



Kent County

Department of Planning Services Division of Planning

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STAFF RECOMMENDATION REPORT May 16, 2019

APPLICATION: A-19-16

APPLICANT/OWNER: Teresa A. Litz
104 Winding Ridge Rd.
Dover, DE 19904

NATURE OF REQUEST:

A-19-16 Teresa A. Litz seeks a variance from the provision stating any private recreational facility shall be at least 10 ft. from each lot line to enable the submittal of an application for an above ground pool (**§205-23.C(10) of the Kent County Code**). The property is located on the northeast side of Winding Ridge Rd., being lot 27 in the Winding Ridge subdivision, approx. 440 ft. southwest of Kenton Rd. (DE Rt. 15), northwest of Dover. Levy Court District: 2nd. Zoning District: AR. **Tax Map No. ED-00-066.07-01-27.00-000.**

The applicant is requesting the variance to construct a 24 ft. round pool, located 7.5 ft. from the side property line, to be attached to an existing wood deck on the opposite side of the pool.

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 **APPROVAL** of the variance 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:
No applicant response.

Staff Response:

As shown on Exhibit A, the subject site is zoned AR (Agricultural Residential District). Surrounding properties are also zoned AR. Pools with attached decks are within the nature of the AR zoning district, contingent upon meeting required setbacks.

2. The character and uses of the immediate vicinity.

Applicant Response:

There was an existing wood deck because I had a pool in that location since 1996.

Staff Response:

The character of the surrounding area is primarily low-density residential in nature. The majority of lots in the immediate vicinity are developed, with some agricultural uses within the immediate vicinity to the north of the subject site. The subject site does appear to be of similar size with those surrounding properties and pools appear to be common in the area, particularly in subdivisions.

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

Applicant Response:

The pool will be approx. 7.5 to 8 ft. from the property line.

Staff Response:

The reduction of the side yard setback may not have a negative impact on neighboring properties considering the request is only a two and a half-foot reduction from the required 10 ft. side setback requirement. The reduction to 7.5 ft. side setback would not seriously affect the neighboring properties. The applicant had previously had a pool in the exact same location for a number of years, with no neighbor objections in the past.

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:

It would be a significant and unexpected expense to have to build a new deck and relocate the sidewalk.

Staff Response:

The failure to remove the restriction may create unnecessary hardship or exceptional

practical difficulty for the owner. This could put an economic hardship on the legal owner, as it would increase the cost of construction for the proposed pool and could also require the applicant to demolish their existing deck. In addition, there are already existing improvements on the site, such as cleared pad for the previous pool. Relocation of this pad and installation of a new one for the new pool would increase the cost of construction fairly considerably.

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 requesting the variance to construct a 24 ft. round pool, located 7.5 ft. from the side property line, to be attached to an existing wood deck on the opposite side of the pool.
- The subject site is 0.5± acres and is improved with a 1,919 sq. ft. single-family dwelling, a 12 ft. by 10 ft. small shed in the rear of the property, and an existing deck around the proposed pool.
- There have not been any Board applications on the subject site.
- There has been four other Board application in the surrounding area similar to this request:
 - A-79-60, for a property located approx. 0.32 miles south of the subject site on Kenton Rd., to allow for setbacks to be reduced from the required distance. The Board granted modified approval of this requirement and approved a 10 ft. side setback for a garage.
 - A-90-08, for a property located approx. 410 ft. east of the subject site on Kenton Rd., to allow for a reduction in the required front and rear setback distances. The Board granted approval of this requirement and approved 25 ft. front and 14 ft. rear setbacks.
 - A-93-24 for a property located approx. 410 ft. east of the subject site on Kenton Rd., to allow for a reduction in the required front setback distance. The Board granted approval of this requirement and approved a 15 ft. front setback.
 - A-96-21, for a property located approx. 410 ft. east of the subject site on Kenton Rd., to allow for a reduction in the required setback distance. The Board granted approval of this requirement and approved a 15 ft. rear setback.
 - A-04-19, for a property located approx. 0.25 miles east of the subject site on Kenton Rd., to allow for a reduction in the required front setback distance to legalize an existing carport. The Board granted approval of this variance request.
- The subject site is zoned AR. The purpose of the AR District is to provide for a wide range of agricultural use and farm related services while providing for low-density residential development in areas that are rural in character and where farming may

not be the optimum land use activity. The Kent County Comprehensive Plan (2018) recommends that this area be utilized for low density residential purposes.

- The applicant is advised that, should the request be granted, a Building Permit shall be obtained prior to the commencement of construction. For more information, contact the Division of Planning at (302) 744-2471 or Department of Inspections and Enforcement at (302) 744-2451 between 8:00 a.m. and 5:00 p.m.

ENC: Exhibits A & B