

Kent County



Department of Planning Services Division of Planning

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Director of Planning Services

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STAFF RECOMMENDATION REPORT October 19, 2017

APPLICATION: A-17-39

APPLICANT: Elliott Surveying, Corp.
Attn: Nik Patel
332 Audrey Lane
Smyrna, DE 19977

OWNER: William C. Nickerson, Jr.
453 Everetts Corner Road
Hartly, DE 19953

PROPERTY LOCATION: 453 Everetts Corner Rd., Hartly, DE 19953

NATURE OF REQUEST:

A-17-39 Elliott Surveying Corp. (Owner: William C. Nickerson, Jr.) seeks a variance from the provision prohibiting accessory structures to dominate in area the principal structure and the required side setback of 5' for a detached accessory building to legalize an existing structure (**Sect. 205-24.D & 205-24.F(2) of the Kent County Code**). The property is located on the southwest side of Everetts Corner Rd. (DE Rt. 44), approx. 2,494' northwest Arthursville Rd. (DE Rt. 11), northwest of Hartly. Levy Court District: 6th Zoning District: AR. Tax Map No.: **WD-00-063.00-01-14.00-000**

The applicant is requesting the variance to legalize an existing detached accessory structure .5± ft. from the side property line. The existing building is approximately 2,001 sq. ft. and the existing dwelling is 1,504 sq. ft. The building was originally permitted as a 24' x 24' detached garage with two lean-tos, and was later altered after final approval, enlarging the building.

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 based on the analysis of the four criteria from the applicant and staff as follows:

- a. **MODIFIED APPROVAL** of the variance request from the provision prohibiting accessory structures to dominate in area the principal structure; and

- b. **DENIAL** of the variance request from the required 5 ft. side setback for an accessory structure to legalize a building at 0.5± ft. from the side property line.

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 AR (Agricultural Residential District). Detached accessory structures are within the nature of the zoning district, contingent upon meeting all size and setback requirements of the Kent County Code.

2. The character and uses of the immediate vicinity.

Applicant Response:

No applicant response

Staff Response:

The character of this area is mainly residential and agricultural in nature. Properties to the north, east and west appear to be agriculturally used, with some residential developed throughout. Properties southeast of the subject site are also primarily agriculturally used, with more residential uses present inside of the town limits of Hartly. Detached accessory structures are prevalent in this area; however, it appears that the majority of these structures may meet the required 5 ft. side and rear setbacks for an accessory structure and do not appear to dominate in size the principal dwelling. Therefore, it appears that the existing building may be viewed as out of character with this area. Staff recommends that the Board deny the portion of the request to legalize the building at 0.5± ft., as the applicant has already removed a portion of the building in order to insure the structure in its entirety is on the subject site. In denying this portion, the recommendation of Staff would be to further remove a portion in order to comply with the setback requirement and further reduce the size of the structure to reduce the area of the structure as it was modified without receiving the necessary approvals.

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 structure is existing and is now entirely on the subject site. Additionally, it

does not appear to cause any coverage issues for 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:

Property zoned AR and the variance requested will not have adverse effect on neighboring properties. In actuality, although not contentious, the variance will allow subject property owner to obtain portion of property he needs from one adjoiner while removing portions of an existing building from another. The existing building in question was built quite some years ago with a permit, but due to a misunderstanding/misinterpretation of an old roadway along with a mistake of a surveyor, the building was incorrectly placed where a small portion was encroaching into the adjoiner property. The owner has since made a concerted effort to appease the Planning Department by removing/demolishing a portion of the building so that he may/is allowed to move forward with the lot line adjustment he seeks. The adjoining areas are primarily used for farming and agricultural purposes, and there have been no objections from immediate neighbors in regards to the building the way it was or is now and no objection to the lot line adjustment being sought.

Staff Response:

The failure to remove the restriction pertaining to the overall size of the structure would not create an exceptional practical difficulty as the applicant created the hardship by altering and enlarging the building without the required building permits. Additionally, it appears that the applicant has already removed a portion of the building, which demonstrates the ability to meet with setback requirements along the side property line. Therefore, the circumstances of both requests do not appear to stem from the uniqueness of the land and appear to be perceived hardships of the applicant.

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 a variance from the provision prohibiting accessory structures to dominate in area the principal structure and the required side setback of 5' for a detached accessory building to legalize an existing structure.
- The applicant is seeking to legalize an existing building 0.5± ft. from the side

- property line that is approximately 2,001 sq. ft. in total area. The existing dwelling is 1,504 sq. ft.
- The applicant applied for a building permit to construct a 24' x 24' detached accessory structure in 2006. The permit application was later revised in 2007 to construct a lean-to on the northwest side of the building and a lean-to on the southeast side of the building. This building received final approval in 2007 (*See attached*).
 - Based on aerial photography, additions were constructed on the rear of the building and on the existing lean-to on the northwest side of the building, and the southeastern lean-to was removed and replaced with a larger addition (*See attached*).
 - The subject site is 0.8234± ac. and is currently improved with a one-story single-family dwelling and two detached accessory structures.
 - There are no previous Board of Adjustment applications for the subject site and there has been one similar requests in the surrounding area:
 - A-74-61, for a property directly opposite the subject site, known as 444 Everetts Corner Rd., was approved for a side setback reduction for a proposed detached garage. The requirement at this time was 20 ft. and the proposed garage was approved for a placement 11 ft. from the side property line.
 - The subject site is zoned AR (Agricultural Residential District). The Comprehensive Plan recommends that this area be utilized for low density residential purposes.
 - DelDOT submitted that they have no comments pertaining to this application at this time.
 - The applicant is advised that, regardless of the outcome of this application, building permits must be obtained for the legalization of any existing structures and prior to the construction of any new buildings on the subject site. For more information, contact the Department of Inspections and Enforcement at (302) 744-2451 between 8:00 a.m. and 5:00 p.m.

ENC: Exhibits A & C

Building Permit Info with Original and Revised Plot Plans (4 pgs.), dtd. 5/19/06

Google Street View – October, 2009

Aerial of Subject Site – 2017

Google Street View – June, 2012

Google Aerial of Subject Site – 2017