


Kent  County

Department of Planning Services
Division of Planning

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STAFF RECOMMENDATION REPORT
June 21, 2018

APPLICATION: A-18-14

APPLICANT: Eli W. Miller
644 Winding Creek Road
Dover, DE 19904

OWNERS: Mary Jane Swartzentruber, LTR
c/o John, John H., & Sarah Anne Miller
764 Winding Creek Road
Dover, DE 19904

PROPERTY LOCATION: 644 Winding Creek Road, Dover, DE 19904

NATURE OF REQUEST:

A-18-14 Eli W. Miller (Owners: Swartzentruber, Mary Jane LTR c/o John Miller, John & Sarah Anne Miller) seeks a variance from the provision prohibiting an accessory structure to be placed within the front yard area to enable the construction of an agricultural building (**§205-24.F(1) of the Kent County Code**). The property is located on the south side of Winding Creek Rd. (Co. Rd. 159), approx. 1,150ft. west of the intersection with Sharon Hill Rd. (Co. Rd. 162), west of Dover. Levy Court District: 2nd. Zoning District: AR. **Tax Map No. WD-00-074.00-01-45.02-000.**

The applicant is requesting the variance to enable the construction of a 44ft. x 60ft. agricultural building located 30ft. from the front property line. The existing dwelling on the property is located 82ft. 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 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 and surrounding properties are zoned AR (Agricultural Residential District). Agricultural buildings are within the nature of the zoning district, contingent on meeting the required setbacks for accessory structures.

2. The character and uses of the immediate vicinity.

Applicant Response:

No applicant response.

Staff Response:

The character of the surrounding area is primarily agricultural and residential in nature. Properties to the north and east of the subject site appear to be utilized as farms, while properties to the west appear to be smaller in size and are improved with single-family dwellings. Although agricultural buildings and accessory structures appear to be prevalent in the surrounding area, surrounding accessory structures appear to be in compliance with the zoning code, particularly on the residentially used lots in the surrounding area. Removal of the restriction requiring accessory structures to be located outside of the front yard area may have a negative impact on the surrounding character, as the subject site is comparable in size to surrounding residential properties rather than the large farms located to the east and north.

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 reduction of the required front setback may have a negative impact on the neighboring properties, as front setbacks are required for the safety of all property owners throughout Kent County. Given the proposed building's size and proposed proximity to the front property line, the encroachment into the front yard may pose safety and sight-distance concerns for travelers along Winding Creek Road.

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 reason we want to build the shed in the front yard is the rest of the property is fenced in and is pasture for horses. Also to the right side of the property is a lower area where water runoff is for pasture and from behind the barn so building there to the right side of the barn and existing shed would create a drainage problem and would put water over on the neighbor's property. Also want building to be accessible

from driveway behind the house is storage shed propane tank and well.

Staff Response:

The failure to remove the restriction for the front setback may not create an exceptional practical difficulty, as there does appear to be alternative legal locations on the property outside of the front yard area. The applicant maintains the ability to locate the proposed building in line with the dwelling and 5ft. to any rear and side property line (while maintaining a 25ft. buffer from any wetlands located on the property). While the applicant may prefer to locate the structure within the front yard area, it appears that the request is a matter of convenience for the owner rather than a unique circumstance due to the property itself.

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 seeking the above-referenced variance to allow an accessory structure to be located within the front yard area, 30ft. from the front property line.
- The site is 3.5± acres in size and is currently improved with a single-family dwelling and multiple accessory structures / agricultural buildings.
- There are 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.
- DelDOT has reviewed the variance application and has indicated that there is no comment at this time. Contact: Joshua Schwartz.
- The applicant is 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