



Kent County

Department of Planning Services Division of Planning

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STAFF RECOMMENDATION REPORT March 16, 2017

APPLICATION: A-17-11

APPLICANT: State of Delaware, Office of
Management & Budget
c/o Mark DeVore
540 S. DuPont Highway, Suite 1
Dover, DE 19901

OWNER: Delaware State Fire School
c/o Mark DeVore
540 S. DuPont Highway, Suite 1
Dover, DE 19901

PROPERTY LOCATION: 1461 Chestnut Grove Rd., Dover, DE 19904

NATURE OF REQUEST:

A-17-11 State of Delaware c/o Mark DeVore (Owner: Delaware State Fire School) seeks a variance from the maximum impervious surface coverage 25% to enable a site plan revision (**Sect. 205-397.2.C(2) of the Kent County Code**). The property is located on the north side of Chestnut Grove Rd. (Co. Rd. 158), approx. 1430' northeast of Deer Track Ln. (Co. Rd. 161), west of Dover. Levy Court District: 1st. Zoning District: AR. Tax Map No.: **ED-00-066.00-02-46.00-000**

The applicant is requesting the variance to legalize the existing impervious surface coverage of 8.14± acres (29%) and increase the allowable coverage amount to 16.9± acres (60%) to enable a site plan revision.

I. STAFF RECOMMENDATION:

The staff has reviewed the information presented by the applicant and recommends that the Board strongly consider all public testimony in making their decision. The staff recommends the following:

- **APPROVAL** of the request to legalize the existing coverage; and
- **CONDITIONAL APPROVAL** for the request to further increase the impervious surface coverage with approval from Kent Conservation District.

These recommendations are based on the analysis of the four criteria from the applicant and staff as follows:

II. RESPONSE TO CRITERIA:

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

Applicant Response:

The property is zoned AR and the area is agricultural in nature with some residential located down Chestnut Grove Road.

Staff Response:

As shown on Exhibit A, the subject site is zoned AR (Agricultural Residential District). Government facilities are within the nature of the zoning district, upon receiving all necessary approvals through Levy Court.

2. The character and uses of the immediate vicinity.

Applicant Response:

The property is bounded on both sides by agricultural fields and on the rear by wooded area. The property across Chestnut Grove Road is also an agricultural field and a granary.

Staff Response:

The character of this area is primarily agricultural in nature. Properties to the south do appear to be both agricultural and residential, with other residential development occurring further to the west and southeast of the subject site. The subject site, originally approved through the conditional use process in 1988, is established as a fire safety training facility and houses the State Fire Marshal office. As the use is an allowable use within the zoning district, it does not appear to be out of character with other residential and agricultural uses in the area. However, 28.17± acre site appears to have had several expansions and additions of impervious surface coverage without receiving prior approvals from the Department of Planning Services, including the necessary building permits to construct additional buildings.

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

Applicant Response:

The change of the maximum impervious coverage will not have an effect on the neighboring properties as they are agricultural fields. The change in the impervious cover will not change the nature of what takes place on the property and thus will not change the effect on the neighboring properties. The property has a major stormwater pond and increase of the impervious area will not have an effect on neighboring properties. Additionally, 60% impervious is not extensive and many properties in the County have impervious covers of 75% or more.

Staff Response:

The removal of the impervious surface coverage requirement in its entirety may cause an exceptional practical difficulty to the applicant, as the current site is developed in a way necessary to serve the community of Kent County and all of Delaware. Additionally, the current lot coverage on the subject site does exceed the maximum allowable impervious surface coverage of 25% minimally, at 29%. However, according to NEMO Delaware, pervious surface coverage is vital to all water bodies as it allows for filtration naturally through soil and vegetation. The allowance of 60% of impervious area for the subject site may significantly affect water quality and flood control by decreasing the absorption of rainfall (Delaware Sea Grant College Program, 2005). Based on this information, the request to exceed the allowable impervious surface coverage to the extent requested should be strongly considered, especially given the proximity of the site to a stream bounding the property on the north and east sides. Should the Board approve the request to allow for additional coverage on the subject site, Staff recommends that approval from Kent Conservation District be obtained prior to the issuance of any additional building permits.

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:

The property already exceeds the maximum impervious coverage at 29%. The facility is the only such facility in the state and its central location in the state is important. The facility is used to train firefighters and emergency responders from the entire state. If the impervious cover limit is not increased, it will create an exceptional practical difficulty as the fire school would have to create separate facilities between two or more locations, which does not work operationally for the facility. Or they would have to seek to another location to relocate to. This would cause a serious financial and operational hardship.

Staff Response:

The failure to remove the restriction pertaining to impervious surface coverage in its entirety may create an exceptional practical difficulty, as the request is to both legalize existing coverage in addition to allowing an increase up to 60% as recorded on the facility's site plan. As the current coverage of the lot is at 29% with the maximum of 25%, it appears that this portion of the request may be viewed as minimal. Additionally, the site improvements made may be viewed as necessary and normal improvements, based on the use of the property. Although other properties within Kent County may be allowed higher amounts of impervious surface coverage, this amount varies dependent upon the zoning district and access to public facilities. As the subject site is located within the growth zone, but is zoned for low density residential uses, the highest allowable impervious surface coverage for this zoning district would be 35%. Given that this district's purpose is to serve as a transitional

zone between agricultural and residential uses by offering agricultural and farm related services in areas where farming may not be optimal, an increase up to 60%, allowing for coverage on 16.9± ac. may be viewed as excessive.

Given the above information, the staff is inclined to recommend the following:

- Approval of legalization of all existing improvements contingent upon obtaining all necessary permits for all existing structures, and
- Conditional approval of any additional proposed impervious surface coverage unless approved by Kent Conservation District.

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 applicant is requesting the variance from the maximum allowable impervious surface coverage of 25%.
- The applicant is requesting the variance to legalize the existing impervious surface coverage of 8.14± acres (29%) and increase the allowable coverage amount to 16.9± acres (60%) to enable a site plan revision.
- The subject site is 28.17± ac., and is currently improved with a government fire training facility and the State Fire Marshal Office.
- Application A-02-03 on the subject site was approved on 1/17/02 to reduce the required 100 ft. buffer to enable the construction of commercial facilities and site improvements for the fire school training facility and State Fire Marshal Office.
- Application A-02-45 on the subject site was approved on 7/18/02 for an expansion up to 25% of the legal nonconforming impervious surface coverage. It appears that this request legalized an amount of 34% and allowed for an increase up to 36% to enable the construction of an addition.
- There have been no Board applications in the surrounding area similar to this request.
- The subject site is zoned AR (Agricultural Residential District). The Comprehensive Plan recommends that this area be utilized for low density residential purposes.
- The applicant is advised that, should the request be granted, a site plan revision will be required and Building Permits shall be obtained for the legalization of all existing structures prior to final plan approval. For more information, contact the Division of Planning at (302) 744-2471 between 8:00 a.m. and 5:00 p.m.

ENC: Exhibits A & B
Survey provided by Becker Morgan dtd. 1/4/17