



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 May 16, 2019

APPLICATION: A-19-18

APPLICANT: Brian McManus
679 S. Carter Rd. Suite 1
Smyrna, DE 19977

OWNER: D.R. Horton, Inc.
679 S. Carter Rd. Suite 1
Smyrna, DE 19977

PROPERTY LOCATION: 125 S. Marshview Terr., Magnolia, DE 19962

NATURE OF REQUEST:

A-19-18 Brian McManus (Owner: D. R. Horton, Inc.) seeks a variance from the required front yard setback of 25 ft. to legalize a previously constructed single-family dwelling (**§205-397.2(C).(1) of the Kent County Code**). The property is located on the south side of S. Marshview Terrace, being lot 40 in the Point Landing subdivision, approx. 365 ft. from Trumpeter Swan Way, south of Dover. Levy Court District: 5th. Zoning District: AC. **Tax Map No. NM-00-096.03-01-40.00-000.**

The applicant is requesting the variance to legalize the placement of a single family dwelling that was built 6.4' into the required 25' front setback. The home is located 18.6' from the front property line.

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 variance 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:

No response.

Staff Response:

As shown on Exhibit A, the subject site is zoned AC (Agricultural Conservation District). Single family dwellings are permitted in this zoning district, contingent on meeting the required principal setbacks as outlined in the Kent County Code.

2. The character and uses of the immediate vicinity.

Applicant Response:

No response.

Staff Response:

The character of this area is primarily residential in nature. The subject site is located in the Point Landing subdivision which is currently under construction. There are single family dwellings located on either side of the subject site and across the road. To the rear of the lot is the passive open space for the development. All other homes along S. Marshview Terrace have met the required setbacks, so this request is not within the character of the immediate vicinity.

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

Applicant Response:

The variance wouldn't affect the neighboring properties as the current architecture façade and overall streetscape of the home is consistent to the rest of the neighborhood. In fact, the neighbor immediately adjoining the property to the west purchased and closed on his home after this home was built.

Staff Response:

The removal of this requirement may have a negative impact on surrounding properties, as the homes location completely changes the streetscape of this community. More importantly, this infringement has caused a decrease in driveway length. When vehicles are parked in the driveway they may be forced to hang over the sidewalk, blocking pedestrian's access. Residents who may be pushing strollers or walking their pets could be forced into the roadway which is a safety issue. If the home was built in a conforming location, the driveway would be long enough to accommodate the length of even large vehicles without blocking the sidewalk.

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 home was mistakenly built protruding 6.4' into the front yard setback and the mistake wasn't detected until the final survey was completed. Failure to receive the variance would require demolition or structural alterations of the façade of the home, which would cause the home to look significantly different, which would have more of a negative impact on the neighboring properties.

Staff Response:

Failure to reduce the setback requirement may create an exceptional practical difficulty, as the home is finished and the applicant would have to tear down a portion or the entire home. The staff recommends that this hardship be considered as entirely self-imposed and not a true exceptional practical difficulty. The builder would've had a number of times during the construction process to be made aware of the issue and correct the problem prior to finishing the home, starting with the engineer certifying the location of the footers and following through with the contractors who could've noticed that this home is much closer to the road than the other homes. While it may not be feasible to remove the home now, the Board should strongly consider the implications associated with the approval of this request and the precedent it may set. Any approval given should not encourage the builder to build structures incorrectly in the future and ask for forgiveness after it's built.

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 a variance from the required front setback of 25' in order to legalize a single family dwelling 18.6' from the front property line.
- The home did receive a building permit showing that the home would meet the front setback. The first inspection is done for the footer of this home. This was certified as being correctly located by a professional engineer. The home has since received its Certificate of Occupancy for meeting all the building code requirements.
- The subject site is approximately 0.225± acres.
- There have been no previous Board of Adjustment applications for the subject site, but one in the surrounding area similar to this request:
 - **A-16-35 U & I Investments, LLC** requested a variance from the required rear setback of 25' to legalize a single family dwelling. The request was approved in August of 2016 to allow the home to be within 15.6 ft. of the rear property line.
- The subject site is zoned AC (Agricultural Conservation). The purpose of the AC

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 2018 Comprehensive Plan recommends that this area be utilized for low density residential purposes.

ENC: Exhibits A & B