

Kent County



Department of Planning Services Division of Planning

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STAFF RECOMMENDATION REPORT March 15, 2018

APPLICATION: A-18-03

APPLICANT: Franchise Management Services
9919 Golf Course Rd.
Ocean City, MD 21842

OWNER: Newwind Properties 2920 LLC
435 N DuPont Hwy
Dover, DE 19901

PROPERTY LOCATION: 2920 N DuPont Hwy, Dover, DE 19901

NATURE OF REQUEST:

A-18-03 Franchise Management Services (Owner: Newwind Properties 2920 LLC) seeks a variance from the required 15 ft. drive-aisle setback from a side property line to enable a site plan submittal (**Sect. 205-223E of the Kent County Code**). The property is located on the northeast side of N DuPont Hwy (U.S. Rt. 13) at the intersection with Maxwell Street, surrounded by Dover. Levy Court District: 3rd. Zoning District: BG. **Tax Map No.: ED-00-057.02-01-08.00-000**

The applicant is requesting a variance from the required drive-aisle setback of 15' from a side property line in order to enable the submission of a site plan application for a drive-thru establishment. The applicant is proposing to construct the drive aisle approximately 2'± from the side property line and plans on utilizing the existing building on the site.

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 **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:

BG- General Commercial District

Staff Response:

As shown on Exhibit A, the subject site is zoned BG (General Business District). Restaurants with a drive-thru are permitted in the BG zoning district through the conditional use process and are within the nature of the district.

2. The character and uses of the immediate vicinity.

Applicant Response:

Used car care and shop to south, lumber retail to the north, car dealership and student housing to west across highway, residential to east.

Staff Response:

The character of the surrounding area is primarily commercial in nature. The subject site is currently improved with a commercial building and established parking lot. Properties to the north, south, and west are utilized commercially and include a flooring establishment, auto repair establishment, and a hotel. The parking areas of surrounding commercial establishments appear to extend closer to the side property line than the required 15'. The property to the east of the subject site is improved with a single-family dwelling; however, there appears to be commercial activity occurring on the site. The proposed reduction of the drive-aisle setback may not have an impact on the character of the area, which appears to be already defined by parking areas similar in nature to what is proposed.

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

Applicant Response:

The variance area will reside to the northern neighbor's property which is specialty retail. The uses will not conflict. The two uses could help both businesses.

Staff Response:

The removal of the requirement may not negatively affect the neighboring properties, as the proposed drive-aisle is extending closer to an existing parking lot / drive-aisle on the adjacent commercial property. Additionally, the applicant is proposing tree plantings along the north and east side property lines that may alleviate any potential impact on neighbors.

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 has an existing building which the applicant is trying to utilize for a new coffee shop. The coffee shop requires a drive-thru in order to thrive and efficiently move customers through. Without the variance, there will be no drive-thru, which the applicant needs for his business.

Staff Response:

The failure to remove the restriction may create an exceptional practical difficulty, as the applicant is proposing to utilize an established site layout. Due to this site layout, alternative options for a drive-thru lane are limited to the area surrounding the existing commercial structure on the property. Additionally, should the application be denied, the applicant may experience an economic hardship and may have an inability to stay competitive with the surrounding commercial uses in the area as a result of area limitations on the property.

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 drive-aisle setback of 15' from a side property line in order to enable the submission of a site plan application for a drive-thru establishment.
- The applicant is proposing to construct the drive aisle approximately 2'± from the side property line and plans on utilizing the existing building on the site.
- The subject site is 0.57± acres and is currently improved with a vacant commercial structure.
- There have been no Board of Adjustment applications on the subject site.
- The subject site is zoned BG (General Business). The Comprehensive Plan calls for Highway Commercial uses in this area.
- The applicant is advised that, should the request be granted, application for a Certificate of Use or Conditional Use approval 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 & B
Letter from Applicant