



Kent County

Department of Planning Services Division of Planning

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STAFF RECOMMENDATION REPORT September 20, 2018

APPLICATION: A-16-26

APPLICANT: Jonathan Falkowski
Becker Morgan Group, Inc.
309 South Governors Ave.
Dover, DE 19903

OWNER: Kent County
555 Bay Rd.
Dover, DE 19901

PROPERTY LOCATION: Northeast side of Bay Rd., Milford, DE 19963

NATURE OF REQUEST:

A-18-26 Jonathan Falkowski (Owner: Kent County) seeks a variance from the maximum impervious surface coverage of 23% to allow the submission of a conditional use with site plan application (**§205-51 of the Kent County Code**). The property is located on the east side of Bay Road (DE Rt. 1) surrounded by South Frederica interchange improvements, southeast of Frederica. Levy Court District: 4th. Zoning District: AC. **Tax Map No. MD-00-141.00-01-32.01-000**

The applicant is requesting the variance from the maximum impervious surface coverage of 23% to allow for the construction of a parking area and building with an impervious surface coverage of 60%.

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 hereby presents information 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:

See attached.

Staff Response:

As shown on Exhibit A, the subject site is zoned AC (Agricultural Conservation District). Surrounding properties are zoned AC and BG (General Business). Sports Medicine Facilities are allowed with conditional use approval in this district subject to meeting all bulk and area provisions of the Code.

2. The character and uses of the immediate vicinity.

Applicant Response:

See attached.

Staff Response:

The character of the surrounding area is agricultural and non-residential in nature with some small residential uses still existing to the southeast of the subject site. The property is within an area surrounded by the South Frederica interchange so no properties immediately border this site. To the north is a commercial recreational facility which is bordered on the east by the Kent County Wastewater Treatment Facility and a commercial property that is used residentially. To the south are a mix of smaller residential and commercial lots that front on both Bay Rd. and Milford Neck Rd. To the west, across Bay Rd., is vacant farmland. The properties in this vicinity all appear to meet the maximum impervious coverage requirements for their district; be it 75% maximum in BG or 23% in AC.

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

Applicant Response:

See attached.

Staff Response:

The increase in the maximum allowable impervious surface coverage may not affect neighboring properties since this lot is surrounded completely by roadways. If through the design of those roads, the storm water management and water runoff from the full development of this site was contemplated to be handled in their design, then there may not be any negative impact to the surrounding properties.

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:

See attached.

Staff Response:

The failure to increase the maximum allowable impervious surface coverage may not create an exceptional practical difficulty as the applicant had been aware of this requirement prior to designing the site. They could have investigated other designs for the parcel to minimize the lot coverage or have contemplated using a pervious paving material so that the entire parking area would not be considered impervious coverage. Alternatively, this code requirement could create an exceptional practical difficulty if the applicant can prove that there is no other use that can be located on this site that would meet the code requirement or that all other design options have been exhausted. If through testimony at the hearing, this can be shown to the satisfaction of the Board, then a practical difficulty may exist in improving this 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 above referenced variance to increase the maximum allowable impervious coverage from 23% to 60% to enable the construction of a park and ride with 253 parking spaces and a 10,000 sq. ft. sports medicine facility.
- The maximum allowable coverage on the site is 1.16± acres and the applicant is proposing 2.93± acres.
- The subject site totals 5.069± acres in size and is currently unimproved.
- There are no previous land use applications on the subject site or any similar requests in the surrounding area.
- The subject site is zoned AC (Agricultural Conservation District). The Comprehensive Plan recommends that this area be utilized for low density residential purposes.
- If approved, this use requires a conditional use with site plan application to be heard through the public hearing process by both the Regional Planning Commission and the Levy Court.

ENC: Exhibits A & B

Letter from applicant dtd. 8/6/18