



Kent County

Department of Planning Services Division of Planning

SARAH E. KEIFER, AICP
Director of Planning Services

Phone: 302/744-2471
FAX: 302/736-2128

KRISTOPHER S. CONNELLY, AICP
Assistant Director of Planning Services

STAFF RECOMMENDATION REPORT September 20, 2018

APPLICATION: A-18-23

APPLICANT: John L. Green Jr.
1309 Prospect Church Road
Harrington, DE 19952

OWNER: John L. Jr. and Jerrie L. Green
1309 Prospect Church Road
Harrington, DE 19952

NATURE OF REQUEST:

A-18-23 John L. Green, Jr. (Owners: John L., Jr. & Jerrie L. Green) seeks a variance from the required 50' side setback for accessory structures used to house livestock to allow the submittal of a minor subdivision (**§205-53.D.(1)(a) of the Kent County Code**). The property is located on the east side of Prospect Church Rd. (Co. Rd. 114), approx. 1,100 ft. south of Hammondtown Rd. (Co. Rd. 311), northwest of Farmington. Levy Court District: 6th. Zoning District: AC. **Tax Map No. MN-00-186.00-01-43.01-000**

The applicant is seeking the variance in order to submit a minor subdivision application that would place a new property line 25 ft. from an existing agricultural building. This building is used to house horses and other farm animals.

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:

The buildings on the property are within the original setback requirements.

Staff Response:

As shown on Exhibit A, the subject site is zoned AC (Agricultural Conservation District). Surrounding properties are also zoned AC. Minor subdivisions are within the nature of this zone dependent on meeting all size, setback, and other bulk standards of the Code.

2. The character and uses of the immediate vicinity.

Applicant Response:

None

Staff Response:

The character of the surrounding area is primarily residential and agricultural in nature with lots improved with single-family dwellings and detached accessory structures, both residential and agricultural in nature. These properties in the surrounding area appear to meet the minimum setback requirements based on the specific type of accessory structure.

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

Applicant Response:

Has no bearing on any of the adjoining properties.

Staff Response:

The removal of the setback restriction for the animal enclosure could have a negative impact on neighboring properties; mainly on the parcel that is being created. We understand that this is intended for a family member of the main property, but there would be a concern that if either property was sold in the future the new owners may be impacted by the distance this large agricultural structure is from the property lines.

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:

The variance at this time is to accommodate for a dwelling for my daughter.

Staff Response:

Failure to remove the restriction may not create an exceptional practical difficulty, as the applicant maintains other options to accomplish their goal of creating a new parcel. The applicant could have investigated creating a lot on the north side of the parcel to the west of the existing home. Secondly, they could remove a portion of the building to allow for the space needed to create the lot in the proposed location. If other options have not been exhausted, the staff hesitates to see a true practical difficulty in meeting the code requirements. In addition, the proposed subdivision also needs waivers from the subdivision and land development code. When a property needs both variances and waivers to be subdivided this may show that the lot doesn't truly meet the goals of the code in creating a new lot. There is also a concern that the buildable area is so small on the proposed lot that there could be future waivers or variances needed if the home is not placed exactly as shown, if the owner would like a larger home, or if the owner wants any other improvements on the property.

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 to create one new lot through the minor subdivision process. All buildings used for farm animals or livestock must be 50 ft. from any lot line. The proposed property line is 25 ft. from the existing building.
- The proposed lot is 2.395 acres and will be accessed off a newly created private road. The remaining land will be 5.802 acres.
- The site is 8.197± acres in size and is currently improved with a single-family dwelling, shed, and large structure for farm animals.
- There have been no previous Board of Adjustment 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 applicant is advised that, should the request be granted, a Minor Subdivision application must be submitted and approved prior to the commencement of construction. For more information, contact the Division of Planning at (302) 744-2471 between 8:00 a.m. and 5:00 p.m.

ENC: Exhibits A & B