



Kent County

Department of Planning Services Division of Planning

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STAFF RECOMMENDATION REPORT June 15, 2017

APPLICATION: A-17-28

APPLICANTS/OWNERS: Michael S. & Jodele M. Marshall
57 Azzurri Court
Smyrna, DE 19977

PROPERTY LOCATION: 78 Azzurri Ct., Smyrna, DE 19977

NATURE OF REQUEST:

A-17-28 Michael S. & Jodele M. Marshall 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 southeast side of Azzurri Ct., approx. 440' east of Eastridge Dr., being lot 31 of the Village of Eastridge subdivision, south of Smyrna. Levy Court District: 1st. Zoning District: AC. Tax Map No.: **KH-00-036.02-04-31.00-000**

The applicants are requesting the variance to enable the construction of a 10' x 16' 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:

See attached

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:

See attached

Staff Response:

The character of the surrounding area is primarily residential. The majority of lots in the immediate vicinity are developed, with some lots in different areas of the subdivision to the 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:

See attached

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 east. 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 further reduction of this setback may impact future development requirements, including a walking path around the perimeter of the open space. While there is no chance that the dedicated open space will be developed residentially, the proposed walking path is considered an amenity of the community and should be treated as such. The continuation of residential development encroaching into this area may pose privacy issues for homeowners along the walking path stemming from walkers enjoying this feature.

Additionally, 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:

See attached.

Staff Response:

The failure to remove the restriction for the rear setback may not create an exceptional practical difficulty as the homeowners of the property were aware of the location of the lot in proximity to the woodlands prior to making their purchase. It is to be expected that wildlife and insects that prevalently inhabit woodlands will frequently be found in close proximity. Although the ability to place a screened-in porch on a home may be considered a "normal improvement," there appears to be no unique characteristic of the lot causing the issue, only the size of the existing dwelling and its current proximity to the rear setback line.

Additionally, it appears that the applicants were offered a number of options while constructing their home, including a screened-in porch on the rear of the owner's suite, which does appear to have met the current rear setback requirements. The applicants opted to construct a sitting room in this area instead, which still provides the ability to enjoy their backyard while retaining the protection required by the applicants to remain shielded from sunlight and potential illness-bearing insects. Should the request be denied, the applicants may construct open decking as close as 10 ft. to the rear property line and utilize any number of detached methods to shield from sunlight. Staff strongly urges the Board to consider the variance criteria and the lot itself, rather than the perceived inconvenience of the applicants in order to maintain the integrity of the Kent County Zoning Code.

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 10' x 16' screened-in porch addition, 8+/- ft. from the rear property line.
- The site is 0. 20± acres in size and is currently improved with a one story single-family dwelling. The subject site, being lot 31 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; however, there have been several 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.
- Variance A-17-08, for 57 Azzuri Ct., was approved on 3/16/17 to allow for the construction of a screened-in porch 10 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.
- DelDOT has submitted that they have 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 Inspections and Enforcement at (302) 744-2451 between 8:00 a.m. and 5:00 p.m.

ENC: Exhibits A & B

Supplemental information regarding variance criteria, submitted with application
Medical documentation pertaining to applicants
Pictures of subject site
Construction plans of proposed screened-in porch
Deed restrictions for Village of Eastridge
Optional features of selected home available at time of construction