

# Kent County Board of Appeals

TELEPHONE 410-778-7475

Kent County Government Center  
400 High Street  
Chestertown, Maryland 21620

FACSIMILE 410-810-2932

## **County Commissioners Hearing Room MEETING TO BE HELD VIRTUALLY via CONFERENCE CALL**

### *COVID-19 Special Announcement Regarding Meeting Attendance*

In response to the State of Emergency, individuals must refrain from attending meetings. Board of Appeals meetings are live streamed (<https://www.kentcounty.com/commissioners/meeting-live-video>), and citizens may call in with questions when the Chair opens the floor for comment.

To participate via Microsoft Teams:

1. Call 1-872-239-8359
2. Enter Conference ID: 943 636 554#

To participate via the Kent County Conference Bridge service:

1. Call 410-810-2213
2. Enter PIN number 55266

Please mute your phone / device until the Chair opens the floor for comment.

## **AGENDA**

Monday, August 17, 2020  
7:00 p.m.

### **APPLICATIONS FOR REVIEW:**

- 20-26 Dixie Land Energy – Set Back Variance (Side & Rear Yards)  
East side of Massey and Sassafras Road – First Election District – Zoned Industrial “I”

### **APPLICANT OR REPRESENTATIVE MUST BE PRESENT**

**APPLICANTS ARRIVING MORE THAN 10 MINUTES AFTER THE SCHEDULED HEARING WILL NOT BE HEARD AND WILL BE RESCHEDULED AT THE APPLICANT’S EXPENSE.**

Meetings are conducted in Open Session unless otherwise indicated. All or part of the Board of Appeals meetings can be held in closed session under the authority of the MD Open Meetings Law by vote of the members. Breaks are at the call of the Chairman. Meetings are subject to audio and video recordings.

Please note that times listed on the agenda are only estimates; however, projects will not be reviewed prior to their scheduled time. Applicants will be given the time necessary to assure full public participation and a fair and complete review of all projects. Therefore, the time each application is heard may be later than the time indicated on the agenda. Items on this agenda are subject to change due to cancellation of projects.

Other business without assigned times may be discussed during the course of this meeting as time allows.



# Kent County Planning Commission

TELEPHONE 410-778-7475

Kent County Government Center  
400 High Street  
Chestertown, Maryland 21620

FACSIMILE 410-810-2932

August 6, 2020

Dr. Al Townshend  
Kent County Board of Appeals  
400 High Street  
Chestertown, MD 21620

RE: Dixie Land Energy, LLC– Side and Rear Yard Setback Variances

Dear Dr. Townshend:

At its August 6, 2020, meeting, the Kent County Planning Commission reviewed the application of Dixie Land Energy requesting an 85-foot variance to both sides and a 50-foot variance to the rear yard, from the required 100-foot, to construct a liquid propane and fuel oil storage and distribution facility. The facility will contain two above ground fuel oil tanks and two above ground liquid propane tanks surrounded by an 8-foot tall, chain link fence with a lockable gate.

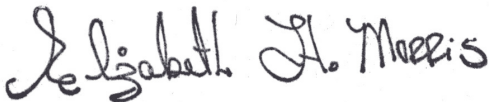
The property is located along the east side of Maryland Route 299 on the north side of Massey (Tax Map 24, Parcel 68). This parcel is zoned Industrial, but is surrounded to the north, east, and south by industrial uses on land zoned Village. The surrounding uses include the existing rail line, grain mill, and fertilizer facilities. Residential properties within Massey are separated from this parcel by the rail line. The 1.17-acre parcel is currently vacant with some trees to the south side and a gravel turn around area that will be removed.

After some discussion, the Planning Commission voted unanimously to send a favorable recommendation for the sides and rear setback variance to construct a liquid propane and fuel oil storage and distribution facility. The decision was based on the following findings of fact:

- Granting a variance will neither cause a substantial detriment to neighboring properties nor will it change the character of the neighborhood and district.
- The variance is consistent with the intent of the Land Use Ordinance and Comprehensive Plan.
- The practical difficulty is caused by the unusual characteristics of size and shape of the property. The neighboring properties do not have consistent zoning but have consistent uses.
- The practical difficulty was not caused by the applicant's own actions.
- The proposed use is reasonable for this parcel.
- No actions or construction have begun, and the applicant has completed a concept site plan review.

