

BEFORE THE TOWN OF DENTON BOARD OF APPEALS

IN RE: JPA VENTURES, LLC
APPLICATION FOR VARIANCE
FROM THE DENTON TOWN CODE
§128-127 TABLE OF DENSITY &
DIMENSIONAL REGULATIONS

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CASE NO. BOA-25-001

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MINUTES, FINDINGS OF FACT, CONCLUSIONS AND DECISION

The Board of Appeals held a Public Hearing on Monday, July 14, 2025, at 6:00 p.m., at the Denton Town Office to consider an application for a Variance for JPA Venture, LLC, (the “Applicant”) on property located at Legion Road, Denton, Maryland (the “Property”).

Board Members present were Chairperson Troy Livingstone, Vice Chairperson Mary “Lori” Schmidt, and Board Member Florence Doherty. Also present were Counsel for the Board, Sharon VanEmburch, Town Attorney, Lyndsey Ryan, Town Administrator, Scott Getchell, Chief of Police, George Bacorn, Jr., and Director of Planning and Codes, Donna Todd. The Applicant’s Attorney, Brendan Mullaney, Applicant’s Engineer, Kevin Shearon, and property owner, Jim DiDonato were present. Adjacent Property Owners’ Attorney, Michael Pedone attended virtually.

PROCEDURAL HISTORY

On November 13, 2025, the Applicant filed an application with the Board of Appeals seeking approval for a variance to reduce the lot depth for the crescent-shaped portion of property to the west of the proposed Commerce Drive from 125’ to 104.1’ (a variance of 20.9’) located at Legion Road, Denton, Maryland, Caroline County Tax Map 106, Parcel 2474. At the January 13, 2025 Board of Appeals meeting, the Board continued the hearing at the request of the Applicant. The public hearing was then scheduled for July 14, 2025.

The application was advertised in the Times Record for two consecutive weeks on June 25, 2025, and July 2, 2025. A sign was posted on the Applicant’s Property on June 25, 2025, and all property owners within 200 feet of the Property received written notification of the Public Hearing. All public notice requirements have been satisfied.

SUMMARY OF PROCEEDINGS

On July 14, 2025, Chairperson Livingstone opened the Public Hearing at 6:00 p.m., followed by the Pledge of Allegiance.

Vice Chairperson Schmidt read the Public Notice advertised in the Times Record for BOA-25-001 into the record.

Chairperson Livingstone swore in Brendan Mullaney, Jim DiDonato, Kevin Shearon, Michael Pedone, and Lyndsey Ryan.

The Applicant's Attorney, Brendan Mullaney, McAllister, DeTar, Showalter & Walker LLC, provided information regarding the location and application. Mr. Mullaney is asking for a variance for property located at Legion Road, Tax Map 106, Parcel 2474, zoned Regional Highway Commercial to reduce the lot depth for the crescent-shaped portion of property to the west of the proposed Commerce Drive from 125 feet to 104.1 feet (a variance of 20.9 feet) to accommodate the construction of Commerce Drive, a new road connecting Gay Street to Legion Road.

Mr. Mullaney states the property is a de facto subdivision as determined by a previous Town Attorney. After construction, the road will be conveyed to the Town of Denton and will become a public street that is a throughway from Gay Street to Legion Road. He noted the traffic issues currently at the Legion Road and Route 404 intersection and expressed the benefits Commerce Drive would have by alleviating some of the current traffic concerns. Commerce Drive is proposed to be located on property owned by the applicant JPA Venture, LLC, and a parcel to the northwest owned by Denton Site SW LLC. It's been approved by State Highway Administration (SHA), to be constructed and plans have been submitted to the Town, and the Applicant is currently in the process of negotiating agreements. JPA Venture, LLC and Denton Site SW LLC are currently underway to fund and construct the road. A comment was raised regarding the installation of Commerce Drive being a subdivision, and the land to the west of the crescent shape shown on the site plan would remain the property of JPA Venture, LLC. The crescent shape lot does not meet all the bulk standards that are found in the Denton Town Code. The minimum lot area in the (RHC) Regional Highway Commercial zoning district is twenty thousand (20,000) square feet in size, and the lot meets that requirement resulting in forty-three thousand three hundred and thirty-eight (43,338) square feet. There's a fifty (50) foot front yard

setback, twenty (20) foot rear yard setback, twenty (20) foot side yard setback aggregate of fifty (50) feet, and a one hundred (100) foot lot width requirement. The plan shows compliance with all besides the one hundred twenty-five (125) foot lot depth requirement. This is currently one hundred and four point one (104.1) feet and are requesting a variance of twenty point nine (20.9) feet.

