



# Kent County

## Department of Planning Services Division of Planning

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### STAFF RECOMMENDATION REPORT January 18, 2018

**APPLICATION:** A-17-50

**APPLICANT:** Jessica R. Valladares  
5520 N DuPont Hwy  
Dover, DE 19901

**OWNER:** Jessica R. & Jaqueline Valladares  
5520 N DuPont Hwy  
Dover, DE 19901

**PROPERTY LOCATION:** 5520 N DuPont Highway, Dover, DE 19901

**NATURE OF REQUEST:**

**A-17-50 Jessica R. Valladares (Owners: Jessica R. & Jacqueline Valladares)** seeks a variance from the required front parking setback of 25 ft., 15 ft. rear parking setback, and 20 ft. parking setback from a residential property line; the maximum allowable impervious surface coverage of 75%; and the conditions of screening along a residential property line, the storage of damaged vehicles within an enclosed building, and the minimum operational setback of 20 ft. to enable the legalization of an auto sales and repair business (**Sect. 205-223B, 205-173, & 205-169.5, 7, & 1 of the Kent County Code**). The property is located on the east side of N DuPont Hwy. (US Rt. 13), approx. 390' north of Fast Landing Rd. (DE Rt. 42), east of Cheswold. Levy Court District: 3<sup>rd</sup>. Zoning District: BG. Tax Map No.: **LC-00-046.02-01-25.00-000**

The applicant is requesting the above referenced variances to legalize the use of an existing site for automobile sales and service with parking areas to be 20' from the front property line, 15' from the southern property line, 0' from the east and north property lines, and 0' from a residential line. The applicant is requesting to legalize the existing impervious coverage of 79% on the subject site and is seeking relief from the 6' screening requirement along the east property line, which borders a residentially zoned area. The applicant is requesting to not store damaged vehicles in a building as required, but in a fenced in area on the eastern portion of the property. Finally, the applicant is requesting the elimination of the operation setback along the northern and eastern property lines to enable the storage and parking of vehicles.

**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:

- a) **DENIAL** of the requests from the parking setback of 25 ft. from the front property line, 15 ft. from the rear property line, and 20 ft. from a residential line; the storage of damaged vehicles within a fenced area instead of within an enclosed building as required; maximum allowable impervious surface coverage of 75%; and screening requirement, minimum of 6' in height, along a residential property line.
- b) **MODIFIED APPROVAL** of the request from 20' operational setbacks to allow a 10' setback from the eastern, southern, and northern property lines (item #5 on Exhibit D).

These recommendations are 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 attached.

Staff Response:  
As shown on Exhibit A, the subject site is zoned BG (General Business District). Properties to the west and south of the subject site are also zoned BG. The subject site is bordered on its southern and eastern property lines by a parcel that is split-zoned both BG and RS1 (Single-Family Residential District). Automobile sales and service are within the nature of this zoning district, contingent upon meeting all conditions set by Code requirements as stated in §205-169.

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

Applicant Response:  
See attached.

Staff Response:  
The character of the surrounding area is primarily commercial in nature, as the subject site is bordered by a gas station and a number of businesses to the west and south. There is a tilled farm land and residentially developed parcels to the north of the site, with a number of dwellings on the west side of N DuPont Hwy. It appears that the subject site is within a transition area along the N DuPont Hwy corridor, located between commercial uses to the south and agricultural / residential uses to the

north. The subject site is improved with a commercial building, which was converted into auto sales and repair in 2012; no County approval was obtained prior to the occupancy of the building.

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

Applicant Response:  
See attached.

Staff Response:  
The removal of the front parking setback of 25 ft., rear parking setback of 15 ft. along a shared commercial property line, and the 20 ft. parking setback from a residential line may not have a negative impact on surrounding properties; however, due to the site's frontage along N DuPont Hwy, the parking of vehicles closer than the required front setback may pose risks to customers maneuvering the subject site when entering the property from N DuPont Hwy. The legalization of the 79% impervious surface coverage may have a negative effect on the surrounding properties, as the subject site does not currently have stormwater management infrastructure to prevent potential drainage issues on adjacent properties.

