



Kent County

Department of Planning Services Division of Planning

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STAFF RECOMMENDATION REPORT June 21, 2018

APPLICATION: A-18-17

APPLICANT/OWNER: Albert C. Ebert III
43 Bayview Ave.
Frederica, DE 19946

PROPERTY LOCATION: 43 Bayview Ave., Frederica, DE 19946

NATURE OF REQUEST:

A-18-17 Albert & Brenda Ebert seek a variance from the maximum impervious surface coverage of 23% in order to legalize existing impervious surface coverage (**§205-67 of the Kent County Code**). The property is located on the west side of Bayview Ave, approx. 150ft. north of the intersection with Bowers Beach Rd. (Co. Rd. 18), being lots 52 and 53 of Bay View Heights subdivision, southwest of Bowers. Levy Court District: 4th. Zoning District: AR. Tax Map No. **SM-00-114.20-01-29.00-000**.

The applicant is seeking the variance in order to legalize an existing impervious surface coverage of 45%, or 6,702sq.ft. The maximum allowable impervious surface coverage for this lot is 23%, or 3,406sq.ft. Coverage on the lot includes a number of building footprints, concrete walkways, and a recently paved asphalt driveway that is approximately 2,473.3 sq. ft.

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 variances 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:
Small residential development.

Staff Response:

As shown on Exhibit A, the subject site is zoned AR (Agricultural Residential District). Surrounding properties are also zoned AR, being Bay View Heights subdivision. Residential improvements such as dwellings, accessory structures, and paved walkways / driveways are within the nature of the zoning district, contingent on meeting impervious surface coverage requirements.

2. The character and uses of the immediate vicinity.

Applicant Response:

We have a double lot- the single lots have paved driveways consistent to the conformity.

Staff Response:

The character of the surrounding area is primarily residential in nature, with lots improved with a variety of single-family dwelling styles. Properties further removed to the northwest are agricultural, and properties further removed to the southeast are natural marsh areas. The subject site appears to be of a typical size for the vicinity and remains in character with the area, as a majority of the properties within the subdivision, including the subject site, have been increased from their original lot size and include multiple combined lots.

Many of the surrounding lots with their respective improvements are legal nonconforming in nature. Many lots in the subdivision that are comprised of older consolidated lots appear to meet the impervious surface coverage requirements. While accessory structures and paved surfaces are often expected in residential areas, the combined impervious surfaces on the subject lot appears to be out of character, making the lot appear over-improved in comparison to the neighbor's lots.

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

Applicant Response:

There have been no issues except this year when we have had the wettest year on record in 50 years.

Staff Response:

The removal of the restriction may seriously affect neighboring properties, as the subject site is located within the floodplain, an area that is prone to flooding. With less permeable area to drain water, additional coverage on the subject site may cause and increase in flooding on to the neighbor's lots. There have been a number of letters received from surrounding property owners citing concerns about an increase in flooding in the area since the driveway has been paved. Should the Board choose to approve the request, Staff recommends that the applicant contact the Kent

Conservation District, and if deemed necessary, develop a potential stormwater management plan for the subject site.

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:

We have a four bay garage that we need to be able to clean snow from.

Staff Response:

The applicant is seeking to legalize existing impervious surface coverage on the subject site. In April of 2016, the applicant was approved by the Board of Adjustment to legalize the use of the 30ft. x 50ft. accessory structure on the subject site for a Home-Based Contractor establishment. At that time, the applicant was advised that there shall be no additional impervious surface coverage on the subject site than what was already present without prior approval from the Board of Adjustment. In February of 2018, Kent County Division of Inspections and Enforcement received a complaint that additional impervious surface coverage had been added to the site without the proper approvals.

Failure to legalize the existing impervious surface coverage on the subject site may not create an exception practical difficulty, as the applicant had been previously advised of the current impervious surface coverage situation on his lot and proceeded to pave the driveway and area in front of the accessory structure. Any difficulty experienced by the applicant could be considered self-imposed and a matter of convenience on the applicant's part, rather than a unique aspect of the land.

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 variance in order to legalize an existing impervious surface coverage of 45%, or 6,702sq.ft. The maximum allowable impervious surface coverage for this lot is 23%, or 3,406sq.ft.
- Coverage on the lot includes a number of building footprints, concrete walkways, and a recently paved asphalt driveway that is approximately 2,473.3 square feet.
- The site is 0.34± acres in size and is currently improved with a one-story single-family dwelling, a detached 30ft. x 50ft. pole building, an above-ground pool, a

storage shed, two paved driveways, and a concrete walkway. The existing paved driveway does appear to extend into a designated alley running along the eastern property line, known as Kent Lane. The applicant appears to be utilizing part of the alleyway as his own driveway.

- This alley is not owned by the applicant. He is advised that an attorney should be consulted should the property owner seek the vacating and/or abandonment of Kent Lane as originally recorded in Plot Book B, Page 13, in 1923.
- There has been one previous Board of Adjustment application on the subject site:
 - A-16-17 approved variances from the required setbacks of 15ft. to a rear and side property line and from the allowable lot size for a Home-Based Contractor Establishment in April of 2016. The application approved the use of the existing 30ft. x 50ft. for a Home-Based Contractor's Establishment.
- Two letters of objection were received from adjacent property owners, Adin B. and Sandra K. Lewis and Kathleen Woolridge, stating concerns about an increase in flooding, the impact on the community, future sea-level rise, water quality, and the ignorance of the regulations for impervious surface coverage. Attached please find a CD with videos and photos of flooding in the surrounding area from Ms. Wooldridge.
- The subject site is zoned AR (Agricultural Residential District). The Comprehensive Plan recommends that this area be utilized for low density residential purposes.
- Based on the outcome of the request, the applicant is advised to contact the Division of Inspections and Enforcement at (302) 744-2455 in order to clear any active violations of the property.

ENC: Exhibits A & B

Letter of Objection w/ CD media from K. Woolridge dtd. 6/6/18

Letter of Objection from Adin B. & Sandra K. Lewis dtd. 6/1/2018