The recommendation also included a request for the Board of Appeals to place a condition requiring final site plan approval from the Planning Commission.

Sincerely,  
Kent County Planning Commission



Elizabeth H. Morris  
Chairman

cc: Kevin Price, Dixie Land Energy, LLC and SP Realty Investments, LLC  
Kevin Shearon, DMS & Associates, LLC



 recycled paper

## PRELIMINARY STAFF REPORT

TO: Kent County Board of Appeals  
SUBJECT: Dixie Land Energy  
Side and Rear Yard Setback Variances  
DATE: August 7, 2020

### DESCRIPTION OF PROPOSAL

Dixie Land Energy is requesting an 85-foot variance to both sides and a 50-foot variance to the rear yard to construct a proposed liquid propane and fuel oil storage and distribution facility on the lands of SP Realty Investments, LLC. The applicant is proposing to construct two above ground fuel oil tanks and two above ground liquid propane tanks surrounded by an 8-foot tall, chain link fence with a lockable gate. The entrance to the facility will be concrete and the remainder of area within the fence will be compact asphalt millings.

The property is located along the east side of Maryland Route 299 on the north side of Massey (Tax Map 24, Parcel 68). This parcel is zoned Industrial but is surrounded to the north, east, and south by industrial uses on land zoned Village. The surrounding uses include the existing rail line, grain mill, and fertilizer facilities. Residential properties within Massey are separated from this parcel by the rail line. The 1.17-acre parcel is currently vacant with some trees to the south side and a gravel turn around area that will be removed.

### HISTORY

At the July 2, 2020, Planning Commission meeting the applicant updated the variance request to request a rear setback of 50-foot, with 15-foot setbacks to the sides. The Planning Commission reviewed and tabled both (concept site plan and variance) applications before them. The Commission felt that the Citizen's Participation Plan needed to be completed before making a recommendation to the Board of Appeals for the requested setback variance.

At the July 20, 2020, Board of Appeals meeting the variance application was tabled until the August 17, 2020, meeting due to the lack of a recommendation from the Planning Commission.

On July 21, 2020, the applicant completed a Citizen's Participation Plan which is required as part of site plan review.

### SETBACK VARIANCE

#### RELEVANT ISSUES

##### I. Density, Height, Width, Bulk, and Fence Requirements

A. *Comprehensive Plan*: "Insure that all new development or redevelopment meets a high standard for planning, workmanship, and design." (Page 31)

B. *Applicable Law*: Article V, Section 15.5 of the Kent County Land Use Ordinance establishes the Density, Height, Width, Bulk, and Fence Requirements as follows for the Industrial Zoning District.

Minimum yard

- Front

- Existing Primary road

- Side and Rear

100 feet<sup>3</sup>

- Adjacent to EC, I, ICA-LDA, & ICA 15 feet 15 feet
- Adjacent to V, RR, CAR 100 feet<sup>3</sup>

B. *Staff and TAC Comments:* According to the official Zoning Map, this parcel is zoned Industrial and the parcels to the north and east (Map 16, Parcel 51) and south (rail line) are zoned Village. When adjacent to Village zoning, the side and rear setback is 100 feet. In addition, the required yard shall be landscaped and screened and shall be unoccupied by buildings, structures, or parking area.

The site plan does not indicate the exact setbacks of the proposed tanks to the property lines; however, the applicant is proposing to locate the parking and truck turnaround area within 15 feet of the side property lines. A variance of 85 feet is requested from both sides and the 50 feet from the rear.

## II. Variance

A. *Applicable Law:* Article IX, Section 2.2 of the Kent County Land Use Ordinance authorizes the Board of Appeals to grant variances from the yard (front, side, or rear), height, bulk, parking, loading, shoreline cliff, 15% slope, pier length, impervious surface, stream protection corridor, and buffer requirements so as to relieve practical difficulties or other injustices arising out of the strict application of the provisions of this Ordinance.

