



DEPARTMENT OF PLANNING SERVICES

STAFF RECOMMENDATION REPORT

April 17, 2025

APPLICATION:

A-25-13

APPLICANT/OWNER:

Jeffrey W. & Jamie L. Van Horn
1284 W Birdie Ln
Magnolia, DE 19962

NATURE OF REQUEST:

A-25-13 Jeffrey W. & Jamie L. Van Horn seek a variance from the required front setback of 20' to allow for the construction of an addition and an Accessory Dwelling Unit (**§205-81.A. & §101-4.C.(1) of the Kent County Code**). The property is located on the southwest intersection of W. Birdie Ln. and Nicklaus Ln., north of Magnolia. Levy Court District: 4th. Zoning District: AC. **Tax Map No. 7-00-105.01-03-34.00-000**

The applicants are requesting a variance from the 20' required front setback to place a 2-story 20'x40' (1,200sq. ft. total area) addition that includes an accessory dwelling unit (ADU) 10.9' from the front property line of Nicklaus Ln.

I. STAFF RECOMMENDATION:

The staff has reviewed the information presented by the applicants 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 applicants 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) inside of the growth zone. Additions and accessory dwelling units are permitted uses within this zoning district, contingent upon meeting all setbacks and conditions of approval outlined in the Kent County Zoning Code.

2. The character and uses of the immediate vicinity.

Applicant Response:
See attached.

Staff Response:

The character of the surrounding area is primarily residential, being within Jonathans Landing subdivision. To the east of the subject parcel is an existing golf course. The proposed 10.9' front setback from Nicklaus Ln would be out of character of the existing dwellings within the subdivision.

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

Applicant Response:
See attached.

Staff Response:

The reduction in the 20' front setback requirement to allow for the addition and ADU to be 10.9' from the front property line of Nicklaus Ln may seriously affect the neighboring properties. The 20' front setback provides a safe distance from the roadway in case of an accident. Also, the proposed 10.9' front setback could block the line of sight at the W. Birdie Ln. and Nicklaus Ln. intersection.

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:

Failure to remove the 20' front setback restriction would not create an unnecessary hardship or exceptional practical difficulty for the owner to make normal improvements to the property. The applicants could construct an addition and ADU attached to the rear of the dwelling while maintaining the required 10' rear setback and 35' access easement. There is also ample area in the rear yard to construct a detached structure.

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 a variance from the 20' required front setback to place a

2-story 20'x40' (1,200sq. ft. total area) addition that includes an accessory dwelling unit (ADU) 10.9' from the front property line of Nicklaus Ln.

- The subject site is improved with a single-family home.
- There have been no previous Board of Adjustment applications on the subject site.
- There have been no Board of Adjustment applications in the surrounding area similar to this request.
- DelDOT has the following comment:
 - DelDOT has no comment. West Birdie Lane is not a State Maintained Road.
- The applicants are advised that, should the request be granted, a building permit and ADU Certificate of Use shall be obtained prior to the commencement of construction. For more information, contact the Permitting Department at (302)744-2451 or the Planning Department at (302)744-2471 between 8:00a.m. and 5:00p.m

ENC: Exhibit A
Exhibit B
Applicant Response



KENT COUNTY Board of Adjustment

LOCATION AND ZONING MAP A-25-13 Exhibit A

APPLICANT/OWNER:

Jeffery W. & Jamie L. Van Horn

PRESENT ZONING DISTRICT:

AC (Agricultural Conservation)

PROPOSED VARIANCE:

Variance request from the required front setback of 20' to allow for the construction of an addition and an Accessory Dwelling Unit

PRESENT USE: Residential

PROPOSED USE: Same with addition and Accessory Dwelling Unit

LEVY COURT DISTRICT:

4th - Scott

TAX MAP NO:

NM-00-105.01-03-34.00-000

LOCATION: Located on the southwest intersection of W. Birdie Ln. and Nicklaus Ln., north of Magnolia.



State Exceptional Practical Difficulty based on the following 4 criteria:

1. The nature of the zone where the property lies; 2. The character and uses of the immediate vicinity;
3. Whether removal of the restriction on the applicant's property would seriously effect the neighboring 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.

1. The current nature of the property zoning is AC - Agricultural Conservation as it was formally part of the Johnathan's Landing Golf course. 2. The current use is mixed with residential, an existing golf course (that has been parceled out) and the existing residual open space maintained by the 55 plus neighborhood to the south (The Champions Club at Jonathan's Landing). 3. I do not believe that reducing the street yard setback to 10' would impact any surrounding parcels. This dwelling has a streets on 2 sides and an existing easement in the rear. Allowing a 10 foot street yard setback would fall more in line with the units that don't front 2 streets. The current streets are also wider than a typical residential street at 35'+ with 60' ROW widths. 4. Failure to permit the variance would create hardship and constructibility issues with the current restrictions already imposed on the property. With a large 35 foot existing easement in the rear and two 25 foot setbacks off 60' rights-of-way imposed on the front and side of the dwelling I'm limited in how to complete the project. This dwelling is to accommodate our family who has entered financial hardship in their retirement age with the currently economic state. They also reside within Kent County and will soon need to sell their property.

Rev. 12/24

clear hands all good 2/2/25