



# Kent County

## Department of Planning Services Division of Planning

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### STAFF RECOMMENDATION REPORT October 19, 2017

**APPLICATION:** A-17-40

**APPLICANT:** Thomas J. Hartley  
1338 Lochmeath Way  
Dover, DE 19901

**OWNER:** Diamond Limited Peachtree, LLC  
3566 Peachtree Run  
Dover, DE 19901

**PROPERTY LOCATION:** 3566 Peachtree Run, Dover, DE 19901

**NATURE OF REQUEST:**

**A-17-40 Thomas J. Hartley (Owner: Diamond Limited Peachtree, LLC)** seeks a variance from the 15' planted screening requirement for the BG zoning district within the front setback area, the condition prohibiting outdoor storage within a required setback area, and the condition requiring all outdoor storage to be screened from adjacent properties to enable a site plan application (**Sect. 205-174.C, 205-282A(1) & Sect. 205-282A(3) of the Kent County Code**). The property is located on the east side of Peachtree Run (Co. Rd. 105), approx. 378' south of Harmony Hill Dr., east of Camden. Levy Court District: 5<sup>th</sup>. Zoning District: BG. Tax Map No.: **NM-00-094.00-02-43.00-000**

The applicant is requesting the variance to eliminate screening requirements within the front setback area and along the rear setback area, while allowing outdoor storage within the required rear and side setback areas. The applicant is requesting relief from conditions applicable to a Contractor establishment/outdoor storage as a means of expanding an existing business through the Conditional Use with site plan application process.

#### **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 variance requests to eliminate buffering and screening requirements, and **APPROVAL** of the variance request to allow for storage of vehicles and equipment within required setback areas, based on 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:

See attachment

Staff Response:

As shown on Exhibit A, the subject site is zoned BG (General Business District). Surrounding properties are zoned BG, RS1 (Single Family Residential District), and RMH (Residential Manufactured Home District). Contractor's establishments are within the nature of the BG zoning district, upon receiving all necessary approvals from Kent County Levy Court through the Conditional Use with Site Plan application process.

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

Applicant Response:

See attachment

Staff Response:

The character of the surrounding area is both commercial and residential. Properties to the south and east appear to be developed and utilized commercially. Properties to the north appear to be residentially developed, while properties to the east are to be developed residentially as part of the Seabrook Village subdivision. While commercial development is to be anticipated along Peachtree Run, given its classification of a major roadway and proximity to other commercial development in this section of the US Rte. 13 corridor, the subject site is required to screen not only along the roadway, but also to screen outdoor storage specifically from adjacent properties in order to protect the integrity of neighboring properties from potentially unsightly storage areas. Although the properties to the east of the subject site have not yet been developed, they are part of an approved residential subdivision and may be developed residentially at any time. Staff, therefore, recommends all screening requirements be met in this area and that any items stored shall not exceed fence height as this required screening is crucial to protecting the rights of future neighboring property owners.

In contrast, Staff recognizes that the business is existing and parking is located within an established area on the site. The proposed parking expansion area is a continuation of the existing parking and therefore does not appear to be out of character with the area or the existing business. Staff therefore recommends approval of the request to allow for vehicles and equipment to be stored inside of the existing fenced area, which appears to be within the required rear and side setbacks of the site.

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

Applicant Response:

See attachment

Staff Response:

The removal of the restriction to screen within the required front setback area and along the rear may negatively affect neighboring properties given the intent behind this Code provision is to provide a buffer from neighboring uses. As the storage area in the rear of the subject site is directly adjacent to vacant residential land to be developed in the future, the implementation of this buffer may alleviate any incompatibility between existing and future uses.

In contrast, the removal of the restriction for storage areas within required setbacks may not negatively impact neighboring properties, given the existing use of the property. The elimination of this requirement does not appear to alter how the subject site is being used, as the application for Conditional Use with Site Plan is due to the expansion only of the existing business and proposed structures to allow for this expansion.

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 improve one's business or to stay competitive as a result of area limitations may qualify as a legitimate exceptional practical difficulty.**

Applicant Response:

See attachment

Staff Response:

The failure to remove the restriction for screening and buffering within the front and rear areas does not appear to create an exceptional practical difficulty as the applicant is able to comply with these requirements that are essential to each site plan throughout Kent County. The applicant is seeking relief in order to expand an existing business, which has been in existence for a number of years. However, the process of implementing a site plan with certain site requirements, including but not limited to landscaping installation, stormwater management design or reapproval, and sidewalk installation, may be viewed as a normal process with an expansion of this magnitude in order to come into compliance with current zoning regulations. Therefore, it appears that any hardship stems from the perception of the applicant and may not constitute an exceptional practical difficulty.

However, the failure to allow relief from the request to enable vehicle and equipment storage within the required rear and side setbacks may indeed cause an exceptional practical difficulty, given the existing site design and layout. Although the site is an adequate size, being over 2.7± acres, the existing structures and parking layout, in conjunction with the presence of existing woodlands and wetlands, does significantly hinder the size of storage areas on the subject site. Should the Board deny this request, the applicant may face a hardship in finding adequate storage space for the necessary vehicles and equipment needed to continue operations.

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 variances to eliminate a 15 ft. screening buffer within the required front setback applicable to the BG zoning district, to eliminate the condition pertaining to screening requirements for outdoor storage, and to modify the condition pertaining to storage within required setback areas to allow storage within the southern side and eastern rear setback areas to enable the submittal of a Conditional Use with Site Plan application for a Contractor Establishment.
- The site is 2.7± acres in size and is currently improved with single story commercial building, a wooden shed, and a manufactured home used as a contractor's establishment. The purpose of the proposed Conditional Use with Site Plan application is to legalize this existing business.
- The existing shed and manufactured home are to be demolished and replaced with a single story 60'x100' commercial building, upon receipt of final approval through Kent County Levy Court and Planning Services.
- The following requests have been proposed by the Board on the subject site:
  - A-99-31 was approved on 5/20/1999, granting relief from the provision prohibiting more than one principal use or structure on a site to enable the construction of a mini storage building, which was not constructed.
  - A-17-34 was approved on 8/17/2017, eliminating landscaping requirements within parking islands and eliminating screening requirements from neighboring property to the south.
- There have been no previous Board applications similar to this request within the immediate vicinity.
- The subject site is zoned BG (General Business District). The Comprehensive Plan recommends that this area be utilized for highway commercial purposes.
- DelDOT submitted the following comment:

*“DelDOT records indicate that Peachtree Run’s functional classification is a major collector requiring 40’ of right-of-way from the centerline of the road. Beyond the right-of-way would require a 15’ permanent easement. DelDOT would not want anything placed within the previously mentioned right-of-way or permanent easement area.”*

Should this application be denied, Staff recommends the placement of the required screening outside of this required permanent easement.
- The applicant is advised that, regardless of the outcome of these requests, a Conditional Use with Site Plan application must be submitted to Kent County Planning Services for a Contractor Establishment/Outside Storage. For more information, contact Kent County Planning Services at (302)744-2471 between 8:00 a.m. and 5:00 p.m.

**ENC:** Exhibits A – C

Supplemental information submitted by applicant at time of submittal