



Kent County

Department of Planning Services Division of Planning

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STAFF RECOMMENDATION REPORT November 16, 2017

APPLICATION: A-17-43

APPLICANT: DBS Auto Body
467 Moose Lodge Rd.
Camden-Wyoming, DE 19934

OWNER: Tsaganos Co., LLC
4446 Summit Bridge Rd.
Suite 1, 2nd Floor
Middletown, DE 19709

PROPERTY LOCATION: 520 Walnut Shade Rd., Dover, DE 19904

NATURE OF REQUEST:

A-17-43 DBS Auto Body (Owner: Tsaganos Co., LLC) seeks a variance from the minimum operational setback of 20 ft., the minimum building setback requirement of 50 ft. from a residential district, and the screening requirement along residential properties to enable an Auto repair shop (**Sect. 205-169.1, 2 & 5 of the Kent County Code**). The property is located on the southeast corner of Walnut Shade Rd. (DE Rt. 10A) and S. DuPont Hwy. (US Rt. 13), east of Woodside. Levy Court District: 5th. Zoning District: BG. Tax Map No.: **NM-00-111.10-01-31.00-000**

The applicant is requesting variances from the 20 ft. minimum operational distance requirement and the 50 ft. building setback requirement from a residential property line for automobile repair to enable the use of an existing structure located as close as 11± ft. to residential property lines and an enclosed storage area as close as 6± ft. to southern property lines.

After the submission of the legal notification, the applicant agreed to the requirement of screening along the residentially zoned property lines; therefore, this variance request is no longer needed.

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 **CONDITIONAL APPROVAL** of the variance 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:

No applicant response.

Staff Response:

As shown on Exhibit A, the subject site is zoned BG (General Business District). Auto repair shops are within the nature of the BG zoning district, contingent upon meeting all conditions as stated within Sect. 205-169 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 both residential and commercial in nature. Properties to the east and south appear to be residentially developed, while properties north and west appear to be commercially developed along the US Rt. 13 corridor. Auto repair uses are permitted by right within the BG zoning district with the compliance of certain conditions, including certain setback requirements established in order to provide adequate buffering from neighboring residential uses. However, given the location of the existing building in proximity to an existing residential use and the proposed location of overflow parking, Staff recommends the Board to approve the requested variances with the condition that the applicant provides a landscape buffer along the front property line, just north of an overflow parking area, and buffer along the property line abutting the rear of the residentially developed property known as 6967 S. DuPont Hwy. to maintain the character of the area, as shown in attached Exhibit C.

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 these requirements may not negatively affect other properties in the area as the structure is existing and the applicant has agreed to meet all screening requirements pursuant to Sect. 205-169 of the Kent County Code. However, the recommendation of Staff to buffer from both a residentially developed property and along Walnut Shade Rd. will further alleviate any impact on neighboring properties.

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 property is zoned BG. Previous tenants, Shortcuts, also used the property to house equipment and work on equipment. DBS enterprise will also be using the property as a satellite office only using it to work on buses. Equipment will then be moved to our other shop only four miles away. The building is large enough for the work to be done inside and then moved to our other location for completion. The attraction to this property is we can perform all work on equipment inside, out of the elements and completed so we are not working in the rain, cold or snow. Residential properties to the east of this are separated by foliage and trees that are mature and have been there for years that provide a buffer that is natural. We also give back to the community and school providing jobs and internships for kids at Polytech.

Staff Response:

The failure to remove the setback requirements may create an exceptional practical difficulty as the applicant is currently seeking to utilize an existing vacant building to expand an existing business. While the applicant may have the ability to secure an alternate location, the applicant may incur additional hardships based on the need to find a structure or erect a structure large enough to meet the needs of the business on other site locations. Additionally, the existence of a private road right-of-way just east of the structure to be used further exacerbates the issue as this roadway has been eliminated and is no longer used as a thoroughfare connecting to Walnut Shade Rd. Should the requests be denied, the applicant will be forced to pursue alternate locations, which may impact the sustainability of the business.

In order to minimize the impact of this request, however, Staff recommends the following:

1. Require landscaped buffer at minimum of 6 ft. in height along the southwest side property the entire length of an existing storage area abutting an existing residential use, and
2. Require landscaped buffer at minimum of 6 ft. in height along the front property line just north of the proposed overflow parking area, as shown on Exhibit C.

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 required operational setback of 20 ft. and required building setback of 50 ft. from a residential property line to enable an auto repair business.
- The applicant is proposing to utilize an existing building as close as 11± ft. to residential property lines and an enclosed storage area as close as 6± ft. to southern property lines.
- The subject site is 3.1± ac. and is currently improved with two retail shopping center buildings and a detached storage building, to be used for the proposed use.
- There have been four previous Board of Adjustment applications on the subject site:
 - Application A-02-13 was an appeal of an administrative decision to allow a church within a retail shopping center. The application was withdrawn.
 - Application A-99-62 was an appeal of an administrative decision to allow a skateboard park accessory to a half-pipe manufacturing principal use under the previous zoning allowances of IL. The Board voted in favor of the applicant to allow the proposed use.
 - Application A-81-47, requesting relief from the minimum one acre lot size, the 150 ft. lot width, 50 ft. front yard setback requirement, 20 ft. side setback requirement, and the 50 ft. side yard aggregate requirement for the IL zoning district, was approved on November 19, 1981 contingent upon zoning request Z-81-33 being approved by Levy Court. The request to re-zone a portion of the property from AR and BG to IL was subsequently approved.
 - Application A-17-05 was an appeal of administrative decision prohibiting the placement of canopy signs on structures along a divided highway. The application was withdrawn.
- There have been three similar requests to the Board in the surrounding area:
 - Application A-85-35, for property known as 132 West Dr., for the reduction of a 25 ft. side setback requirement to 22 ft., was denied on 5/16/85.
 - Application A-72-07, for a property southwest of the subject site along S. DuPont Hwy., for the reduction of a 30 ft. side setback requirement and a 50 ft. aggregate side setback requirement, was approved on 4/27/72 to allow for a manufactured home as close as 20 ft. to the side property line, with an aggregate of 48 ft.
 - Application A-80-10, for a property south of the subject site along S. DuPont Hwy., to grant a Special Use Exception and a side setback reduction from 20 ft. to 5 ft. to enable an additional structure on a legal non-conforming commercial establishment, was approved on 3/20/80.
- 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 comments:
 - *DelDOT records indicate that South DuPont Highway's functional classification is as Other Principal Arterial requiring 30' of right-of-way from the right edge of the right through lane 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.

- *2. DelDOT records indicate that Walnut Shade Road'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.*
- The applicant is advised that, should the request be granted, application for a Certificate of Use must be made to the Department of Planning Services prior to the commencement of operations. For more information, contact the Department of Planning Services at (302) 744-2471 between 8:00 a.m. and 5:00 p.m.

ENC: Exhibits A – C