Such granting of a variance shall comply, as nearly as possible, in every respect to the spirit, intent, and purpose of this Ordinance; it being the purpose of this provision to authorize the granting of variation only for reasons of demonstrable practical difficulties as distinguished from variations sought for purposes or reasons of convenience, profit, or caprice.

In order to grant a variance, the Planning Director, or the Planning Director's designee, must find all the following:

- a. That the *variance* will not cause a substantial detriment to adjacent or neighboring property.
- b. That the *variance* will not change the character of the neighborhood or district.
- c. That the *variance* is consistent with the *Comprehensive Plan* and the general intent of this Ordinance.
- d. That the practical difficulty or other injustice was caused by the following:
  - i. Some unusual characteristic of size or shape of the property.
  - ii. Extraordinary topographical or other condition of the property.
  - iii. The use or *development* of property immediately adjacent to the property, except that this criterion shall not apply in the *Critical Area*.
- e. That the practical difficulty or other injustice was not caused by the applicants' own actions.
- g. In considering an application for a *variance*, the Board shall consider the reasonable use of the entire parcel or lot for which the *variance* is requested.
- i. The Board may consider the cause of the *variance* request and if the *variance* request is the result of actions by the applicant, including the commencement of *development* activity before an application for a *variance* has been filed.

B. *Staff and TAC Comments:* The variance will not cause a substantial detriment to adjacent or neighboring properties or change the character of the neighborhood. The location for which the storage and distribution facility will be located is surrounded by existing industrial uses including a storage area, grain mill, railroad, and multiple agricultural fertilizer businesses. The storage and distribution of fuel oil and propane will blend with the surrounding landscape. The village and

residential area of Massey does not extend north of the rail line and farther to the north of the industrial area is agricultural land.

The variance is consistent with the intent of the Land Use Ordinance and Comprehensive Plan. The Comprehensive Plan supports new businesses and the Ordinance only requires a 15-foot setback for Industrial zoned properties that are adjacent to other Industrial zoned properties. A 15-foot setback is reasonable at this location due the surrounding land uses.

The practical difficulty is caused by the overall size and shape of the existing lot. From the north, east, and south a 100-foot setback is required due to the zoning of the adjacent properties. Please see the attached image that indicates each required 100-foot setback. There is no area remaining once the 100-foot setbacks are applied.

The practical difficulty was not caused by the applicant's own actions. This property is zoned for an industrial use. If required to meet the 100-foot setbacks, it is impossible for an industrial use to be developed on this property without requesting a variance. The surrounding properties that are zoned village are used in an industrial manner.

The proposed use is reasonable for this parcel. No actions or construction have begun, and the applicant has applied for a concept site plan review.

The concept site plan indicates that the required afforestation area will be located on the rear of the property. The proposed 50-foot rear setback merely skims the afforestation area. The variance should only be the minimum necessary to ensure safe areas for parking, truck turning, and a safety fence.

## **STAFF RECOMMENDATION**

Staff recommends approval of an 85-foot variance from the required 100-foot setback to the north and south side yards of this parcel to construct a liquid propane and fuel oil storage and distribution facility. Staff also further recommends that the variance for the rear setback be the minimum necessary to ensure safe areas for parking, truck turning, and the proposed fence.



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Davis, Moore, Shearon & Associates, LLC

June 11, 2020

Mr. William Mackey, Planning Director  
Kent County Department of Planning & Zoning  
400 High Street  
Chestertown, Maryland 21620

**RE: BOARD OF APPEALS VARIANCE APPLICATION, PROPOSED DIXIE LAND ENERGY LIQUID PROPANE AND FUEL OIL STORAGE AND DISTRIBUTION FACILITY, MASSEY, MARYLAND  
KENT COUNTY TAX MAP 24, PARCEL 68  
DMS & ASSOCIATES JOB #2019160**

Dear Mr. Mackey,

Attached please find a Board of Appeals variance application for reduced setbacks for the proposed Dixie Land Energy development. Please find the following information in support of this application:

- One copy of the Board of Appeals Application
- Three copies of the Concept Plans
- \$350 application fee check

The requested variance is from Article V, Section 15.5 to place structures within the 100-ft side and rear yard setbacks. We are requesting a reduction in the side and rear yard setbacks from 100-ft to 15-ft. The subject property is zoned Industrial yet is surrounded on three sides by Village zoned property and a primary road on the other. Each of these conditions require a 100-ft setback. Once applied, the result is 0.00 acre of a development envelope.

