



Kent County

Department of Planning Services Division of Planning

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STAFF RECOMMENDATION REPORT April 20, 2017

APPLICATION: A-17-14

APPLICANTS: John & Bonita Kocka
1807 S. State Street
Dover, DE 19901

OWNERS: John & Bonita Kocka
Justin & Christina Krupka
1807 S. State Street
Dover, DE 19901

PROPERTY LOCATION: 1807 S. State St., Dover, DE 19901

NATURE OF REQUEST:

A-17-14 John & Bonita Kocka (Owners: John & Bonita Kocka and Justin & Christina Krupka) seek a variance to allow an accessory cottage to exceed the maximum floor area of 1,200 sq. ft. to enable an addition onto an existing accessory building (**Sect. 205-397.6.C(1) of the Kent County Code**). The property is located on the east side of S. State St. (DE Rt. 10A), approx. 200' north of Elizabeth Ave., south of Dover. Levy Court District: 5th. Zoning District: RS1. Tax Map No.: **NM-00-086.03-01-01.04-000**

The applicants are requesting the variance to enable a 552 square foot addition onto a previously approved accessory cottage, bringing the total square footage to 1,491 square feet. The maximum allowable size for an accessory cottage is up to 40% of the square footage of the principal dwelling (1,158 sq. ft.) or 1,200 square feet, whichever is greater.

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 variance based on the 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:

No applicant response.

Staff Response:

As shown on Exhibit A, the subject site is zoned RS1 (Single Family Residential District). Accessory cottages within detached accessory structures are within the nature of the zoning district, contingent upon receiving all necessary approvals and meeting all bulk and area requirements as stated in the Zoning Code of Kent County.

2. The character and uses of the immediate vicinity.

Applicant Response:

No applicant response.

Staff Response:

The character of this area is primarily residential in nature. Lots to the east and south are residentially improved, lying within the Pennwood subdivision. Lots to the west are residentially developed with a variety of home styles, and the subject site is bordered on the north by a waterway. The size of the subject site does appear to be larger than other properties in the immediate vicinity. This property is the product of a lot consolidation to combine two properties, both of which having a principal dwelling. In order to enable the lot consolidation, the property owner legalized the existing dwelling as an accessory cottage.

As the detached garage with apartment was originally permitted as a detached single-family dwelling, the approval of this request may lead to a detrimental trend throughout Kent County enabling two separate dwelling units on one parcel. As the proposed addition would cause the existing structure to be only slightly smaller than the principal dwelling on the site, as well as further dominate in area many principal dwellings within the area, Staff recommends the Board uphold the zoning code and require a new lot to be created to accommodate any residential additions to the accessory structure. Furthermore, Staff cautions the Board in considering the impact of this application on all other properties within Kent County seeking placement of a second dwelling unit on a parcel within a relatively dense area where a minor subdivision may be possible.

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

Applicant Response:

No applicant response.

Staff Response:

The removal of this requirement may not negatively affect other properties in the area as the current lot coverage with all proposed improvements does appear to meet Kent County Code requirements. However, the impact of this application may affect neighboring properties by setting a trend that is in direct contradiction of the zoning

code developed by the Kent County Levy Court.

- 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:

Handicap access requirements throughout for senior living eventually.

Staff Response:

The failure to remove the restriction would not create an exceptional practical difficulty as the applicants and legal owners of the property created the subject site through an administrative process, while agreeing to abide by all conditions for an accessory cottage. Additionally, the property owners and applicants have the opportunity to re-subdivide the subject site in order to allow a legal alternative to the proposed request. By working with Staff to establish a separate parcel, the applicants and owners of the subject site may further develop the structure that was originally permitted as a single-family dwelling, which is proposed at over 3,500 square feet of total floor area should the request be approved. The request to enable the proposed addition to accommodate the anticipation of a physical disability does not appear to be an exceptional practical difficulty and may only be viewed as a perception of hardship. If and when the applicants do require accommodations for physical conditions, an application with the Board at that time may be more appropriate for consideration of their actual needs.

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 requesting a variance from the maximum allowable size of an accessory cottage of 1,200 sq. ft.
- The applicants are proposing a two-story 19' x 29' addition onto an existing accessory structure, currently housing a 940 sq. ft. cottage. The total livable square footage of the cottage would equal approx. 1,491 sq. ft.
- The subject site is 1.4+/- ac. and is currently improved with a two-story single-family dwelling and a two-story detached garage. The accessory cottage was approved under application AD-13-06 for previous owners of the property.
- The property was consolidated by previous owners James E. & Peggy V. Long in 2014, combining two individual parcels, both of which had existing single-family dwellings.
- The existing property owners purchased the property on 5/12/16.
- There have not been any previous Board applications on the subject site and no

- previous requests in the immediate vicinity similar to this request.
- The subject site is zoned RS1 (Single Family Residential District). The Comprehensive Plan recommends that this area be utilized for medium density residential purposes.
 - Correspondence was received from DelDOT indicating that they have no comments pertaining to this application at this time.
 - DNREC, Division of Fish and Wildlife, submitted the following comments on 4/3/17:

“A review of our database indicates that there are currently no records of state-rare or federally listed plants, animals or natural communities at this project site. However, the forest on the northern portion of the parcel provides an important buffer to Isaac Branch. We recommend that tree clearing activities are avoided to the greatest extent practicable.”
 - 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