasible.

  
COLONEL ERICSON, Acting Chairman

cc: Building Inspector (1)