


Kent  County

Department of Planning Services
Division of Planning

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STAFF RECOMMENDATION REPORT
March 15, 2018

APPLICATION: A-18-01

APPLICANT: Clement F. Aiken, Jr.
475 Bowers Beach Rd
Frederica, DE 19946

OWNER: Roy T. Huff Trust
c/o John C. Huff
33 JD Court
Magnolia, DE 19962

PROPERTY LOCATION: 475 Bowers Beach Road, Frederica, DE 19946

NATURE OF REQUEST:

A-18-01 Clement F. Aiken, Jr. (Owner: Roy T. Huff Trust c/o John C. Huff) seeks a variance from the provision prohibiting an accessory structure to be placed within a front yard area and from the required accessory structure setback of 5 ft. to a side property line in order to legalize a detached garage and shed (**Sect. 205-24F(1) & 205-24F(2) of the Kent County Code**). The property is located on the north side of Bowers Beach Rd. (Co. Rd. 18), approx. 175' northeast of the intersection with Skeeter Neck Rd. (Co. Rd. 372), southeast of Magnolia. Levy Court District: 4th. Zoning District: AC. Tax Map No.: **SM-00-122.00-02-19.00-000**

The applicant is requesting the variances in order to legalize an existing 20' x 25' detached garage that is located within the front yard approximately 29' to the front property line and 3' from the side property line, and a 12' x 8' shed located 3' to the side property line. The existing dwelling is located approximately 46.7' from the front 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 variance requests, based on the analysis of the four criteria from the applicant and the 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 AC (Agricultural Conservation District). Surrounding properties are zoned residentially, with a mixture of RMH (Residential Manufactured Home) and AC in the surrounding area. Accessory structures are within the nature of this zone after receiving the proper approvals through the building permit process.

2. The character and uses of the immediate vicinity.

Applicant Response:

No applicant response.

Staff Response:

The character of the surrounding area is primarily low-density residential in nature, with some agricultural uses and vacant land in the vicinity. Surrounding properties appear to be improved with manufactured dwellings or single-family dwellings. Detached accessory structures could be considered a normal improvement in the surrounding area; however, accessory buildings on surrounding properties appear to be compliant with both the required side setback of 5' and the provision restricting accessory structures to be in line with or behind the dwelling. Given the curvature of the Bowers Beach Road and the existing location of the accessory structure in the front yard, the legalization of the structure may pose safety issues to travelers along Bowers Beach Road.

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 the restriction may not affect neighboring properties, as the subject garage and shed are located away from the adjacent neighbor's home. Additionally, the parcel to the east appears to be vacant woodlands.

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:

The ground is higher and the drainage is better and there are woods in the back.

Staff Response:

Failure to remove the restriction may not create an exceptional practical difficulty, as the applicant created the hardship by placing the subject accessory structures without the required building permits. Additionally, there appears to be legal locations on the property for the subject accessory structures that maintain the required setbacks and buffers from environmental impacts on the property. Therefore, the circumstances of both requests do not appear to stem from the uniqueness of the land and appear to be a perceived hardship of the applicant.

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 the variances in order to legalize an existing 20' x 25' detached garage that is located within the front yard approximately 29' to the front property line and 3' from the side property line, and a 12' x 8' shed located 3' to the side property line.
- The site is 0.5± acres in size and is currently improved with a manufactured home and multiple accessory structures.
- The subject site is impacted by wetlands that are located on the northern portion of the property, however all structures appear to maintain the required 25' wetland buffer.
- The subject accessory structures were placed on the property without building permit approval.
- There has been one previous Board application the subject site. **A-16-08** was approved in January of 2016. The application approved the subject site to become increased in legal nonconformity and be reduced in size to half an acre.
- 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 this request be approved, any applicable building permits must be obtained from the Division of Inspections and Enforcement. For more information, contact their office at (302)744-2451 between 8:00 a.m. and 5:00 p.m.

ENC: Exhibits A & B