The following are draft findings for the Board of Appeal's consideration in accordance with Article IX, Section 2.2.3 we offer the following:

- a) The variance will not cause a substantial detriment to adjacent or neighboring properties. The proposed development is consistent with adjacent uses that include a large grain storage facility, a large stone stockpile yard, a multi-track railroad, and a Crop Production Services operation.

- b) Granting of the variance will not negatively change the character of the neighborhood. Many of the surrounding uses are also storage facilities with a distribution component.
- c) Granting of the variance is consistent with the Comprehensive Plan by locating industrial uses on Industrial zoned properties.
- d) The practical difficulty arose from the following:
  - i. Applying the 100-ft setbacks from all property lines results in no usable or developable area.
  - ii. n/a
  - iii. n/a
- e) The practical difficulty was not caused by the applicants own actions, but rather the nature of the zoning and, more importantly, the surrounding zoning. If the adjacent properties were also zoned Industrial, the side and rear setbacks would only be 15-ft.
- f) Not Applicable. The subject property is not located within the Critical Area.
- g) As noted above, without a variance, there would be no usable area for this property.
- h) Not Applicable. The subject property is not located within the Critical Area.
- i) No construction has begun on this project.

We ask that you please review this information. We request that this project be placed on the July 2, 2020 Planning Commission agenda for review and positive recommendation to the Board of Appeals. If you have questions please call me at 443-262-9130.

Sincerely,

DMS & Associates, LLC



Kevin J. Shearon, P.E., LEED AP

Enclosures

pc: Dixie Land Energy (via email)

BOARD OF APPEALS APPLICATION

Kent County Department of Planning, Housing and Zoning

Kent County Government Center
400 High Street • Chestertown, MD 21620
410-778-7475 (phone) • 410-810-2932 (fax)

IN THE MATTER OF THE APPLICATION OF:
(Name, Address and Telephone Number of Applicant)

Dixie Land Energy
281 E. Main Street, Suite B
Rising Sun, Maryland 21911
Phone: (410) 708-1447

Email: kjs@dmsandassociates.com

For Office Use Only:
Case Number/Date Filed:
Filed by:
Applicant:
Planning Commission:
Date of Hearing:
Parties Notified:
Notice in Paper:
Property Posted:

TO THE KENT COUNTY BOARD OF APPEALS: In accordance with Article V Section 15.5
of the Kent County Zoning Ordinance, as amended, request is hereby made for:

Appealing Decision of Kent County Zoning Administrator X Variance
Special Exception Non-conforming Use

DESCRIPTION OF PROPERTY INVOLVED:

Located on: (Name of Road, etc.) Massey - Sassafras Road, Massey, Maryland
In the 1st Election District of Kent County.

Size of lot or parcel of Land: 1.17 acres
Map: 24 Parcel: 68 Lot #: n/a Deed Ref: 870/403

List buildings already on property: There are currently no buildings on the property.

If subdivision, indicate lot and block number: n/a

If there is a homeowners association, give name and address of association: n/a

PRESENT ZONING OF PROPERTY: I - Industrial

DESCRIPTION OF RELIEF REQUESTED: (List here in detail what you wish to do with property that requires
the Appeal Hearing.) Requesting a variance from 100-ft side and rear yard setbacks to 15-ft side and rear setbacks.

If appealing decision of Zoning Administrator, list date of their decision: n/a

Present owner(s) of property: Shirley Ann Beiler Telephone: (410) 708-1447

If Applicant is not owner, please indicate your interest in this property: Dixie Land Energy is the contract purchaser

Has property involved ever been subject to a previous application? no

If so, please give Application Number and Date:



**PLEASE FILL IN BELOW, OR ATTACH HERETO, A SKETCH OF THIS PROPERTY.**

List all property measurements and dimensions of any buildings already on the property.

