



Kent County

Department of Planning Services Division of Planning

SARAH E. KEIFER, AICP
Director of Planning Services

Phone: 302/744-2471
FAX: 302/736-2128

STAFF RECOMMENDATION REPORT August 17, 2017

APPLICATION: A-17-35

APPLICANT: Gary W. Hall
106 Felix View Ct.
Smyrna, DE 19977

OWNERS: Gary W. & Marie E. Hall
106 Felix View Ct.
Smyrna, DE 19977

PROPERTY LOCATION: 106 Felix View Ct., Smyrna, DE 19977

NATURE OF REQUEST:

A-17-35 Gary Hall (Owners: Gary W. & Marie E. Hall) seeks 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 south side of Felix View Ct., approx. 532' southeast of Eastridge Dr., being lot 67 of the Village of Eastridge subdivision, south of Smyrna. Levy Court District: 1st. Zoning District: AC. Tax Map No.: **KH-00-036.02-05-83.00-000**

The applicant is requesting the variance to enable the construction of a 10' x 12' screened-in porch, 10.4± 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:

We have an existing deck 10'x10' that we would like to cover and screen on the back side of our home. I have an elderly father and disabled wife who would like to be able to go out back without bugs and sun bothering them.

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:

This patio would allow them to be able to go outside in comfort.

Staff Response:

The character of the surrounding area is primarily residential. Surrounding lots in the immediate vicinity are developed, with some lots in different areas of the subdivision to the north 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. While the topography of this lot is different from other subject properties that have appeared before the Board in the past, the request is similar in nature, requesting additional living space within the rear yard setback area. 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:

There are woods and a small field behind our home with no dwellings.

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 south. However, Staff is concerned with the trend arising from this type of request, given there are alternative solutions available from the developer of the subdivision.

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:

This improvement will have no impact on neighbors or surrounding properties. We basically have no useable back yard because of a slope. This would give us a lot of more useable space.

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 contours of the lot prior to making their purchase. 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. 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 applicant is 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 12' screened-in porch addition on an existing deck, 10.4± ft. from the rear property line.
- The site is 0. 11± acres in size and is currently improved with a one story single-family dwelling. The subject site, being lot 67 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.

- Variance A-17-28, for 78 Azzuri Ct., was approved on 6/15/17 to allow for the construction of a screened-in porch 8 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.
- 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