Although RS1 area to the east of the subject site is not utilized residentially at present, residential uses are permitted in the RS1 zoning district. Additionally, the subject area that is required to be screened is also the same area where the applicant is requesting a 0 ft. parking setback and 20 ft. operational distance, as well as the outdoor storage of damaged vehicles. Should the request for the outdoor storage of vehicles be granted, Staff strongly recommends that the entire storage area be appropriately screened.

In contrast, the recommended reduction of the operational setback may not have an impact on neighboring properties, as there will still be an adequate buffer from the property lines. A reduction may grant relief for the property owner's efforts store vehicles and provide safe maneuverability on 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:  
See attached.

Staff Response:

The failure to grant the variances as requested may not create an exceptional practical difficulty, as there is adequate room on the subject site to meet the code requirements and establish a code-compliant site design. Additionally, the existing layout of the subject site did not receive approval prior to the commencement of operation. The Board should strongly consider granting the absolute minimum requests needed in order to legalize the use within this property. Likewise, the removal of the 20 ft. operational setback and rear parking setbacks in their entirety may be viewed as self-imposed, as the applicant has the ability to utilize space in alternative layouts. While the code requirements may impose an exceptional practical difficulty on the applicant's business plan, a reduction of the operational setback to 10 ft. may alleviate any site constraints and provide adequate room to meet other code requirements and provide the necessary buffering from neighboring properties.

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. AGENCY COMMENTS**

**Delaware Department of Transportation**  
**Contact: Joshua J. Schwartz (302) 760-2768**

**Comment:**

1. DelDOT records indicate that North 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. DelDOT would not want anything placed within the previously mentioned right-of-way area.

### **IV. APPLICATION BACKGROUND INFORMATION:**

- The applicant is requesting a reduction of the minimum required 25 ft. parking setback from the front property line to 20 ft.
- The applicant is requesting a reduction of the minimum required 15 ft. rear setback of parking from a shared commercial line to 0 ft.
- , The applicant is requesting a reduction of the minimum 20 ft. parking setback from a residential line to 0 ft.
- The applicant is requesting relief from the 75% maximum impervious surface coverage to legalize the existing 79% coverage on the lot.
- The applicant is requesting a variance from the screening requirement, a minimum of 6 ft. in height, from a residential property that shares the site's eastern property line in order to not install any screening.
- The applicant is requesting a variance from the requirement that all damaged vehicles be stored entirely within an enclosed building in order to utilize the fenced in area located on the northeast portion of the property.

- The applicant is requesting the elimination of the required 20 ft. operational setback for automobile sales and service along the east and north property lines to 0 ft.
- The property owner applied for a detached sign permit in August of 2015 for an automobile sales and service establishment for the subject site. A Certificate of Use was not filed with the Planning office to officially establish this use on the property prior to the commencement of operations.
- A portion of the subject site was rezoned from IG to BG in July of 2017.
- The subject site is 0.77± acres and is currently improved with a commercial structure.
- There are no previous Board of Adjustment applications on this site.
- The subject site is zoned BG (General Business District). The Comprehensive Plan recommends that this area be utilized for highway commercial purposes.
- The applicant is must apply for a Certificate of Use with the Division of Planning Services, 555 Bay Rd., Dover, DE, prior to the continuation of operations of the use for the subject site. For more information, call Kent County Planning Services at (302)744-2471.
- The applicant is also advised that building permits are required for, but not limited to, a Business Certificate of Occupancy prior to continuation of any business transactions on the subject site, as well as for any desired signage for the subject site. For more information, contact the Division of Inspections & Enforcement at (302)744-2451.

**ENC:** Applicant Response Letter with Plot Plan  
Exhibits A - D