**Put distances between present buildings or proposed buildings and property lines.**

**NAMES OF ADJOINING PROPERTY OWNERS:**

Owner(s) on the North: (see attached) \_\_\_\_\_

Owner(s) on the South: (see attached) \_\_\_\_\_

Owner(s) to the East: (see attached) \_\_\_\_\_

Owner(s) to the West: (see attached) \_\_\_\_\_

Homeowners Association, name and address, if applicable: n/a \_\_\_\_\_

**BY SIGNING THIS APPLICATION I GRANT MEMBERS AND ALTERNATE OF THE BOARD OF ZONING APPEALS THE RIGHT TO ENTER ONTO THE PROPERTY FOR THE PURPOSE OF VIEWING THE SITE OF THE APPLICATION OR APPEAL.**

  
Signature of Owner/Applicant/Agent or Attorney

6/11/2020  
Date

Please file this form at 400 High Street, Chestertown, MD 21620 accompanied by **\$350.00** filing fee made payable to the Board of Appeals. If you have any questions, contact Clerk at 410-778-7467.

**NOTICE: Neither the Board of Appeals or the Planning Office is required to make out this Application. Application should be filled in by applicant or its agent. If the Planning Department assists you, it cannot be held responsible for its contents.**

**Applicants arriving more than 10 minutes after the scheduled hearing will not be heard and will be re-scheduled at the applicant's expense.**



LANDS N/E OF  
**CROP PRODUCTION SERVICES, INC.**  
M.L.A. 24/718  
ZONED - INDUSTRIAL  
CURRENT USE - COMMERCIAL

LANDS N/E OF  
**ISE AMERICA, INC**  
M.L.A. 24/742  
ZONED - EMPLOYMENT CENTER  
CURRENT USE - AGRICULTURE

LANDS N/E OF  
**COUNTY COMMISSIONERS  
OF KENT COUNTY**  
M.L.A. 24/715  
M.L.A. 24/704  
ZONED - INDUSTRIAL  
CURRENT USE - COMMERCIAL

LANDS N/E OF  
**COUNTY COMMISSIONERS  
OF KENT COUNTY**  
M.L.A. 24/715  
M.L.A. 24/704  
ZONED - INDUSTRIAL  
CURRENT USE - COMMERCIAL

LANDS N/E OF  
**COUNTY COMMISSIONERS  
OF KENT COUNTY**  
M.L.A. 24/715  
M.L.A. 24/704  
ZONED - VILLAGE  
CURRENT USE - COMMERCIAL

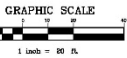
LANDS N/E OF  
**MARYLAND DEPT. OF TRANSPORTATION**  
M.L.A. 24/715  
ZONED - VILLAGE  
CURRENT USE - HIGHWAY

SUBMERGED GRAVEL WETLANDS  
SURFACE ELEV. = 63.50

PROPOSED ABOVE GROUND  
PROPANE TANKS

PROPOSED ABOVE  
FUEL OIL TANKS

PROPOSED  
AFFECTION AREA  
AREA = 0.175 ac ±



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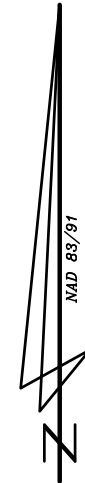
DATE	REVISION



**DAVIS, MOORE, SHEARON  
& ASSOCIATES, LLC**  
ENGINEERING, DRAFTING/DESIGN,  
ENVIRONMENTAL SERVICES & SURVEYING  
715 BIRCH RD.  
DOWNSVILLE, MARYLAND 21017  
PHONE: 1-443-292-9190  
FAX: 1-443-292-9148

BOARD OF APPEALS EXHIBIT  
ON THE LANDS OF  
**SP REALTY INVESTMENTS, LLC**  
IN THE VILLAGE OF MASSEY  
TAX MAP - 24, GRID - 1C, PARCEL - 68  
FIRST ELECTION DISTRICT, KENT COUNTY, MARYLAND  
PREPARED FOR: DIXIE LAND ENERGY