TESTIMONY AND EVIDENCE

Kevin Shearon, DMS & Associates, testified as an expert witness due to his bachelor's of science degree in civil engineering from Clemson University and has been practicing engineering for thirty-one years. He's the owner and principal of DMS & Associates. He is the project manager and design engineer of Commerce Drive and is also actively working on other projects in the Town and County.

Mr. Mullaney asked the Board to consider the credentials Mr. Shearon possesses as an expert in land use and engineering.

Mr. Shearon explained that the alignment of Commerce Drive at Route 404 and Legion Road needs to come in close to perpendicular to the existing road due to the potential of interfering with traffic patterns. The two points of connection are established and are a part of the Town's Comprehensive Plan to connect Route 404 with Legion Road. The connection between the two roads, showing at a seven-hundred-and-fifty-foot radius, would allow for better and safer site distance and visibility at intersections.

Mr. Mullaney noted the smaller the radius, the less safe the angle becomes for commuters. He asked Mr. Shearon if they were to move the road more into JPA Venture, LLC's property, how small the radius would have to be.

Mr. Shearon explained it would have to be about five hundred (500) feet and would be less than what is ideal for the anticipated speed and traffic that would be on the road.

Mr. Mullaney asked Mr. Shearon in his professional opinion if what is designed is consistent with Maryland design requirements and the safest configuration for Commerce Drive and the public in the future.

Mr. Shearon agreed.

Board Member Doherty noted there is proposed access to the west side of Commerce Drive that leads to the crescent-shaped area at a sharp angle and wanted to know if this would remain in the same zoning district.

Mr. Mullaney stated it would remain (RHC) Regional Highway Commercial.

Member Doherty asked if the forested area to the east would be made into a subdivision. Per the site plans provided, it shows easy access to and from Rout 404 for the entryways, including two lanes going in both directions.

Mr. Mullaney stated there's no agreement at this time and those entryways would not be part of the public right of way. The purpose of them is to show potential access for future development.

Member Doherty expressed her concerns regarding the traffic pattern going from two lanes to only one.

Mr. Shearon explained they don't feel there's enough traffic to install dual lane traffic for the full length of Commerce Drive. The State Highway Administration (SHA) requires the amount of four total lanes at the Route 404 intersection, whereas Legion Road only requires the two lanes due to less traffic. Due to the length of the proposed road, he has no concerns regarding the way it's stacked. He also noted that just because the lot is considered a subdivision doesn't mean there will be multiple lots within the area.

Mr. Mullaney stated the intention is for the area to be used for open space, landscaping requirements, and stormwater associated with development on the remainder of the site. The entryways were there to show how to get onto the properties.

Chairperson Livingstone asked if SHA could require changes to the road if it becomes an issue later.

Mr. Shearon stated SHA couldn't, but the Town could, due to it being a public road. He points out the access roads off Commerce Drive will not be the only access points to all of the property shown. There could be additional access points off of Legion Road to JPA property, and the possibility Denton Site SW LLC could internally connect to Strato Drive at some point to provide more internal flow.

Michael Pedone, Venable LLP, represents the owners of PSM Property LLC, Tax Map 106, Parcel 2479, Lot 1, and Dhruvil LLC, Tax Map 105, Parcel 2476, that are adjacent to the

proposed road. Mr. Pedone asked Mr. Shearon to explain what the State Highway Administration (SHA) access manual describes as a permissible angle.

Mr. Shearon states generally ninety degree is preferred and SHA allows variations from that occasionally.

Mr. Pedone asked if he knew the range the manual permits them to vary.

Mr. Shearon stated he doesn't, and he is not a traffic engineer.

Mr. Pedone asked Mr. Shearon if he was familiar with the intersection of Route 404 and Legion Road, and if it was at a ninety-degree angle.

Mr. Shearon stated he is familiar with the intersection, and it isn't a ninety-degree angle nor is it efficient or ideal.

