



Kent County

Department of Planning Services Division of Planning

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STAFF RECOMMENDATION REPORT June 21, 2018

APPLICATION: A-18-15

APPLICANT: Peter Meyer
2706 Kirkwood Hwy
Wilmington, DE 19805

OWNER: Meyer and Meyer, Inc.
2706 Kirkwood Hwy
Wilmington, DE 19805

PROPERTY LOCATION: 4585 DuPont Hwy, Dover, DE 19901

NATURE OF REQUEST:

A-18-15 Peter Meyer (Owner: Meyer and Meyer, Inc.) seeks a variance from the required front setback of 75ft. from a major roadway and from the required rear setback of 40ft. to enable the construction of a commercial building (**§205-174.B & §205-174.A(4) of the Kent County Code**). The property is located on the west side of N DuPont Hwy (US Rt. 13) at the intersection with Rose Bowl Rd. (Co. Rd. 154), south of Cheswold. Levy Court District: 3rd. Zoning District: BG. **Tax Map No. LC-00-046.04-01-23.00-000.**

The applicant is requesting a variance from the required front setback of 75ft. from N DuPont Hwy and from the required rear setback of 40ft. in order to construct a commercial structure located 25ft. from the front (east) property line along N DuPont Hwy and 10ft. from the rear (north) property line. The applicant is currently proposing to use the subject site for child-care center, which requires conditional use with site plan approval.

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 **MODIFIED APPROVAL** of the variance as follows:

- a. Staff recommends approval of a 50ft. setback from the front (east) property line

along N DuPont Hwy.

- b. Staff recommends approval of a 20ft. setback from the rear (north) property line.

These recommendations are based on the analysis of the four criteria from the applicant and staff.

II. RESPONSE TO CRITERIA:

1. The nature of the zone where the property lies.

Applicant Response:

The subject property is located at 4585 N DuPont Hwy, Dover, DE and is bound by Route 13 to the east, Rose Bowl Road to the south, and BG zoned properties in all other directions.

Staff Response:

As shown on Exhibit A, the subject site is zoned BG (General Business District). Child-care centers are within the nature of the zoning district, contingent on meeting all required conditions of site plan approval in addition to meeting standard principal structure setbacks.

2. The character and uses of the immediate vicinity.

Applicant Response:

The uses surrounding the site mainly consist of residential dwellings and retail stores.

Staff Response:

The character of the surrounding area is both commercial and residential in nature. The subject site is located at the northwest corner of N DuPont Hwy and Rose Bowl Road. Properties to the north along DuPont Hwy appear to be utilized for commercial purposes, while properties to the west along Rose Bowl Road appear to be utilized residentially. Overall, many of the commercially improved properties in the immediate vicinity appear to be legal nonconforming, with buildings located closer to the property lines.

Given the subject site is currently vacant, approval of a front setback of 25ft. to the front property line and 10ft. to the rear property line may create an undesirable trend for new development and character along the N DuPont Hwy corridor. However, a reduction of the front setback to 50ft. and the rear setback to 20ft. may be keeping with the surrounding character while also maintaining the integrity and intent of the code, particularly when it comes to undeveloped properties.

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

Applicant Response:

Removal of the restriction would not affect any neighboring properties.

Staff Response:

The removal of the restriction to enable construction of the proposed building as requested by the applicant may have a negative impact on surrounding properties. Commercial setbacks are meant to provide a safe separation distance between uses on properties while also providing a safe distance between structures and the highway. If approved as requested, the structure may have a negative impact on the property located to the north of the subject site and may pose safety concerns for travelers along N DuPont Hwy. Should the request receive a modified approval as outlined by Staff, the applicant will have an opportunity to develop a site-design that maintains an appropriate separation distance from the property lines. This would also provide the applicant with an opportunity to develop a site-design that considers the safety of the children and the establishment of a maneuverable site that meets the proposed use's conditions.

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:

Failure to remove the restriction would cause the playground area for the child-care facility to be moved to the front of the proposed building and fronting Route 13, causing an increase in safety concerns for the children at play.

Staff Response:

The failure to remove the restriction as requested may not create an exceptional practical difficulty, as the subject site is currently unimproved and a code-compliant site design could be developed. A condition of approval for a child-care facility is that there be at least 50 square feet of outdoor play area per child, and that the play area be fenced off and completely separate from the parking area. The applicant has indicated in the Data Column that the facility will be able to house 80 children, requiring a 4,000 square foot play area. Additionally, a "T" or circular drive is required as part of the site design in order to ensure safe ingress and egress.

Should the application be denied in its entirety, the applicant may be forced to design the site in a manner that locates the required play area adjacent to the property line along N DuPont Hwy. This could potentially compromise the safety and welfare of the children that are cared for at the proposed facility. The applicant also maintains

the ability to revise the size of the proposed structure and number of children cared for at the facility in order to develop a code compliant site plan; therefore, any difficulty experienced by the applicant may be viewed as self-imposed. A modified approval of the request would provide the applicant with relief from the required setbacks, alleviating any difficulty experienced by the applicant.

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 required front setback of 75ft. from N DuPont Hwy and from the required rear setback of 40ft. in order to construct a commercial structure located 25ft. from the front (east) property line along N DuPont Hwy and 10ft. from the rear (north) property line.
- The applicant is currently proposing to use the subject site for child-care center, which requires conditional use with site plan approval.
- The conditions of approval for a child-care facility are as follows:
 - At least 50 square feet of outdoor play area per child shall be provided, and the outdoor area shall be fenced or otherwise enclosed on all sides at a minimum of four feet high, and shall be completely separate from the parking area and also be suitable for children's active play use.
 - At least one parking space per adult attendant and one space per 10 children shall be provided in close proximity to the facility's entrance, and a circular or "t" drive shall be provided to permit safe ingress and egress from the site.
 - All requirements established by the State of Delaware Division of Child Protective Services under 31 Del. C. § 342 must also be satisfied.
 - All requirements, regulations and recommendations submitted by any agency member of the Development Advisory Committee shall be satisfied.
- The subject site is 1.4± acres in size and is currently unimproved.
- There has been one previous Board of Adjustment application on the subject site, however the application was withdrawn.
- There have been the following land use applications on the subject site:
 - S-86-18 & S-88-16 Efficiency Motel was approved for a site plan for a Motel. The motel was never constructed.
 - CZ-08-10 Meyer & Meyer, Inc. was approved to rezone the property from RMH (Residential Manufacture Home District) to BG (General Business District).
 - S-09-01 Meyer & Meyer, Inc. was approved for a commercial building site plan. The building was never constructed.
 - S-14-04 Meyer & Meyer, Inc. was approved for a retail building site plan. The building was not constructed.
- The subject site is zoned BG (General Business District). The Comprehensive Plan

- recommends that this area be utilized for Highway Commercial 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, application for a Conditional Use Requiring Site Plan approval must be made to the Department of Planning Services prior to the commencement of operations. For more information, contact the Department of Planning Services at (302) 744-2471 between 8:00 a.m. and 5:00 p.m.

ENC: Exhibits A & B
Site Plan