DATE	SCALE
JUNE '05	1" = 20'
201910	DRAWN BY
24-2019102	ISSUED BY
	SHEET No. -
	CADD FILE = 191809DA



LANDS N/F OF  
**CROP PRODUCTION SERVICES, INC.**  
M.L.M. 558/244  
ZONED - INDUSTRIAL  
CURRENT USE - COMMERCIAL

MARYLAND  
ROUTE 299  
50' R/W

LANDS N/F OF  
**COUNTY COMMISSIONERS  
OF KENT COUNTY**  
W.H.G. 75/715  
W.H.G. 76/594  
ZONED - INDUSTRIAL  
CURRENT USE - COMMERCIAL

LANDS N/F OF  
**COUNTY COMMISSIONERS  
OF KENT COUNTY**  
W.H.G. 75/715  
W.H.G. 76/594  
ZONED - INDUSTRIAL  
CURRENT USE - COMMERCIAL

LANDS N/F OF  
**ISE AMERICA, INC**  
88/427  
ZONED - EMPLOYMENT CENTER  
CURRENT USE - AGRICULTURE

SUBMERGED GRAVEL WETLANDS  
SURFACE ELEV. = 63.50

FOREBAY

PROPOSED ABOVE GROUND  
PROPANE TANKS

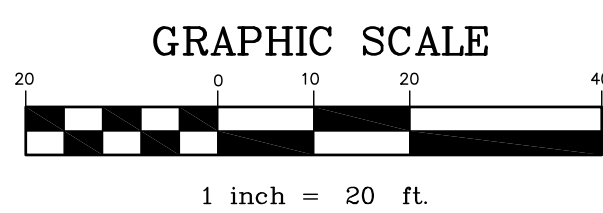
PROPOSED CANOPY OVER  
FUEL OIL FILL CONCRETE PAD

PROPOSED ABOVE GROUND  
FUEL OIL TANKS

PROTECTED  
AFFORESTATION AREA  
AREA = 0.175 ac.±

LANDS N/F OF  
**COUNTY COMMISSIONERS  
OF KENT COUNTY**  
W.H.G. 75/715  
W.H.G. 76/594  
ZONED - VILLAGE  
CURRENT USE - COMMERCIAL

LANDS N/F OF  
**MARYLAND DEPT. OF TRANSPORTATION**  
RAILROAD R/W PLAT V-2/31  
ZONED - VILLAGE  
CURRENT USE - RAILROAD




PROFESSIONAL CERTIFICATION:  
I HEREBY CERTIFY THAT THESE DOCUMENTS WERE PREPARED OR  
APPROVED BY ME, AND THAT I AM A DULY LICENSED PROFESSIONAL  
ENGINEER UNDER THE JURISDICTION OF THE STATE OF MARYLAND, LICENSE  
No. 2004690, AND MY EXPIRATION DATE: 2021

DATE: 7-24-2020  
SEAL

**DAVIS, MOORE, SHEARON  
& ASSOCIATES, LLC**  
ENGINEERING, DRAFTING/DESIGN,  
ENVIRONMENTAL SERVICES & SURVEYING  
P.O. BOX 80  
CENTREVILLE, MARYLAND 21617  
PHONE : 1-443-262-9130  
FAX : 1-443-262-9148

DATE	REVISION
7-24-20	PER COMMENTS

BOARD OF APPEALS EXHIBIT

ON THE LANDS OF  
**SP REALTY INVESTMENTS, LLC**

IN THE VILLAGE OF MASSEY

TAX MAP - 24, GRID - 1C, PARCEL - 68

FIRST ELECTION DISTRICT, KENT COUNTY, MARYLAND

PREPARED FOR : DIXIE LAND ENERGY

DATE	SCALE
JUNE '20	1" = 20'
JOB No. 2019160	DRAWN BY WJM
FOLDER Ref 24-2019160	DESIGNED BY KJS
SHEET No. -	
CADD FILE - 19160B0A	





