



Kent County

Department of Planning Services Division of Planning

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STAFF RECOMMENDATION REPORT November 16, 2017

APPLICATION: A-17-42

APPLICANT/OWNER: Glenda M. White
175 Lupine Drive
Smyrna, DE 19977

PROPERTY LOCATION: 175 Lupine Dr., Smyrna, DE 19977

NATURE OF REQUEST:

A-17-42 Glenda M. White seeks a variance from the rear setback requirement of 25 ft. to enable a screen porch and deck **addition (Sect. 205-397.2C(1) of the Kent County Code)**. The property is located on the north side of Lupine Dr., approx. 148' west of Volpe Way, being lot 15 of the Village of Eastridge subdivision, south of Smyrna. Levy Court District: 1st. Zoning District: AC. Tax Map No.: **KH-00-036.02-04-15.00-000**

The applicant is requesting the variance to enable the construction of a 10' x 12' screened-in porch with a 10' x 4' attached open deck, 9± ft. from the rear property line.

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 request based on the opportunity available to the Developer for a more appropriate, alternative solution and 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:

This property lies in a residential retirement community, Village of Eastridge by Benchmark Builders.

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:

No applicant response.

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 south and 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 as approved by the Levy Court and the developer. Staff recommends that the Board, therefore, strongly consider the ramifications of the approval of this request as the continuation of the further reduction of the required rear setback 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:

The deck will not seriously affect the neighbors on either side of me. There are woods behind my property. Passive open space one side border a public walk thru open space.

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 north. However, Staff is concerned with the impact of a further reduction to the rear setbacks given the approved amenities of the subdivision, including a walking path abutting perimeter lots. This pathway, to be installed prior to the implementation of a Homeowner's Association, is to be located to the north of the subject site and accessed on the west side of this lot. The further reduction of the required rear setback may impact the usability of this amenity that is to be shared by all residents within the subdivision as privacy issues could arise from this type of request. With the continuation of this trend in further reducing the rear setback, it is becoming more likely that this trend will have a greater impact on all properties located within the Village of Eastridge subdivision as a whole and should be addressed by 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:

The wooded area behind my property brings a variety of wild life, deer ticks, poison ivy, which limits my outdoor use in the rear. This is my retirement home and I would

like to enjoy my rear yard as I get older.

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, the applicant maintains the ability to construct open decking as high as 4 ft. above grade as close as 10 ft. to the rear property line by right. Staff, therefore, strongly urges the Board to consider the variance criteria and the lot itself, rather than the perceived inconvenience of the applicant 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 applicant is proposing a 10' x 12' screened-in porch addition with a 10' x 4' attached open deck, 9± ft. from the rear property line.
- The site is 0. 12± acres in size and is currently improved with a one story single-family dwelling. The subject site, being lot 15 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.
- Variance A-17-35, for 106 Felix View Ct., was approved on 8/17/17 to allow for the construction of a screened-in porch 10.4 ft. from the rear property line.
- DelDOT has submitted that they have no comment on this application at this time.
- The subject site is zoned AC (Agricultural Conservation District). The Comprehensive Plan recommends that this area be utilized for low density residential purposes.
- The applicant is 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

Village of Eastridge Architectural Review Committee approval letter, dtd. 9/11/17