


Kent County

Department of Planning Services
Division of Planning

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STAFF RECOMMENDATION REPORT
October 18, 2018

APPLICATION: A-18-27

APPLICANTS: Filipino and American Christian Fellowship
2736 Forrest Ave.
Dover, DE 19904

OWNERS: Liferaft Ministries, Inc. c/o John Welcome
66 Liberto Ln.
Dover, DE 19901

NATURE OF REQUEST:

A-18-27 Filipino and American Christian Fellowship (Owners: Liferaft Ministries, Inc. c/o John Welcome) seek a variance from the required 40' rear principal structure setback to allow the use of a detached building as a church (**§205-68.A.(4) of the Kent County Code**). The property is located on the north side of Forrest Ave. (DE Rt. 8), approx. 1,850 ft. west of Sharon Hill Rd. (Co. Rd. 162), west of Dover. Levy Court District: 2nd. Zoning District: AR. **Tax Map No. ED-00-075.02-01-01.01-000**

The applicant is requesting the variance to allow the use of a church in an existing detached building 11.8 ft. from the rear property line. The other building on the property is approved as a church and meets all code requirements. The applicant had been using this detached building without approval and would like to legalize the use of both buildings on the property as churches.

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 request based on the analysis of the four criteria from the applicants and staff as follows:

II. RESPONSE TO CRITERIA:

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

Applicant Response:

The property is located on Forrest Ave., west of Dover, and has operated as a church since 1990.

Staff Response:

As shown on Exhibit A, the subject site is zoned AR (Agricultural Residential District). Surrounding properties are zoned AR or AC (Agricultural Conservation). Churches are allowed within this zone with approval through the conditional use process contingent on meeting all code requirements.

2. The character and uses of the immediate vicinity.

Applicant Response:

No response.

Staff Response:

The character of the surrounding area is primarily low-density residential in nature with single family dwellings located around the site in all directions. The reduction of the required setback for a principal use may be out of character with the surrounding area, since there are no other non-residential uses in the area beyond the church building on the subject site which does meet all the required setbacks. Additionally, the other properties in the area only have one principal use.

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

Applicant Response:

No response.

Staff Response:

The reduction of the rear yard setback may have a negative impact on neighboring properties considering the use of a church can be an active use that has large crowds, amplified voices and/or music, and morning or evening hours. In a residential area, these types of uses may disturb the adjacent property owners. The required setback is meant to separate this use from uses on adjacent properties to lower these types of negative externalities.

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:

When the opportunity to buy this property became available to our church, we bought it and our ability to afford the mortgage is connected to renting the back building out to another church who have been using it since we purchased the property. It would create exceptional practical difficulty on both the church renting the building and our congregation to not have the help with the mortgage payment if this change of use is not granted.

Staff Response:

The failure to remove the restriction may not create an exceptional practical difficulty

as the applicant could build a new building on the site that can meet these required setbacks. Conversely, the applicant could work out an agreement to share the existing church building for each ministry. The change of use of the building simply for economic purposes is not a true practical difficulty unless the applicant has exhausted all other options on the site.

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 applicants are requesting the variance to enable a 40 ft. x 80 ft. one story accessory building, permitted as a metal garage for accessory storage, to be used as a second principal use on site. Any principal structure must be at least 40 ft. from a rear property line. This building is located 11.8 ft. from the rear lot line.
- The other building on the property is a fully approved church that went through the Conditional Use process for approval in 1990 as part of C-90-03.
- The site is 3.8366± acres in size and is improved with the two buildings mentioned above, two sheds, and a parking lot.
- There has been one previous Board of Adjustment application for the subject site. A-01-110 was approved to allow the construction of this 40' x 80' detached building to be located within 100' of a residential property. The building was to be used as a warehouse for the church that owned the property at the time.
- The subject site is zoned AR (Agricultural Residential District). The Comprehensive Plan recommends that this area be utilized for low density residential purposes.
- The applicants are advised that, should the request be granted, a Building Permit shall be obtained prior to the use of this building as a church. 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