240

NO SMOKING  
PROPANE

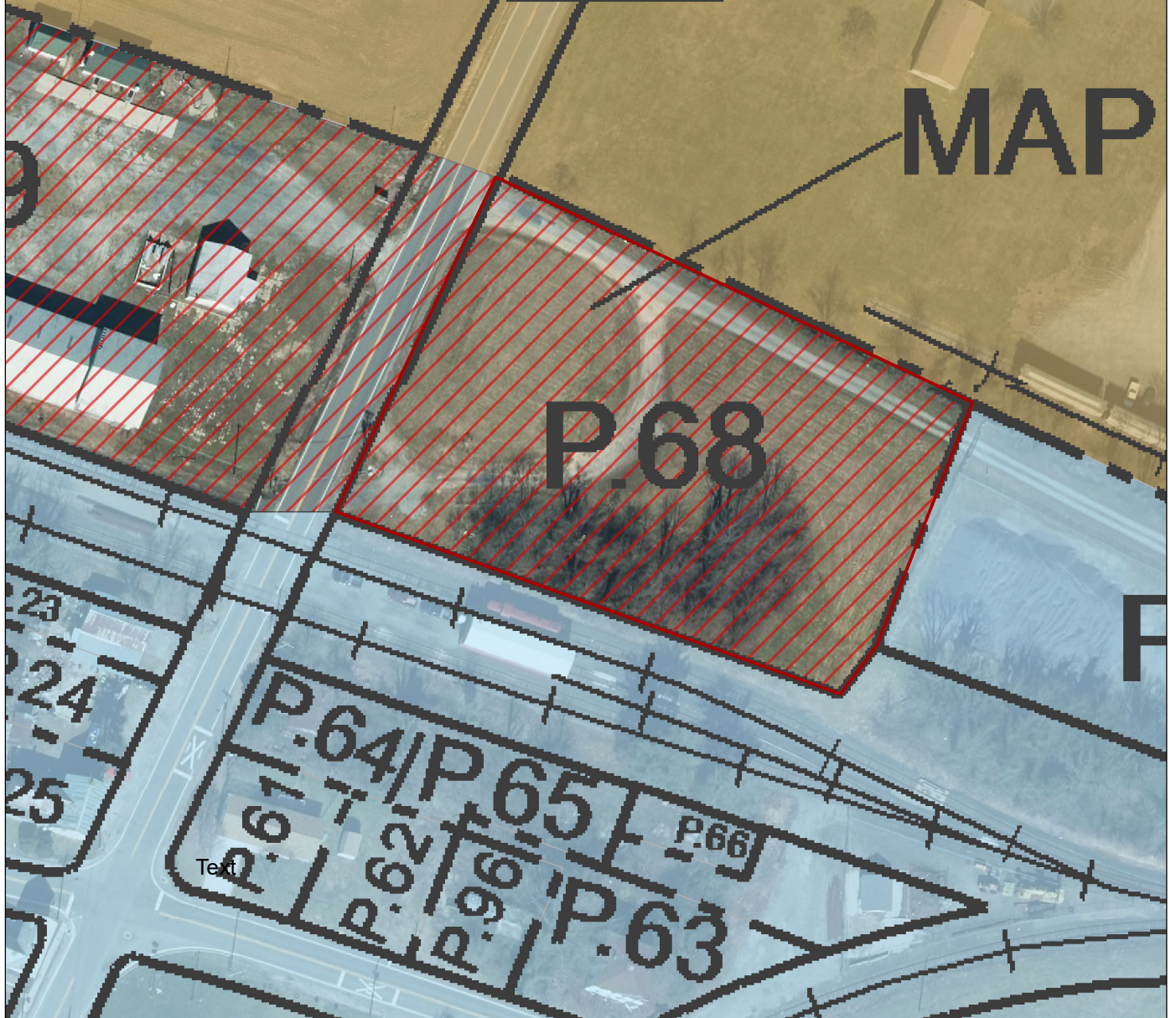


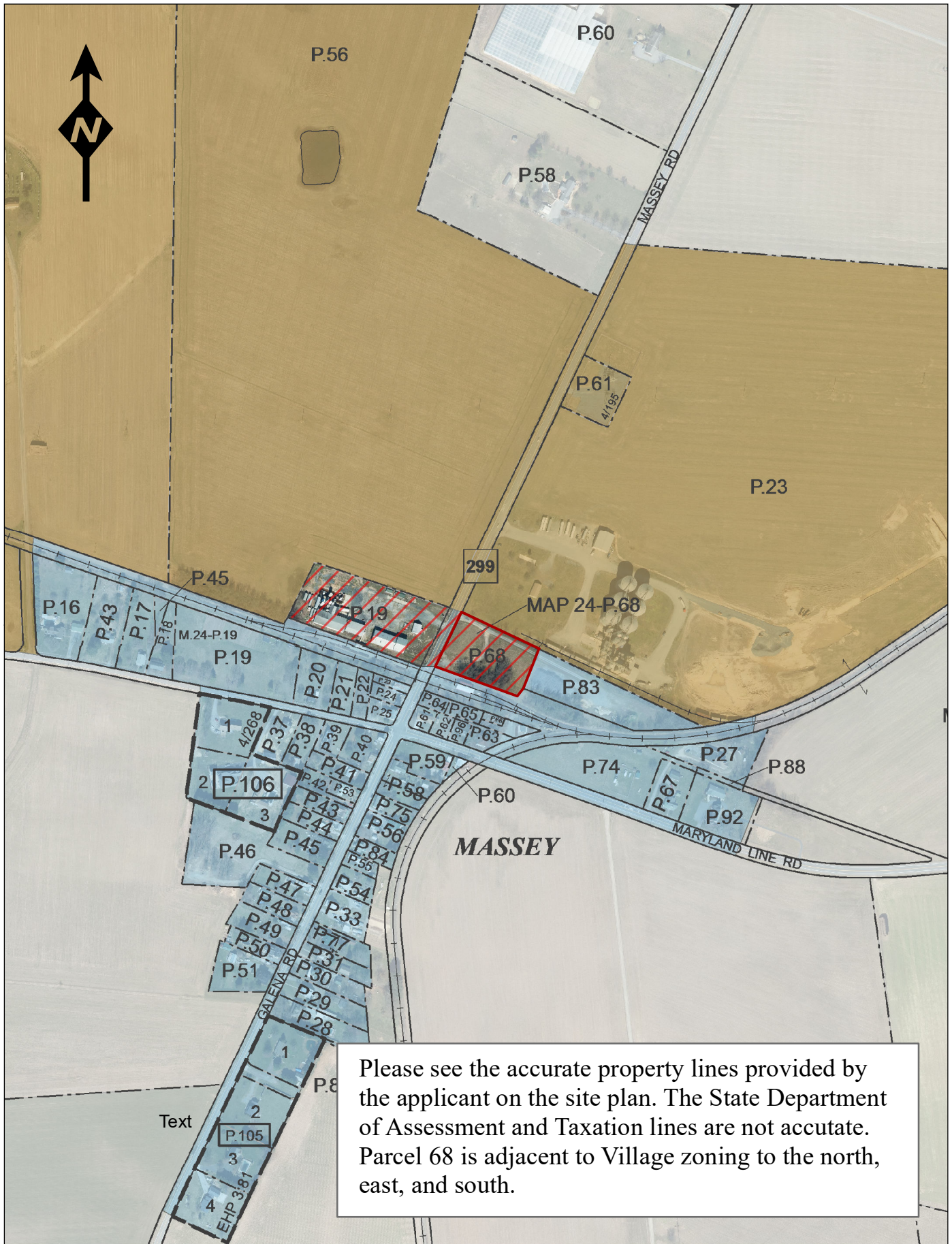
Please see the accurate property lines provided by the applicant on the site plan. The State Department of Assessment and Taxation lines are not accurate. Parcel 68 is adjacent to Village zoning to the north, east, and south.

**299**

**MAP**

**P.68**





Source: Kent County Department of Planning, Housing, and Zoning.  
 Aerial taken Spring 2016. Map prepared June 2020.

1 inch = 500 feet