



DEPARTMENT OF PLANNING SERVICES

NOTICE OF DECISION

APPLICATION:

A-25-13

APPLICANT/OWNER:

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

**DATE OF PUBLIC HEARING
& DECISION:**

April 17, 2025

MEMBERS PRESENT:

Brian Cusick, Chairperson
Morgan Hudson, Vice-Chairperson
Temple Carter
George Gallo, Jr.
Charlie Jones

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.

SUMMARY OF EVIDENCE

1. The subject site is 0.45 ± ac and is currently improved with an single family dwelling.
2. Mr. Jeffrey Van Horn, property owner, spoke in favor of the application.
3. Mr. Van Horn explained that the proposed addition will provide area for an accessory dwelling for his in-laws on the first floor and an area for his children on the second floor.
4. Mr. Van Horn stated that he does not have access to his property from Nicklaus Drive.
5. Mr. Van Horn added that there is a 35' easement in the rear of the property for the golf course.
6. Mr. Van Horn explained that he is a traffic engineer and they look for a 7' clear zone. The

road is about 30' wide and then there is right of way beyond the roadway.

7. Mr. Van Horn detailed that he has existing upgraded deck attached to the rear of the dwelling and it would be a financial hardship to remove it.
8. Mr. Van Horn stated that he has owned the property since February 2022 and has done Airbnb since then.
9. Mr. Van Horn explained that if he were to do a detached building then it would have to be in the middle of his yard due to the 35' easement.
10. Mr. Van Horn detailed that his in-laws are selling their house and would like to live with the family so that they could help care for their children.
11. Mr. Van Horn stated that he needs this size to allow for room for a stairwell. He added that the rectangular shape would be cost effective.
12. Mr. Van Horn explained that he is building the addition to match the existing house and to stay in character of the other dwellings in the neighborhood.
13. Mr. Van Horn provided letters from neighbors in support of the variance request.

FINDINGS OF FACT & CONCLUSIONS OF LAW

Analysis of the four factors set forth in Board of Adjustment of New Castle County v. Kwik-Check Realty, Inc., 389 A.2d 1289, 1291 (Del. 1978), supports the **APPROVAL** of the requested variance.

- (1) **The nature of the zone where the property lies:** 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:** 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.
- (3) **Whether removal of the restriction on the applicant's property would seriously affect the neighboring properties:** 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 will not seriously affect the neighboring properties. The proposed 10.9' front setback from Nicklaus Ln and the existing right of way will provide a safe distance from the roadway in case of an accident. Also, the proposed 10.9' front setback would not block the line of sight at the W. Birdie Ln. and Nicklaus Ln. intersection. Letters of support were submitted as part of the testimony. No adjacent property owners spoke in opposition of the application.
- (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: Failure to remove the 20' front setback restriction would create an unnecessary hardship or exceptional practical difficulty for the owner to make normal improvements to the property. The applicants have recently constructed a deck in the rear and the HVAC system is in the rear of the dwelling. The proposed addition would be for additional living space within the dwelling and an accessory dwelling. The property being a corner lot gives the applicants further setback restrictions than a parcel with only one front.

DECISION: On a motion made by Mrs. Hudson and seconded by Mr. Jones, the Board of Adjustment voted 4 in favor and 1 opposed of the motion to **APPROVE** application A-25-13, thus granting 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, as shown on Exhibit B. The support of this motion was based on testimony given, the parcel being a corner lot that requires front setbacks on 2 property lines, 35' easement in the rear of the parcel, the proposed would not seriously affect neighboring property owners, and the financial hardship to move the existing deck and HVAC from the rear of the dwelling. Oppositions of this motion was based on the restriction does not create an unnecessary hardship on the property owners and it would change the character of the area.

NOTES:

1. The applicants are advised that any persons jointly or severally aggrieved by any decision of the Board of Adjustment may present to the Superior Court in and for Kent County a petition setting forth that such decision is illegal in whole or in part, specifying the grounds for the illegality. The petition shall be presented to the Court within 30 days after the filing of the decision in the office of the Board (9 Del. C. § 4918).
2. 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
3. This variance will expire after ONE YEAR if a permit has not been issued by the Division of Permitting.

KENT COUNTY BOARD OF ADJUSTMENT



Brian Cusick, Chairperson

DECISION FILED: 6/18, 2025