



Kent County

Department of Planning Services Division of Planning

SARAH E. KEIFER, AICP
Director of Planning Services

KRISTOPHER S. CONNELLY, AICP
Assistant Director of Planning Services

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

STAFF RECOMMENDATION REPORT January 17, 2019

APPLICATION: A-19-03

APPLICANT: Seth L. Thompson, Esq.
2 Mill Rd., Suite 105
Wilmington, DE 19806

OWNERS: Arnold J. & Ceil Block
29 Roosevelt Ave.
Lake Hiawatha, NJ 07034

PROPERTY LOCATION: 766 Andrews Lake Rd., Felton, DE 19943

NATURE OF REQUEST:

A-19-03 Arnold J. & Ceil Block seek a variance from the provision prohibiting the parking of a commercial vehicle on a residential lot to allow the parking of a commercial vehicle (**Sect. 205-220.C of the Kent County Code**). The property is located on the southeast side of Andrews Lake Rd. (Co. Rd. 380), approx. 633' northeast of Yoemans Tale Ln., southeast of Viola. Levy Court District: 6th. Zoning District: AC. Tax Map No.: **SM-00-129.00-02-20.12-000**

The applicant is requesting a variance from the provision prohibiting the parking of a commercial vehicle on a residential lot. The owners have a tractor trailer that they would like parked on this lot.

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 applicants and staff as follows.

II. RESPONSE TO CRITERIA:

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

Applicant Response:

AR (Agricultural Residential)

Staff Response:

As shown on Exhibit A, the subject site is zoned AC (Agricultural Conservation), which is a low-density residential zoning district. The parking of commercial vehicles is prohibited within this zoning district due to its residential nature.

2. The character and uses of the immediate vicinity.

Applicant Response:

A 78 acre farm on one side and residences typically on one acre lots, with Route 13 and its commercial enterprises less than a mile down Anders Lake Rd.

Staff Response:

The character of this area is both residential and agricultural in nature. Properties to the west, south, and north appear to be residentially developed, being within several strip subdivisions established prior to the current zoning code. Properties to the east appear to be utilized for agricultural purposes. The parking of commercial vehicles is prohibited in residential zoning districts in order to protect the safety, health and welfare of surrounding property owners. The vehicle in question may be registered as a motorhome based on its ability to meet criteria of the Division of Motor Vehicles (DMV), but could also be registered as a commercial vehicle given its weight of over two tons and appearance as a tractor trailer typically found in the freight/hauling industry. The DMV may tag a vehicle meeting certain criteria as a "motorhome" based on its use; however, Kent County's land use code specifically prohibits the parking of a "commercial vehicle" as well as a "commercially used vehicle," which appears to include the hauling truck in question. The owners have widened the existing driveway in order to enable the maneuvering of the vehicle onto the lot. This driveway size is much larger than a normal residential entrance. This further solidifies the point that the storage of the vehicle in question on the subject site, despite being used for recreational purposes, does not appear to maintain the character of this particular area.

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

Applicant Response:

No, the owners are building a 35' x 60' building to house the vehicle, so it will not be in the open. It is infrequently used as well.

Staff Response:

Approval of the request may not protect the safety and welfare of neighboring properties, as the vehicle in question is commercial in nature, as opposed to a residential or recreational vehicle. Commercial sized vehicles can create traffic

concerns as well as noise that may not be appropriate for a primarily residential area. While it does not appear that the vehicle in question is currently being stored at the subject property, there may be concerns in the future by the adjacent residential neighbors since this type of vehicle is not normally seen entering or leaving residential lots.

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:

The owners purchased the property in 2017 and have spent substantially on renovations. They plan to retire there shortly. The owners invested time and money in their motor home, as it is classified in NJ and as they view it. They expect it to be registered as a motor home in Delaware by the hearing. Other hobbies and motor homes, whether inside or out, are not prohibited.

Staff Response:

Failure to allow the prohibited vehicle on the subject site may not create an exceptional practical difficulty, as there are no unique characteristics to the property and the manner in which it is zoned to allow for the parking of a commercial vehicle. The subject property is located in a residential area and the subject vehicle is not a typical vehicle found in this area, regardless on how the applicant uses it. Additionally, variance approvals stay with the lot, so a future owner could park a commercially used vehicle on this site if approved by the Board as part of this request. There may be a perceived hardship to the applicant, as they wish to store this vehicle on the property; however, the subject vehicle is a tractor trailer and the fact that the DMV may classify this as a motor home doesn't change this perception. Should the application be denied, the applicant can seek to store the vehicle on a more appropriately zoned 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.

While Staff cautions the Board to strongly consider the implications of allowing the parking of the subject vehicle on this parcel, should the Board choose to approve the commercial vehicle request, the Staff recommends the following conditions be added:

- a. That the vehicle in question be stored completely within an enclosed structure at all times.
- b. There shall be only one such vehicle allowed on the property.
- c. That the vehicle in question be prohibited from transitioning from its proposed

recreational use to any commercial use while stored on the subject property.

III. APPLICATION BACKGROUND INFORMATION:

- The applicant is requesting a variance from the restriction that states commercial vehicle parking is prohibited in the AC zoning district to enable the storage of the subject vehicle within an enclosed building.
- The subject vehicle is a tractor trailer, which the applicants are proposing to convert to a motor home with the Delaware DMV. The truck is currently registered in the State of New Jersey as a motor home.
- The subject site is 1.0± acres and is currently improved with a 28' x 76' manufactured home. A 35' x 60' detached garage is currently under construction. This building is smaller in size than the home.
- There has been one previous Board of Adjustment application on the subject site. A-17-45 was a request by the owners to park this same commercial vehicle on the property and to build a detached garage that would be larger than the home. Both of these requests were denied on December 21, 2017
- The subject site is zoned AC (Agricultural Conservation). The Comprehensive Plan recommends that this area be utilized for low-density residential uses.

ENC: Exhibits A & B
Image of vehicle to be stored