Mr. Pedone pointed out that the intersection was permitted in the SHA Manual. He noted in earlier conversations that it was less than ideal if a different alignment was used for Commerce Drive. It would cause it to extend farther into JPA's property or closer to his client's property. He questioned if what they're proposing is the only possible alignment and if there are no other options.

Mr. Shearon stated that there are other options, but the one they are proposing is the most ideal and efficient way to connect Legion Road to Route 404.

Vice Chairperson Schmidt asked Mr. Shearon what the anticipated speed limit was for Commerce Drive.

Mr. Shearon stated it would most likely be posted at twenty-five miles per hour.

Vice Chairperson Schmidt asked if the seven hundred fifty (750) foot radius was for tractor trailers to turn and what kind of traffic it can accommodate.

Mr. Shearon explained it could accommodate tractor trailers, but it is not its intended purpose.

Vice Chairperson Schmidt questioned the proposed stormwater management.

Mr. Shearon stated the stormwater management will be located at each end of the road.

Mr. Mullaney wanted to clarify that a five hundred fifty (550) foot radius is not in compliance with the Maryland Design standards.

Mr. Shearon noted a traffic impact study was conducted in the area, which included an analysis of existing traffic patterns. Based on this study, the traffic engineer recommended the appropriate number of lanes for Commerce Drive.

Mr. Mullaney emphasized the intersections of Commerce Drive will be subject to review and approval by the Town of Denton and State Highway Administration (SHA) for any future projects or developments. He further indicated the proposed road is referenced in the Town's Comprehensive Plan, located on page 132.

Mr. Mullaney read the narrative attached to the application submitted to the Board.

Chairperson Livingstone asked if the Planning & Codes Department had any comments.

Mrs. Donna Todd, Planning and Codes Director, states she provided the Board with a memo and a letter of support from Dennis Silicato, owner of Denton Site SW LLC.

Mr. Pedone stated the Denton Town Code makes it very clear what is being proposed is not permitted, and the applicant is not allowed to seek approval for convenience, profit, or caprice. The question again is: is what's proposed the only way to build the road, or is it just the most convenient and advantageous for the Applicant? He points out that Mr. Shearon stated that any other option is not ideal and the ninety-degree angle requirement in intersections is preferred but not required, and in § 3.1.2 of the State Highway Administration Access Manual confirms that a ninety-degree angle is not required. Mr. Shearon also testified that the proposed alignment is not the only way to build Commerce Drive and said it would be ideal for his client. Mr. Mullaney told the Town that it's what the Comprehensive Plan recommends and agrees that a road should be constructed, but the Comprehensive Plan does not require the particular alignment or the creation of the orphan crescent parcel. The alignment has not been dictated; the applicant has chosen it. The variance application doesn't pass legally, and there's a legal problem with it, and they have failed to properly state their request. They seek a variance to reduce the lot depth from one hundred twenty-five (125) feet to one hundred four point one (104.1) feet. In § 128-15 of the Zoning Code, the term lot depth is defined as the mean horizontal distance between the front and rear lot lines. From their drawings, the one hundred four point one (104.1) feet is not the mean horizontal distance from the front and rear lot lines of the proposed crescent lot; it's the maximum distance at the apex of the curved lot line. Given the shape of the property, the mean horizontal distance is much lower, but the applicant didn't provide it in their application. He believes they didn't request

the correct relief and suggests the Board could stop and deny the application on that basis alone. He also noted Mr. Mullaney stated it will result in a de facto subdivision of the land, but the application is not correct that the claim of the crescent lot is compliant with the Code. The Town Code requires a subdivision layout to be in full compliance with zoning standards, including area and dimensional requirements. The crescent lot proposed by the Applicant would not meet the requirements; for example, the minimum depth for a lot located in the (RHC) zone is one hundred twenty-five (125) feet, and the mean depth would be much less. If you consider the front setback of fifty (50) feet and rear setback of twenty (20) feet, the proposed crescent lot will have a theoretical building envelope at its deepest point of only thirty-four (34) feet and would taper to be much smaller at the ends. It becomes a lot that is impractical and impossible to build on, and that's what the Zoning Code prohibits. Denton Town Code §128-120, No lot shall be created that is so narrow or otherwise so irregularly shaped that it would be impracticable to construct a building on it. He once again urged the Board to deny the application.

