



Kent County

Department of Planning Services

Division of Planning

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STAFF RECOMMENDATION REPORT

June 21, 2018

APPLICATION: A-18-13

APPLICANT / OWNER: Raymond E. Price, Jr.
5017 Halltown Road
Hartly, DE 19953

PROPERTY LOCATION: 5017 Halltown Road, Hartly, DE 19953

NATURE OF REQUEST:

A-18-13 Raymond E. Price, Jr. seeks a variance from the maximum impervious surface coverage of 23% to enable the construction of an addition, from the requirement that an accessory structure be located 30ft. behind the rear elevation of the principal structure and 15ft. from all rear and side lot lines, and from the requirement that the aggregate floor area within an accessory structure be no greater than 5% of the lot area to provide for a Home-Based Contractor application (**§205-67, §205-397.7A.(7)(b), & §205-397.7A.(7)(c) of the Kent County Code**). The property is located on the north side of Halltown Road (DE Rt. 8), approx. 650ft. east of the intersection with Crystal Rd. (Co. Rd. 189), southeast of Hartly. Levy Court District: 6th. Zoning District: AR. **Tax Map No. WD-00-073.04-01-29.00-000.**

The applicant is requesting the variance in order to legalize an existing impervious surface coverage of 35.6% in addition to a proposed total impervious surface coverage of 37% to enable the construction of an addition. The applicant is also requesting variances for the existing pole building on the subject site to enable a Home-Based Contractor Establishment application. The existing garage is 11ft. to the side property line and is flush with the rear elevation of the house. The existing garage is approximately 1,464 square feet, which exceeds 5% of the lot area, which is a condition of approval for a Home-Based Contractor Establishment.

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 the following:

- a) **MODIFIED APPROVAL** of the request from the maximum allowable impervious surface coverage of 23% to a maximum impervious surface coverage of 37%. Staff recommends that the current coverage of 35.6% be legalized.
- b) **APPROVAL** of the request from the required Home-Based Contractor's Establishment setbacks of 30ft. from the rear elevation of the house and 15ft. from all rear and side property lines.
- c) **APPROVAL** of the request from the requirement that the aggregate floor area within an accessory structure be no more than 5% of the lot area, allowing the use of the existing 1,464 sq. ft. structure.

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). Residential additions and residential accessory structures are within the nature of the zoning district, contingent upon staying within allowable impervious surface coverage of an individual lot.

Detached accessory structures utilized for Home-Based Contractor Establishments, no outdoor storage, are within the nature of the zoning district, contingent on meeting all requirements of Sect. 397.7 of the Kent County Code.

2. The character and uses of the immediate vicinity.

Applicant Response:

No applicant response.

Staff Response:

The character of this area is primarily residential in nature. The majority of surrounding properties appear to be improved with single-family dwellings on legal nonconforming lots that are part of the Green Briar subdivision. Surrounding properties primarily appear to meet the required impervious surface coverage. The subject site does appear to have a larger driveway than other residential lots in the Green Briar subdivision. If approved, additional impervious surface coverage on the lot may be viewed as excessive and out of character with the surrounding properties.

Detached accessory structures appear to be a normal improvement within the surrounding area. Home-based contractor establishments with no outdoor storage may be considered to be within the character of the immediate vicinity, and this request, proposing only to utilize an existing structure which was legally constructed on the subject site, does appear to remain in character with the area.

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

Applicant Response:

No applicant response.

Staff Response:

Additional impervious surface coverage on the lot may have a negative impact on surrounding properties. The current lot coverage is 35.7%, exceeding the maximum allowable amount of coverage by 12.7%. The proposed coverage of 37% could negatively impact drainage towards neighboring properties.

The removal of the Home-Based Contractor Establishment, No Outdoor Storage, requirements may not have a negative impact on surrounding properties, as the applicant is proposing on utilizing an existing structure that meets residential accessory structure setbacks. Although the property is bordered by a number of residential lots, use of the existing structure for a business may not have a negative impact on surrounding properties if all other requirements of the Home Based Contractor Establishment are followed. This is including but not limited to hours of operation and all storage of items associated with a business stored completely within an enclosed building.

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:

Our permit has not been approved due to the fact that currently our property with the addition would exceed maximum impervious surface coverage allowed. The house in the back is in a "U" shape. We would like to add a room filling in this space to move our laundry and pantry upstairs. This will not affect our neighbor in any way. This change will allow my mother-in-law that lives with us more freedom as she has back problems and should not be going downstairs.

Staff Response:

The failure to remove the restriction of the impervious surface coverage may not create an exceptional practical difficulty. While the existing and proposed improvements to the lot may be considered normal improvements separately, the combination of the existing and proposed improvements may be viewed as excessive. Any hardship experienced by the applicant may be that of convenience, rather than a unique aspect of the land.

In turn, failure to grant the requests from the required setbacks and lot area restriction in order to enable a Home-Based Contractor Establishment may create an exceptional practical difficulty, as the detached garage proposed for the business already exists. Given that the subject site is already over impervious surface coverage and the existing improvements on the site do not provide for the construction of a code-compliant structure for a Home-Based Contractor Establishment. Should the request be denied, the applicant may be forced forego this process and remove the business from the property and relocate off-site.

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 maximum allowable impervious surface coverage of 23% to a maximum coverage of 37% in order to construct a residential addition.
- The site currently exceeds the maximum allowable impervious surface coverage at a total of 35.7%.
- The applicant is seeking a variance from the required setbacks of a Home-Based Contractor's establishment that state that an accessory structure must be 30ft. beyond the rear elevation of the dwelling and be located at least 15ft. from any rear and site property line. The existing structure is located 11ft. from the side property line and is flush with the rear elevation of the dwelling on the subject site.
- The subject site is 0.46+ acres in size and is currently improved with a single-family dwelling, an in-ground pool, an accessory structure, and a paved driveway.
- There have been no previous land use applications on the subject site.
- There have been no similar requests in the immediate vicinity.
- The subject site is zoned AR (Agricultural Residential District). The Comprehensive Plan recommends that this area be utilized for low density residential purposed.
- The applicant is advised that, should the requests be granted, an application for a Home-Based Contractor Establishment, No Outside Storage, should be filed with Kent County Planning Services. For more information, contact the Department of Planning Services at (302) 744-2471 between 8:00 a.m. and 5:00 p.m.
- The applicant is also advised that, should the requests be granted, any applicable building permits and a Business Certificate of Occupancy shall be obtained for the use of the Home-Based Contractor Establishment. For more information, contact the Department of Inspections and Enforcement at (302) 744-2451 between 8:00 a.m. and 5:00 p.m.

ENC: Exhibits A & B