



Kent County

Department of Planning Services Division of Planning

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STAFF RECOMMENDATION REPORT April 20, 2017

APPLICATION: A-17-18

APPLICANTS/OWNERS: Nicholas R. & Kristine S. Loebe
299 Walnut Shade Road
Felton, DE 19943

PROPERTY LOCATION: 299 Walnut Shade Rd., Felton, DE 19943

NATURE OF REQUEST:

A-17-18 Nicholas R. & Kristine S. Loebe seek a variance from the minimum side setback requirement of 15 ft. to enable a home-based contractor establishment application (**Sect. 205-397.7.A(7)(b) of the Kent County Code**). The property is located on the north side of Walnut Shade Rd. (DE Rt. 10A), approx. 391' west of West Dr., southeast of Camden. Levy Court District: 5th. Zoning District: AR. Tax Map No.: **NM-00-111.06-01-07.01-000**

The applicants are requesting the variance to utilize an existing 30' x 40' detached pole structure with a 4' x 10' lean-to located 12.8'+/- from the side property line for a home-based contractor establishment with no outside storage. A building used for a home-based contractor establishment is required to be a minimum of 15 ft. from side and rear property lines.

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 **APPROVAL** of the variances 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 response

Staff Response:

As shown on Exhibit A, the subject site is zoned AR (Agricultural Residential

District). Surrounding properties are also zoned AR, with the exception of the some commercially zoned properties to the east and southeast of the subject site. Home-based contractor establishments and home occupations are within the nature of the AR zoning district.

2. The character and uses of the immediate vicinity.

Applicant Response:

No response

Staff Response:

The character of the surrounding area is primarily residential, being improved with a variety of single-family dwelling styles. The adjacent property to the west of the subject site is commercially developed with a landscaping business and nursery. Properties further removed to the east are also commercially developed with a commercial shopping center, a gas station and convenience store with fast food establishment, and several other uses along the Route 13 corridor. Properties within the immediate vicinity of the subject site appear to be of a variety of sizes and configurations, with the subject parcel appearing smaller in nature than those along the northern side of Walnut Shade Rd., and larger than those along the southern side of Walnut Shade Rd. Detached accessory structures are prevalent in this area and the existing structure, legally permitted in 2014 for residential use, currently meets all legal size and setback requirements.

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

Applicant Response:

No response

Staff Response:

The removal of the restriction may not affect neighboring properties as the applicants are seeking to legalize an existing business with the use of an existing detached accessory structure. The applicants have had no prior code enforcement violations and have received a letter in support from the neighboring property owner to the east. In addition, it does not appear that the applicants are proposing any additional structures in regards to the prospective home-based contractor establishment. As it appears that the applicants currently keep the subject site well-maintained, housing all associated business equipment with the existing structure, it does not appear that the approval of this request will affect 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.

Applicant Response:

The building is already existing on my property. It will be used to store mowers in at the end of the day. This area affected is already next to an existing landscaping company and there is a privacy fence separating us. There is only a matter of a couple feet in question. I started this business when I retired from the Dept. of Corrections, it has been operating for six years without any complaints from neighbors. I just realized the need for Home Based Contractor Establishment and want to do things the right way. This area in question now is just stone filled to access the rear building. There are no employees that will be parking here, it is a family business with my two sons that live in the property with my wife and I. This is my only income and a livelihood for my two children who are working at this business.

Staff Response:

The failure to remove the restrictions for the setback requirement for a home-based contractor establishment could lead to an exceptional practical difficulty as the existing structure was legally permitted as a residential structure in 2014 and met all setback requirements. Additionally, it appears that the configuration of the lot itself, given the angle of the rear property line, may have contributed to the ability of the property owner to meet this requirement regardless of desire to maintain the required setback. With no other practical location to place this structure on the lot while maintaining the required distance behind the rear elevation of the home, there does appear to be a practical difficulty in granting approval for the building location. Should the request be denied, the applicants may be forced to decrease the size of the building or locate a suitable and legal location to run this business.

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 seeking the above referenced variance to reduce the required setback requirement of 15 ft. from the side property lines to enable the submittal of a home-based contractor establishment application.
- The applicants are proposing to utilize an existing 30' x 40' detached accessory structure with a 4' x 10' lean-to located 12.8 ft. from the western side property line for the home-based contractor establishment.
- The site is 0.91± acres in size and is currently improved with a single-family dwelling, a detached 30' x 40' pole building, and an 18' x 30' detached pole building.
- There are no previous Board of Adjustment applications for the subject site and there are no similar requests in the surrounding area.
- A letter of support was received from the neighboring property owner of the adjacent

- property to the east of the subject site (see attached).
- Correspondence was received from DelDOT indicating that they have no comments pertaining to this application at this time.
 - The subject site is zoned AR (Agricultural Residential District). The Comprehensive Plan recommends that this area be utilized for low density residential purposes.
 - Should the applicants be approved for this request, an application for a home-based contractor establishment, no outside storage, must be approved through Kent County Planning Services prior to the continuation of commercial use on the subject site.
 - The applicants should be aware that this application is solely for the structure as stated above and does not apply to any additional accessory structures on site. Should the applicants wish to use any additional structures as part of the Home-Based Contractor Establishment, No Outdoor Storage, the applicants must apply to do so and receive all necessary approvals from all applicable agencies prior to commencement of operations within these structures.

ENC: Exhibits A & B
Letter of support from J. Shultie dtd. 3/27/17