Lyndsey Ryan, Town Attorney, clarified that the Town is neither opposing nor supporting the application. She concurs with Mr. Pedone's assessment that the variance is unnecessary for project execution. Additionally, she proposes alternative solutions for managing crescent-shaped land, such as deeding it to the Town with Commerce Drive. This plan, which will be finalized at the project's conclusion, will enable the Town to utilize the crescent area for stormwater management purposes.

Mrs. Ryan also observed that the application indicated that the special conditions were not established by the Town but rather by the applicant. The Town did not construct or design Commerce Drive; it has solely reviewed the road in conjunction with the provided site plans.

Chairperson Livingstone asked if the crescent part of the land will be deeded to the Town.

Mrs. Ryan explained that it's the applicant's intention to build the road and deed it to the Town. The crescent part is requested by the Town to use for stormwater management.

Mr. Mullaney responded to Mr. Pedone's concern regarding the small building envelope result; he assured Mr. Pedone they are willing to approve the project on the condition that no buildings will be constructed on the crescent lot without prior approval from the Board of Appeals.

Chairperson Livingstone asked if they would be willing to deed that portion of land to the Town.

Mr. Mullaney informed the Board that the project is self-funded. Therefore, the Town should not obstruct Commerce Drive, and the Applicant should not be required to transfer an acre of land in addition to the road.

Mr. Mullaney stated the hardships were not created by the Applicant but rather by the unique configuration of the property boundaries that are platted and the configuration of Legion Road, MD 404, and Gay Street intersection.

Jim DiDonato, the owner of JPA Venture LLC, provided a historical overview of the property. He has owned it for over two decades and has been attempting to develop the road for the past ten years. Historically, he was approached by the Town's previous manager and attorney regarding constructing a road across his property to alleviate the burden of Legion Road and MD 404. The State Highway originally denied the access road off MD 404. They collaborated with both the Town and Caroline County to present the project to the SHA. One of the stipulations was the road must be owned by the Town of Denton and not private. After reviewing engineering reports and conducting multiple traffic impact studies, SHA approved the project. Mr. DiDonato noted the road is his property and does not require construction. It was originally an eight hundred thousand (\$800,000) dollar road that had been through multiple adjacent property owners. The road has now exceeded three million (\$3,000,000) dollars and will be privately funded. JPA has already given up three and a half (3.5) acres that will be dedicated to the Town. He stated the primary beneficiary of Commerce Drive is the Town of Denton. It would provide the Town with a direct access to Legion Road and Gay Street, alleviating issues that were never caused by the Town, primarily due to SHA's design. Mr. DiDonato also clarified he would not profit from the construction of the road and has no open plans to build. He acknowledged the layout could be altered but intends to prioritize what is best for the Town. He explained this road will become an integral part of the Town and is the safest option. He suggested the Town could purchase the road from him at fair market value, but he would not be relinquishing any additional land.

Sharon VanEmburch, Counsel for the Board, informed the attendees that the Town has implemented a new Zoning Ordinance. While certain sections in the advertisement and application have undergone modifications, the underlying content remains unchanged.

- §128-163 (k) is now §128-181
- §128-117 is now §128-127

Mr. Pedone expressed his disagreement with Mr. Mullaney's proposal to refrain from constructing on the crescent section of the property. He asserted creating an unusable parcel is illegal in his opinion. While acknowledging the benefits of constructing Commerce Drive and his desire for a road, Mr. Pedone emphasized the proposed application is not the sole viable option and does not necessitate its construction in the manner suggested.

Board Member Doherty asked Mr. Pedone if he could clarify what the dimensions would've been if the Applicant gave accurate information.

Mr. Pedone stated he doesn't know because they didn't give accurate information and states the Board shouldn't have to guess as it should be in the application.

Mrs. VanEmburch stated that the calculation for mean depth would need to be performed by Mr. Shearon or someone with the ability to make the calculation.

Mr. Mullaney stated he'd be happy to clarify the dimensions and have the engineering work done and come back next month.

Board Member Doherty expressed her belief that the road would be safer if the variance were eliminated. She anticipates the majority of traffic will be entering and exiting MD 404. Additionally, she advocates for constructing the road with dual lanes rather than retrofitting it for its limited claimed usage.

The Board inquired as to whether it could ask legal counsel some questions in closed session. Ms. VanEmburch explained that they would need to make a motion, second and have a vote to go into closed session for legal advice.

