



# Kent County

## Department of Planning Services

Division of Planning

SARAH E. KEIFER, AICP  
Director of Planning Services

Phone: 302/744-2471  
FAX: 302/736-2128

KRISTOPHER S. CONNELLY, AICP  
Assistant Director of Planning Services

### STAFF RECOMMENDATION REPORT

April 19, 2018

**APPLICATION:** A-18-05

**APPLICANT/OWNER:** Khoscine Garris  
415 Southern View Dr.  
Smyrna, DE 19977

#### NATURE OF REQUEST:

**A-18-05 Khoscine Garris** seeks a variance from the maximum impervious surface coverage of 35% to allow for a pool enclosure (**§205-397.2.C.(1) of the Kent County Code**). The property is located on the west side of Southern View Dr., approx. 526 ft. north of Macon Ln., being lot 25 of Southern View subdivision, east of Clayton. Levy Court District: 1<sup>st</sup>. Zoning District: AC. **Tax Map No.: DC-00-018.04-04-07.00-000**

Application A-15-50 approved variances in order to legalize an attached garage 7.1' ± from the property line, with aggregate setbacks of 21.1' ±, as well as a detached pavilion 4.1' ± to the rear property line. The applicant also received approval of a variance to legalize a total impervious coverage of 56%, to allow for the construction of a pool enclosure, contingent on the removal of a portion of existing coverage on the lot. The approval of relief from the maximum impervious coverage of 35% has expired, as no construction has commenced within a period of one year.

The applicant is requesting a variance from the maximum impervious surface coverage of 35% to a total impervious surface coverage of 56% in order to construct a pool enclosure.

#### 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 to increase the impervious coverage 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 AC (Agricultural Conservation District). Residential additions and accessory structures found on the subject site are a permitted use within the zone, contingent upon staying within allowable impervious surface coverage of individual lot.

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

Applicant Response:

No applicant response.

Staff Response:

The character of this area is residential in nature, being lot 24 of Southern View subdivision. A majority of neighboring properties currently maintain one single-family dwelling with some having one detached storage structure. The subject site does appear to be in character with surrounding properties in regards to lot size; however, the excessive coverage of the lot does not appear to be in character with the surrounding properties. The applicant is proposing to remove a portion of the existing impervious coverage for the lot, while proposing to further increase the coverage by constructing a pool enclosure. The existing in-ground pool may be in character and use with the immediate vicinity; however, the addition of an additional structure approximately 40' x 31' in size 3.4 ft. from the existing dwelling may also be seen as excessive and out of character with the roof coverage already present on the subject site.

**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 this requirement may negatively affect other properties in the area as the current lot coverage on the subject site does exceed the maximum allowable impervious surface coverage of 35% by almost twice the allowable amount. The proposed coverage of 56% could negatively impact drainage towards neighboring properties. Although drainage may be designed to flow towards the west, or the rear of the property, this could produce an issue with excess drainage flowing to the neighboring lots, particularly with the proposed coverage of the existing in-ground pool with an enclosed structure.

**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:

In regards to the improvements made to the property as well as the excessive impervious coverage of the lot, the failure to remove these particular restrictions would not create an exceptional practical difficulty. While the improvements made to the subject site may be considered normal improvements separately, the excessive coverage from the combination of all improvements on the subject site is in fact a matter of convenience. As the discussion of impervious surface coverage had taken place previously with the applicant and structures were then built without permits and subsequently legalized by variances, it is apparent that the exceptional practical difficulty is self-imposed and could have been avoided when advised by Staff.

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 impervious surface coverage of 35% within the zoning district, allowing a total of 4,707 sq. ft. of coverage.
- The applicant is seeking the above referenced variance to legalize the current impervious surface coverage created by all improvements on the subject site, totaling 62.2%, or 8,370 sq. ft. The applicant is proposing to remove the existing concrete pad and enclose the existing in-ground pool, which will bring coverage to 56% +/-, or 7,531 sq. ft.
- The applicant was approved for a variance to legalize all current and proposed impervious surface coverage, a total of 56%, in December of 2015; however, the approval of the variance has since expired due the fact that construction did not commence within the time frame of one year.
- The applicant coordinated the proposed plans for the parcel with the Kent Conservation District, which according to the applicant, received approval on October 27, 2017.
- The existing concrete pad to be removed is the same area that Kent Conservation District has identified as the area over the existing stormdrain easement along the southern property line. The Kent Conservation District withdrew their condition this area be removed
- The subject site is 0.31+/- ac. and is currently improved with a two-story single-family dwelling, an in-ground swimming pool, and a detached pavilion housing an outdoor kitchen area, in addition to a concrete patio area.

- The applicant originally applied for a sunroom addition and pavilion in January of 2014; however, the application was denied for the excessive impervious surface coverage at that time. The applicant was informed of the process required to obtain a variance for excess coverage, but did not proceed as advised. The applicant then proceeded without a permit to construct the addition of a sunroom and the pavilion, adding additional coverage to the subject site.
- The applicant wishes to enclose the existing in-ground pool with an enclosure, approximately 1,304 sq.ft. in size. The existing pool is currently excluded from the impervious surface coverage; however, the addition of this building would then add that coverage back into the calculation.
- There has been one previous Board of Adjustment application on the subject site:
  - **A-15-50 Khoscine Garris:**
    - Legalized the placement of a permitted, attached garage addition 7.1'+ to the side property line, with an aggregate side setback of 21.1'+.
    - Legalized the placement of an unpermitted, detached pavilion 4.1'+ from the rear property line. The structure has since been permitted.
    - Legalized a maximum impervious surface coverage of 56% for the lot, contingent on the removal of a portion of existing coverage on the parcel.
- Letters of no objection were received from both DelDOT and Kent County Public Works for this project and were included in the previous application.
- The subject site is zoned AC (Agricultural Conservation District). The Comprehensive Plan recommends that this area be utilized for low density residential purposes.
- Should the request be approved, a building permit for the proposed pool structure will need to be obtained. For additional information, please contact the Division of Inspections and Enforcement at (302) 744-2455.

**ENC:** Exhibits A & B  
Email from applicant  
Proposed plan of parcel  
Letter of No Objection from Kent Conservation District