



Kent County

Department of Planning Services Division of Planning

SARAH E. KEIFER, AICP
Director of Planning Services

Phone: 302/744-2471
FAX: 302/736-2128

MARY ELLEN GRAY, AICP
Division Head

STAFF RECOMMENDATION REPORT March 16, 2017

APPLICATION: A-17-08

APPLICANTS/OWNERS: Paul R. Jr. & Jayne M. Cutrona
57 Azzurri Court
Smyrna, DE 19977

PROPERTY LOCATION: 57 Azzurri Ct., Smyrna, DE 19977

NATURE OF REQUEST:

A-17-08 Paul R. Jr. & Jayne M. Cutrona seek a variance from the minimum required rear setback of 25 ft. to enable the construction of a porch (**Sect. 205-397.2.C(1) of the Kent County Code**). The property is located on the north side of Azzurri Ct., approx. 283' east of Eastridge Dr., being lot 27 of the Village of Eastridge subdivision, south of Smyrna. Levy Court District: 1st. Zoning District: AC. Tax Map No.: **KH-00-036.02-04-27.00-000**

The applicants are requesting the variance to enable the construction of a 12' x 15' screened-in porch, 8+/- ft. from the rear property line.

I. STAFF RECOMMENDATION:

The staff has reviewed the information presented by the applicants and recommends that the Board strongly consider all public testimony in making their decision. The staff recommends **DENIAL** of the request based on the opportunity available to the Developer for a more appropriate, alternative solution and analysis of the four criteria from the applicants and staff as follows:

II. RESPONSE TO CRITERIA:

1. The nature of the zone where the property lies.

Applicant Response:

Yes, screen porch is in a residential neighborhood.

Staff Response:

As shown on Exhibit A, the subject site is zoned AC (Agricultural Conservation District). Surrounding properties are also zoned AC, being part of the Village of Eastridge subdivision established in 2005. Residential additions are within the nature of the AC zoning district.

2. The character and uses of the immediate vicinity.

Applicant Response:

Neighbors have put on screen porches just as I am requesting.

Staff Response:

The character of the surrounding area is primarily residential. The majority of lots in the immediate vicinity are developed, with some just west currently undeveloped. Although rear porch additions are proposed closer to the rear property line than the required 25 ft. minimum, the subdivision, being a Planned Unit Development (PUD), has established a rear setback of 15 ft. throughout the development. However, this request does appear to be a continuation of a trend requesting a further reduction in the required rear setback in perimeter lots. Staff recommends that the Board strongly consider the ramifications of the approval of this request. The continuation of this trend may result in a character change throughout the subdivision, and should be addressed by the developer through more appropriate processes.

3. Whether removal of the restriction on the applicant's property would seriously affect the neighboring properties.

Applicant Response:

No it would not affect any neighbors as we back to the woods.

Staff Response:

The reduction of the required rear setback may not negatively affect neighboring properties in the area as the subject site is abutting open space to the north. However, Staff is concerned with the trend arising from this type of request. Although this and the previous requests were for perimeter lots abutting open space, the implications of past approvals, as well as the possible approval of this request, could affect interior lots in the future. Should this trend continue, the possibility of reduction to interior lot rear setbacks could significantly alter the entire character of the neighborhood.

While the request itself may not pose any negative effects towards neighboring property owners, the lack of response from the developer to address this situation may lead to a negative impact on the subdivision as a whole. The forcing of individual property owners within this community to bear unnecessary fees and excessive processing times for variance requests to the Board is needless. The issue itself appears to stem from the housing styles available from the developer, which appear to have a standard floating door leading to the rear yard area. However, given the contours of the perimeter lots, certain improvements which may be viewed as normal improvements (i.e. screened in porches and decks), do not appear to allow for such improvements within the current buildable area of these lots.

4. Whether failure to remove the restriction would create unnecessary hardship or exceptional practical difficulty for the owner in relation to the owner's efforts to make normal improvements to the property. Economic hardship, standing alone, may justify granting an area variance and the inability to prove one's

business or to stay competitive as a result of area limitations may qualify as a legitimate exceptional practical difficulty.

Applicant Response:

We need a 12 x 15 screen porch. I had two skin cancer surgeries on my face and can't be in the sun. My husband's immune system is compromised due to cirrhosis of liver. He can't take the chance of bug or mosquito borne diseases. We want to be able to enjoy the woods without issues.

Staff Response:

The failure to remove the restriction for the rear setback in its entirety may create an exceptional practical difficulty as the rear of the existing dwelling is just 5 ft. from the rear property line. The expectation for the applicants to construct additional living space within this area may not be feasible. Staff recommends, therefore, that the proposed addition be reduced to maintain 10 ft. to the rear property line at minimum to align with previous approvals.

This recommendation was made without the benefit of public testimony and is based on the information presented when the application was received by the Department of Planning Services. The Board of Adjustment shall give considerable weight to public testimony received during the public hearing in considering its decision.

III. APPLICATION BACKGROUND INFORMATION:

- The applicants are seeking the above referenced variance to reduce the required rear setback of 25 ft. to enable the construction of a residential addition.
- The applicants are proposing a 12' x 15' screened-in porch addition, 8+/- ft. from the rear property line.
- The site is 0.12± acres in size and is currently improved with a one story single-family dwelling. The subject site, being lot 27 of the Planned Unit Development of the Village of Eastridge, is required to meet a reduced rear setback of 15 ft. as established and approved by Kent County Levy Court.
- There are no previous Board of Adjustment applications for the subject site and no applications within the immediate vicinity of the subject site similar to this request; however, there have been five similar applications within the subdivision thus far:
 - Variance A-12-31, for 144 Eastridge Dr., was approved on 9/20/12 to allow an open deck approximately 7'8" above grade to be constructed 10 ft. from the rear property line.
 - Variance A-15-20, for 30 Felix View Ct., was approved with a modification to allow for the construction of a screened-in porch 10 ft. from the rear property line.
 - Variance A-16-30, for 208 Eastridge Dr., was approved on 6/16/16 to allow for two rear porch additions 9.7 ft. from the rear property line.
 - Variance A-16-41, for 187 Lupine Dr., was approved on 9/15/16 to allow for the construction of a screened-in porch and an open deck 9 ft. from the rear property line.

- Variance A-17-06, for 209 Lupine Dr., was approved on 2/16/17 to allow for the construction of a screened-in porch 12.9 ft. from the rear property line.
- The subject site is zoned AC (Agricultural Conservation District). The Comprehensive Plan recommends that this area be utilized for low density residential purposes.
- A comment sheet was provided by DelDOT on 3/2/17; DelDOT has no comments at this time.
- The applicants are advised that, should the request be granted, a Building Permit shall be obtained prior to the commencement of construction. For more information, contact the Division of Planning at (302) 744-2471 or Department of Inspections and Enforcement at (302) 744-2451 between 8:00 a.m. and 5:00 p.m.

ENC: Exhibits A & B

Proposed elevation of addition from applicants, submitted with application