



# Kent County

## Department of Planning Services

Division of Planning

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### STAFF RECOMMENDATION REPORT

April 20, 2017

**APPLICATION:** A-17-19

**APPLICANT/OWNER:** Faithwork LLC  
630 W. Division Street  
Suite P  
Dover, DE 19904

**PROPERTY LOCATION:** 514 W. Lebanon Rd., Dover, DE 19901

#### NATURE OF REQUEST:

**A-17-19 Faithwork LLC** seeks a variance from the minimum side building setback requirement of 50 ft. for a convalescent center; minimum drive aisle and parking setback of 20 ft. and loading setback of 50 ft.; and minimum required number of parking and loading spaces to enable a convalescent center (**Sect. 205-305.A(1); 205-223.B(3); & 205-226 of the Kent County Code**). The property is located on the south side of W. Lebanon Rd. (DE Rt. 10), approx. 124' west of First Tenth Ct., east of Camden. Levy Court District: 5th. Zoning District: RS1. Tax Map No.: **NM-00-095.09-01-14.00-000**

The applicant is requesting the variance to enable a Conditional Use with Site Plan application for the conversion of a previously approved and active residential group home into a convalescent center. The applicant is proposing to utilize an existing dwelling 39.41± ft. from the side property, which is required to meet a 50 ft. minimum side setback for the proposed use of a convalescent center. **Should this portion of the request be granted, the applicant is subsequently requesting the following:**

- Minimum drive-aisle and parking setback of 20 ft. reduced to 5 ft.;
- Minimum loading setback of 50 ft. reduced to 39.03 ft.;
- Minimum requirement of (4) loading spaces reduced to (1); and
- Minimum requirement of (12) parking spaces reduced to (6).

#### 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 **DENIAL** of the initial variance request of the 50 ft. side property line setback reduction, which would alleviate the need for any additional variance requests, based on the ability for the applicant to continue utilizing the property as an approved

group home and 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 nature of the zone is permitted under the terms of the conditional use.

Staff Response:

As shown on Exhibit A, the subject site is zoned RS1 (Single Family Residential District). Surrounding properties are similarly zoned RS1. Convalescent centers are an approved use within the RS1 zoning district, provided all necessary approvals are gained through the Conditional Use with Site Plan process and all conditions are met as stated in the Kent County Zoning Code and/or mandated by Kent County Levy Court.

### **2. The character and uses of the immediate vicinity.**

Applicant Response:

The immediate vicinity is a mixed use of highway commercial and residential. This use is in keeping with character of the highway corridor.

Staff Response:

The character of this area is residential in nature. Surrounding properties include a number of approved subdivisions and appear to be developed with a variety of housing styles. There are two non-residential uses of a church and a cemetery further northwest and west of the subject site, which indicates minimal commercial use within this area. While the area itself is highly infused with residential development, a convalescent center may be within the character and use of the immediate vicinity based on the needs of the community. However, given the size and location of the subject site, it appears that the increase in intensity from the existing residential group home use to a convalescent center may be a detriment to the surrounding properties and be out of character with this vicinity. Staff recommends the use of a residential group home be maintained and strongly urges the Board to consider the impact approval of these requests to protect the safety, health and welfare of surrounding Kent County property owners.

Additionally, the requests from the additional site plan requirements further support the claim that the proposed conversion of the subject site from a residential group home to a commercial convalescent center may be excessive in nature. The applicant has proposed minimal additional commercial improvements to the site, which may indicate that the claim for a full commercial use within the site may be out outside the recommended uses of the site.

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

Applicant Response:

Removal of the requested restrictions will not have any adverse impact on neighboring properties.

Staff Response:

The removal of the condition allowing a dwelling to be converted to a convalescent center that does not meet the required setbacks may greatly impact neighboring properties. The intent behind any condition requiring a specific setback is to protect neighboring properties and provide adequate buffering from conflicting land uses. Staff urges the Board to strongly consider the implications of the granting of this request, as it would directly contradict the purpose of the Kent County Zoning Code.

Should the Board approve the removal of condition and thereby enable the application process for a Conditional Use with Site Plan for a convalescent center, Staff urges the Board to consider the requirements for the site based on the current code. As shown in Exhibit C, the subject site may allow for many of the required improvements for which the applicant seeks relief. However, site visits have shown that the proposed parking location and configuration of the site provide a distinct challenge for ingress/egress of the property as well as potential encroachment issues along the western side property line. Should there be a need for emergency vehicles to enter and exit the site, the proposed site layout may restrict maneuverability of these vehicles and possibly affect the flow of traffic. While Staff agrees that the proposed use may be suitable for this area, Staff does not agree that the subject site is suitable for the potential increase in traffic, residents, or overall intensity of the site.

- 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:

Failure to remove the requested restrictions would create a great financial hardship and exceptional practical difficulties for us. We are more than willing to make normal and reasonable improvements. However, the restrictions for which we request relief are too costly and make the project unfeasible. We have taken a dilapidated and abandoned property and made it a viable and productive asset to our community. We have spent more than \$400,000 to date and are now limited in our resources. Furthermore, this project has improved the area, added to the tax base, provides a great service to the community and employs more than a dozen workers with good paying jobs. Relief from these hardships and difficulties will insure the continued success of the project and allow our business to be competitive and successful.

Staff Response:

The failure to remove the restriction may not create an exceptional practical difficulty as the applicant has the ability to maintain the previously approved, quasi-commercial

use of a residential group home, allowing up to 10 residents. As the applicant is aware of the requirements for a convalescent center and is choosing to pursue this in order to accommodate more residents within the existing facility, thereby increasing the use for additional profit, it does not appear that there is an exceptional practical difficulty for the application. Therefore, the hardship does not appear to meet the criteria under Sect. 205-400.C(2) as stated:

*"...The hardship must be created by the unique physical characteristics of the property, and not by the real or perceived inconvenience of the property owner..."*

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 to enable a Conditional Use with Site Plan application for a convalescent center. The applicant is proposing to utilize an existing dwelling 39.41± ft. from the side property, which is required to meet a 50 ft. minimum side setback for the proposed use of a convalescent center.
- Should this variance request be granted, the applicant is subsequently requesting relief from the following site plan requirements:
  - Minimum drive-aisle and parking setback of 20 ft. reduced to 5 ft.;
  - Minimum loading setback of 50 ft. reduced to 39.03 ft.;
  - Minimum requirement of (4) loading spaces reduced to (1); and
  - Minimum requirement of (12) parking spaces reduced to (6).
- The subject site is 0.91+/- ac. and is currently improved with a two-story group home facility and storage shed.
- A Certificate of Use was issued on 8/12/16 converting the use of the existing dwelling from a residential single-family dwelling to a group home for the care of handicapped persons, as allowed pursuant to Sect. 205-79 of the Kent County Code. The purpose of this use was to enable a 10-bed group home.
- There are no previous Board of Adjustment applications for the subject site and there are no similar requests in the surrounding area.
- Correspondence was received from DelDOT indicating that they have no comments pertaining to this application at this time.
- The subject site is zoned RS1 (Single Family Residential District). The Comprehensive Plan recommends that this area be utilized for medium density purposes.
- The applicant is advised that, should the request be granted, application must be made for a Conditional Use with Site Plan for the proposed use of a convalescent center. For more information, contact the Department of Planning Services at (302) 744-2471 between 8:00 a.m. and 5:00 p.m.
- The applicant is also advised that, regardless of the decision of the Board, building permits shall be obtained for all existing structures and for any new construction approved on the subject site, including fencing. For more information, contact the

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Department of Inspections and Enforcement at (302) 744-2451.

**ENC:** Exhibits A - C