



Kent County

Department of Planning Services

Division of Planning

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STAFF RECOMMENDATION REPORT

April 19, 2018

APPLICATION: A-18-09

APPLICANTS/OWNERS: Brian & Kim Baker
197 Eastmoor Circle
Smyrna, DE 19977

PROPERTY LOCATION: 197 Eastmoor Circle, Smyrna, DE 19977

NATURE OF REQUEST:

A-18-09 Brian & Kim Baker seek a variance from the maximum impervious surface coverage of 35% to enable the construction of a porch over an existing deck (**§205-397.2.C.(1) of the Kent County Code**). The property is located on the northeast side of Eastmoor Circle, approx. 188ft. northwest of W Pembroke Dr., being lot 126 of Wicksfield, west of Smyrna. Levy Court District: 1st. Zoning District: AC. **Tax Map No.: DC-00-018.04-02-33.00-000**

The applicants are requesting the variance to legalize an existing impervious surface coverage of 4,049 sq.ft. and to enable the construction of a 12' x 25.5' roof over an existing deck. The applicant is proposing to bring the total impervious surface coverage to 43.5% (approximately 4,355 sq.ft.). The maximum allowable impervious surface coverage for this subject site is 35% (approximately 3,500 sq.ft.).

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 variance 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:

Residential (AC) development. Requesting covered roof over an existing deck.

Staff Response:

As shown on Exhibit A, the subject site is zoned AC (Agricultural Conservation District). Residential additions, accessory structures and other similar improvements are within the nature of the zoning district, provided all lot improvements stay within the allowable impervious surface coverage of each individual lot.

2. The character and uses of the immediate vicinity.

Applicant Response:

Not out of character for the development. Homeowners Association and neighbors have approved the request. Design and structure in consideration of neighbors and water drainage issues.

Staff Response:

The character of this area is residential in nature, being lot 126 of the Wicksfield subdivision. The subject lot appears to be in character with the surrounding area in regards to lot size; however, the lot itself appears out of character due to the additional improvements on the property and existing coverage. The subject site is improved with an in-ground pool bordered by a concrete apron. Although an in-ground pool may be considered an improvement expected on a residential property, surrounding properties are not similarly improved.

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

Applicant Response:

Common area has stormwater management drain.

Staff Response:

The proposed coverage of 43.5% may negatively impact drainage towards neighboring properties and shared open space for residents of the development. Should the Board approve the request, it may be recommended that a Letter of No Objection from Kent Conservation District be obtained for additional lot improvements or lot specific stormwater management efforts be required as a condition of approval.

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 requesting additional coverage for family entertainment, protection from elements and secure play area for two toddlers, and an outside smoking area for elderly mother who refuses to give it up. Two gazebos have already been ruined by wind (one blew off completely).

Staff Response:

The failure to remove the restriction may not create an exceptional practical difficulty. While the proposed porch and in-ground pool may be considered normal improvements separate from each other, the excessive coverage is a matter of convenience. Any hardship experienced by the applicant may be that of desire for a screen porch, rather than there being a unique aspect of the land to warrant the granting of additional coverage.

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 a variance from the impervious surface coverage of 35% within the zoning district, or 3,500 square feet.
- The applicants are requesting the variance to legalize existing impervious coverage overage of 540 sq.ft. and to enable the construction of a roof over the existing deck located on the rear of the dwelling.
- The applicants recently obtained a permit for an in-ground pool located within the back yard.
- The subject site is 0.23+/- ac. and is currently improved with a two-story single-family dwelling, an asphalt driveway, concrete walkway, and in-ground pool.
- There have been no previous Board applications on the subject site.
- The subject site is zoned AC (Agricultural Conservation District). The Comprehensive Plan recommends that this area be utilized for low density residential purposes.
- The applicants are advised that, should the application be approved, a building permit must be obtained prior to the commencement of any new construction on the subject site. For more information, please contact the Division of Inspections & Enforcement at (302)744-2451.
- Deed restrictions for Wicksfield Development were submitted by the applicant. Due to the size, these were not included in the mailing packet, but will be part of the file and available for review at the hearing if needed.

ENC: Exhibits A & B
HOA Approval