



Kent County

Department of Planning Services Division of Planning

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STAFF RECOMMENDATION REPORT March 16, 2017

APPLICATION: A-17-10

APPLICANT: Howard Robertson, Inc.
c/o Carmine Casper
801 Brandywine Boulevard
Wilmington, DE 19809

OWNER: Hound Dog Recovery, LLC
c/o Crystal Grelock
2151 S. DuPont Boulevard
P.O. Box 28
Smyrna, DE 19977

PROPERTY LOCATION: 2151 S. DuPont Blvd., Smyrna, DE 19977

NATURE OF REQUEST:

A-17-10 Howard L. Robertson, Inc. c/o Carmine Casper (Owner: Hound Dog Recovery, LLC) seeks a variance from the minimum required front building setback of 60' and front parking setback requirement of 25' to enable a commercial towing company (**Sect. 205-174.A(1) & Sect. 205-233.B(1) of the Kent County Code**). The property is located on the northeast corner of Lawndale Dr. and S. DuPont Blvd. (US Rt. 13), being lots 28-30 & 53-55 of the Lawndale subdivision, south of Smyrna. Levy Court District: 1st. Zoning District: BG. Tax Map No.: **DC-00-019.00-02-26.00-000**

The applicant is requesting the variances to enable the development of the subject site with a commercial building 38± ft. from the front property line and parking 15± ft. from all front property lines, for a commercial towing business.

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:

- **DENIAL** of the variance request from the front building setback requirement; and
- **MODIFIED APPROVAL** of the front parking setback requirement to 20 ft.

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 fronts on Route #13 northbound. Along that frontage, there are vacant properties to the south and other commercial properties to the north.

Staff Response:

As shown on Exhibit A, the subject site is zoned BG (General Business District). Commercial development, including commercial towing companies and auto storage lots, are to be anticipated within the BG zoning district, contingent upon meeting all zoning and site plan requirements.

2. The character and uses of the immediate vicinity.

Applicant Response:

The rear portion of the lot borders on a strip of mobile homes and although the properties to the east are residential in nature, many have large commercial trucks and businesses.

Staff Response:

The character of this area is primarily residential in nature, the subject site being lots 28-30 & 53-55 of the Lawndale subdivision. The majority of surrounding properties have been developed residentially, while properties to the south, although commercially zoned, remain undeveloped. The subject site has been utilized residentially in the past, and the applicant is proposing to redevelop the site for commercial purposes given the zoning district where it lies. As the Route #13 corridor continues to develop, Staff is seeing a rise in redevelopment of properties zoned commercially that historically were used for residential purposes. As there are minimal commercial uses within the immediate vicinity, the development of the subject site commercially where the building and parking setbacks are not based on current Code requirements would be out of character with the rest of Kent County.

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

Applicant Response:

A car storage lot for repossessed cars will not be a detriment to the area since the property will be completely surrounded by a 6' high opaque fence and extensive landscaping so that it does not affect the neighboring properties.

Staff Response:

The reduction of the parking setback to the degree requested by the applicant may, indeed, negatively impact neighboring properties as the area is currently residential in nature. The setback requirements of 25 ft. from the front property lines for parking allow for added protection to the surrounding properties. Therefore, the request to reduce the requirement by 10 ft. may be construed as excessive. However, given the requirement of DelDOT to dedicate a 5 ft. strip of land along the eastern and southern property lines, and a 10.92 ft. strip along the western property line, Staff recommends a setback reduction from 25 ft. to 20 ft. to compensate for this dedication.

The removal of the restriction allowing a proposed commercial building within the front yard setback may also negatively impact neighboring properties as the property is one of the first commercial developments in this area. By approving this request, the Board may see additional applications similar to this at time of redevelopment. Therefore, reducing the front building setback from 60 ft. to 38 ft. may negatively impact the overall area, as it may create a trend for new development within this area.