Chairperson Livingstone motioned to move to a Closed Session.

Board Member Doherty seconded the motion. All Aye.

DELIBERATIONS

The Board entered into a closed session for legal advice pursuant to § 3-305(b)(7) of the General Provisions Article of the Annotated Code of Maryland at 7:30 p.m. Present for the closed session were Board Chairperson Livingstone, Board Members Doherty and Schmidt, Counsel for the Board, Sharon VanEmburch, and Director of Planning and Codes, Donna Todd. No action was taken by the Board.

The Board reconvened the open meeting at 8:03 p.m.

Board Member Doherty noted that all public notice requirements were satisfied.

Chairperson Livingstone stated they have come to the decision there are other options that would not need a variance of the crescent lot.

Board Member Doherty stated they didn't receive sufficient evidence to support the details of the lot dimensions. The mean lot depth was unclear for the total lot dimensions, and Applicant doesn't comply with §128-120 for the minimum lot width in the Denton Town Code.

FINDINGS AND DECISIONS

Variance Request – Member Doherty clarified the Applicant appears to have selected the road design resulting in the difficulties and the crescent subdivision. She further asserted the construction of the road was not feasible in a safe manner, as evidenced by the engineer's provision of the optimal road design. She inquired about the justification behind the dimensions provided in the application and the intended use of the property. There is no hardship as it is possible to change slightly so a variance may not be needed.

Chairperson Livingstone stated that if they slightly change the road a variance wouldn't be needed.

In accordance with §128-181(2) of the Denton Town Code, the Board makes the following findings of fact:

- (a) Strict enforcement of this chapter would produce unnecessary and undue hardship as distinguished from variations sought by applicants for purposes or reasons of convenience, profit, or caprice.**

The Board finds that the Applicant has not demonstrated a hardship since it is possible to vary the location of the road to avoid or at least reduce the variance. The location of the road was selected by the Applicant for its own convenience, profit or caprice.

- (b) Such hardship is the result of special conditions and/or circumstances not generally shared by other properties in the same zoning district or vicinity and which are peculiar to the land, structure, or building involved. Such conditions and/or circumstances may include but are not limited to the following: exceptional narrowness or shallowness, or both, or irregular shape or topography**

of the property, unusual and limiting features of the building; or the effective frustration or prevention of reception of satellite programming due to the presence of a physical object or objects which obscure the line of sight when such object or objects cannot be easily removed.

As noted above, the Board does not find that a hardship exists. While the property owned by JPA Ventures, LLC is somewhat irregularly shaped because it is an L-shape, it is very large and could accommodate other locations for the proposed Commerce Drive that don't create a lot that requires a variance.

- (c) Such special conditions or circumstances must not be the result of any action or actions of the applicant.**

The Board believes the conditions that exist for the road are the result of the actions and decisions of the applicant.

- (d) Granting of the variance must be in harmony with the general purpose and intent of this chapter and must not be harmful to adjacent property, the character of the neighborhood, or the public welfare.**

It is not in harmony with the zoning chapter to create new nonconforming lots particularly when a variance can be avoided.

- (e) Granting the variance shall not allow a use expressly or by implication prohibited in the zoning district involved.**

The variance would not allow a use prohibited.

- (f) The condition, situation, or intended use of the property concerned is not of so general or recurring a nature as to make practicable a general amendment to this chapter.**

The variance is not so general as to make an amendment to the chapter practicable.

- (g) The variance granted must be the minimum necessary to afford relief.**

The variance requested is not the minimum necessary to afford relief. The location of the road could be moved to reduce or eliminate the variance.

Board Member Doherty made a motion to deny the variance.

Vice Chairperson Schmidt seconded the motion. The motion passed 3:0.

Staff Item – The new postponement policy was voted on.

Chairperson Livingstone motioned to approve the new postponement policy.

Vice Chairperson Schmidt seconded the motion. The motion passed 3:0

The meeting on July 14, 2025, adjourned at 8:11 p.m.

ATTEST:

Donna R. Todd
Donna R. Todd

8-4-2025
Date

DENTON BOARD OF APPEALS:

Troy Livingstone
Troy Livingstone, Chairperson

Mary "Lori" Schmidt
Mary "Lori" Schmidt, Vice Chairperson

Florence E. Doherty
Florence Doherty, Board Member