


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-18-06

APPLICANTS / OWNERS: Christopher M. & Kelly B. Foster
855 School Street
Houston, DE 19954

PROPERTY LOCATION: 4315 Deep Grass Lane, Houston, DE 19954

NATURE OF REQUEST:

A-18-06 Christopher M. & Kelly B. Foster seek a variance from the required side setback of 25ft. to enable the construction of an attached carport and an addition (**§205-68.A.(3) of the Kent County Code**). The property is located on the west side of Deep Grass Ln. (Co. Rd. 384), adjacent to the intersection with School St. (Co. Rd. 445), west of Houston. Levy Court District: 4th. Zoning District: AR. **Tax Map No.: MN-00-181.00-01-03.00-000**

The applicants are requesting the variance to enable the construction of a 33ft. x 16ft. addition located 16ft. from the side property line and a 20ft. x 20ft. attached carport located 6ft. from the side property line. Construction for the addition had commenced in early 2018 without a building permit; however, the Kent County Division of Inspections and Enforcement issued a stop work order in February of 2018. Construction of the carport has not begun.

I. STAFF RECOMMENDATION:

The staff has reviewed the information presented by the applicants and recommends that the Board strongly consider all public testimony in making their decision. The staff recommends **DENIAL** of the request based on the analysis of the four criteria from the applicants 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 AR (Agricultural Residential District). Surrounding properties are similarly zoned. Residential additions are

within the nature of the AR zoning district, contingent on meeting the required principal setbacks and obtaining the proper permits and approvals.

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. Surrounding lots appear to be improved with dwellings older in age and are legal nonconforming in nature. While neighboring lots appear to be smaller and improved with dwellings located closer to property lines, parcels comparable in size to the subject site and conforming in nature appear to be improved with dwellings meeting the setback requirements. Therefore, reduction of the required side setback for the proposed addition and attached carport may be out of character with the surrounding area.

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

Applicant Response:

No response.

Staff Response:

The reduction in the side yard setback may have a negative impact on neighboring properties, particularly the adjacent property to the south. The parcel to the south of the subject site was created through the subdivision process in August of 2017, with the property line between the two parcels establishing a code compliant setback between the dwelling on the subject site and the new parcel. At the time of subdivision, a clear separation distance between the existing house and new lot was created. Although the parcel to the south is currently unimproved, should a dwelling be constructed on the property, neighboring residential activity will be occurring 6 ft. to the property line, which is 19 ft. closer than what the code calls for. Approval of the proposed reduction may be of detriment to the safety and welfare of future property owners of the neighboring property located to the south.

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:

We are building the addition to add a bedroom and bathroom as well as an entry way into a small mud room. The original home is a 1930 colonial we are restoring. Our family is larger than the original setup (floor plan). The addition was designed to accommodate the septic system to the right side of the house including the old cesspool in the back side of the lot. Ground is exceptionally low as the lot goes back.

This addition needs to be uniformed to the house as well. Would also like a car port cannot build a garage with the frontage or rear because of low ground.

Staff Response:

The failure to remove the restriction of side setback may not create an exceptional practical difficulty, as there appears to be alternative locations on the site to locate the proposed addition. Based on the survey completed in August 2017, there appears to be ample area on the parcel that is not considered wetlands. Additionally, a building permit was not obtained prior to the commencement of construction. Therefore, any difficulty experienced by the applicant may be self-imposed, as planning staff would have advised the applicant of appropriate locations to locate the proposed improvements in relation to any existing site constraints such as setbacks and/or on-site utilities.

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 applicants are requesting the variance to enable the construction of a 33ft. x 16ft. addition located 16ft. from the side property line and a 20ft. x 20ft. attached carport located 6ft. from the side property line.
- Construction for the addition had commenced in early 2018 without a building permit; however, the Kent County Division of Inspections and Enforcement issued a stop work order in February of 2018. Construction of the carport has not begun.
- The site is 2.2± acres in size and is currently improved with a two-story, single-family dwelling that is located 25.3 ft. to the front property line and 26 ft. to the southern (side) property line
- The subject site was subdivided in August of 2017, creating the 1.7 acre parcel to the south of the subject site and establishing a code compliant setback for the house located on the subject site.
- There have been no previous Board of Adjustment applications for the subject site.
- The subject site is zoned AR (Agricultural Residential District). The Comprehensive Plan recommends that this area be utilized for low density residential purposes.
- The applicants are advised that, should the request be granted, a Building Permit shall be obtained prior to the commencement of construction. For more information, contact the Division of Inspections and Enforcement at (302) 744-2451 between 8:00 a.m. and 5:00 p.m.

ENC: Exhibits A & B
Minor Subdivision Plan dtd. 8/8/2017