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:

Complying with the paving setbacks will cause an exceptional practical difficulty for the owner because they will not be able to fully utilize the land to obtain the storage area needed for a car storage operation.

Staff Response:

The failure to reduce the parking setback in its entirety may create an exceptional practical difficulty, as the site redevelopment does require additional land to be dedicated to DelDOT for right-of-way purposes. However, it may be perceived that the reduction to the extent requested within the subject site is, in fact, a matter of convenience and may be viewed as excessive. Therefore, Staff recommends the parking setback requirement be reduced to 20 ft. based on the dedication requirements.

The failure to reduce the building setback, however, does not appear to create an exceptional practical difficulty as the site is slated for redevelopment, meaning once all existing structures are removed, the applicant will have a vacant property to develop for its initial commercial use. Given the size and nature of the proposed use as well as the minimal size of the proposed building, it appears that the applicant is able to meet the required building setbacks with alternate site layouts available. In addition, the initial design for the site showed this building was able to meet the required setbacks. The applicant must prove that the relocation of entrance means

that the building has to be moved or that leaving the building in the original location will cause an irreparable harm to the applicant's proposed business.

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 minimum required front building setback of 60' and front parking setback requirement of 25' to enable a commercial towing company.
- The applicant is seeking the variances to construct a commercial building 38± ft. from the front property line, with parking 15± ft. from the front property lines.
- The subject site is 1.05+/- ac., being lots 28-30 & 53-55 of the Lawndale subdivision. The site is currently developed residentially, with a single-family dwelling and detached garage, which appear to be irreparable. The applicant is proposing to demolish these structures in order to redevelop the property for the initial commercial use.
- The applicant submitted a site plan for approval from the Regional Planning Commission and was approved conditionally on 12/8/16. Per the conditions, the originally proposed entrance was to be relocated to the South Street portion of Lawndale Drive, if approved by DelDOT, to minimize impact on the adjacent residential properties. Due to this requirement, the applicant redesigned the site's parking, entrance, and building location (*see original plan attached*).
- There was one letter of objection received from property owners just north of the subject site, citing concerns regarding the use of the property, and one letter received in support of the application (*see attached*).
- There have been no previous Board of Adjustment applications on the subject site.
- There have been three Board of Adjustment requests in the immediate vicinity similar to this request:
 - Variance A-77-52, approved on 11/17/77, for adjacent property to the north known as 2119 DuPont Blvd., reduced the minimum required 50 ft. rear setback to 7 ft. to enable the construction of a commercial garage. The proposed garage does not appear to have been constructed.
 - Variance A-00-39, approved on 7/20/00, for a property northeast of the subject site known as 50 Lawndale Dr., reduced the front building setback from 25 ft. to 15 ft. to legalize an existing manufactured home, and reduced the required 5 ft. rear setback for an accessory structure to legalize a detached garage 2 ft. from the rear property line. This property, however, does not appear to be comparable to the subject site as it located within the RMH zoning district and is just 0.17± ac. in size, which indicates that this request is of lesser impact to neighboring properties.
 - Variance A-77-44, conditionally approved on 9/15/77, for a property southwest of the subject site and adjacent to 2190 DuPont Blvd., allowed a

mobile home to be placed 10 ft. from the rear property line, reducing the required 25 ft. rear setback, in order to house the daughter of the applicant. However, the home was to be removed once the daughter ceased to reside in the home; it is unclear as to whether this condition is currently being met.

- The subject site is zoned BG (General Business District). The Comprehensive Plan recommends that this area be utilized for highway commercial purposes.
- The applicant is advised that, should the requests be granted, final site plan approval is required prior to the issuance of any building Permits and/or the commencement of any construction. 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

Supplemental information provided by property owners, dtd. 2/3/17

Site plan originally submitted to RPC Dec. 2016

DelDOT comments dtd. 3/2/17

Letter in objection from neighboring property owned, dtd. 3/3/17

Letter in support from B. Phillips, recd. 3/9/17