

# Kent County

## Department of Planning Services Division of Planning

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### STAFF RECOMMENDATION REPORT December 7, 2017

|                                |   |  |
|--------------------------------|---|--|
| <b>Application Number</b>      | : | C-17-07 – Skeels (Gallo), Kelsey   |
| <b>Present Zoning District</b> | : | AR (Agricultural Residential)  |
| <b>Present Use</b>             | : | Residential  |
| <b>Proposed Use</b>            | : | Same with Home Occupation<br>( <i>Firearms Broker – No Retail Sales</i> )  |
| <b>Relation to Growth Zone</b> | : | Outside  |
| <b>Area and Location</b>       | : | 0.37± acre on the north side of Marsh Branch Rd.<br>(Co. Rd. 441), approximately 597' west of S.<br>DuPont Hwy. (US Rt. 13), south of Farmington |

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#### I. STAFF RECOMMENDATION:

The staff recommends **APPROVAL** based on the information submitted as the application demonstrates compliance with the conditions for approval as outlined in the Code, as follows:

#### **§205-366. Home Occupations**

Conditions of this use shall be as follows:

- A. The owner/operator shall secure a zoning Certificate of Use from the Department of Planning Services, Division of Planning. The dwelling shall be the bona fide residence of the operator of the occupation.
- B. The use shall not change the character of the dwelling unit or residential premise nor have any exterior evidence other than an identification sign as provided for in Article XVIII.
- C. There shall be no person engaged or employed other than members of the household residing on the premises.
- D. Only equipment and facilities that are similar in nature, type and power to what would generally be used for domestic or household purposes shall be permitted.

- E. The use of property shall not change the general character of the neighborhood.
- F. As the proposed home occupation is to be conducted in an unattached accessory structure, the structure shall meet the principal structure setback requirements for the zoning district.
- G. The occupation shall create no noise, dust, vibration, smell, smoke, glare, electrical interference, fire hazard or any other hazard or nuisance to any extent greater or more frequent than that usually experienced for an average residential use in the district where located.
- H. Sale or rental of goods, other than those produced on the premises by the home occupation, shall be prohibited.

## **II. BACKGROUND INFORMATION:**

- The applicant began the administrative processing of a home occupation for firearms broker, no retail sale permitted, on or around August 13, 2017. The applicant is aware of and is willing to meet the requirements listed above. Additionally, the applicant has agreed that the proposed use will require minimal customer parking, with no available merchandise to be on the subject site, as this will be used as a by-appointment only office.
- One letter of objection was received during this process from a neighboring property owner, causing the application to move to a Conditional Use process. The neighbor in question stated there is a concern regarding the applicant's husband and the discharging of a weapon within their back yard area. The neighbor has stated that this practice is "careless" and feels this will continue if the application is approved.
- The applicant is requesting this use within an existing detached residential accessory structure; therefore it does not fall under the purview of the Adequate Public Facilities Ordinance as no new land development is proposed with this application. [§187-90.2(D)(8)].
- The Comprehensive Plan calls for low density residential uses in this area, with some highway commercial and neighborhood commercial areas to the west of the subject site.
- If approved, the proposed use would be conducted within a designated office area within an existing detached residential accessory structure that is to be relocated to meet principal setbacks. This would remain compliant with the existing zoning district and the Comprehensive Plan.
- The applicant should be advised that the operation of a firing range on the subject site is prohibited without the prior approval of Kent County Planning Services. Additionally, the discharging of personal firearms shall be regulated pursuant to Title 7, Chapter 7, Sect. 719 of the Delaware Code as follows:

*"No person, except in lawful self-defense, shall discharge any firearm while on or within 15 yards of a public road or right-of-way unless it is a road or right-of-way within an area controlled by the Department of Natural Resources and Environmental Control, the Department of Agriculture of the State or the United States Department of the Interior and is designated by the respective department as an area open to hunting or trapping."*

- The 0.37± acre subject site is currently improved with a one-story single-family dwelling. The character of the surrounding area is mainly residential in nature, with a substantial amount of woodlands to the north and east.
- There have been three previous land use applications on the subject property:
  - HP-16-11, an administrative application for a home occupation for internet firearm sales & transfers, was submitted on 10/5/16. However, this application was withdrawn on 10/10/16.
  - A-06-62, a variance request from the 25' side setbacks and 40' rear setback requirements, was granted reducing setbacks to 15' from the side property line and 9' from the rear property line with the condition that the placement of a manufactured home be prohibited.
  - A-07-29, a variance request from the 20' required side and rear setbacks for an accessory structure, was granted reducing setbacks to 5' from the side and rear property lines.
- There have been no similar requests within the immediate area.

### **III. AGENCY COMMENTS**

#### **A. KENT COUNTY – Department of Public Works, Division of Engineering – Contact: Brian L. Hall, Engineering Project Manager II**

**Requirement & Source:**

1. N/A

**Comment:**

1. The Engineering Division grants “Approval with No Objection to Recordation.”

#### **B. DNREC: Division of Fish and Wildlife - Species Conservation and Research Program-**

**Contact:** Kate Fleming, Wildlife Biologist/Environmental Review Coordinator

A review of our database indicates that there are currently no records of state-rare or federally listed plants, animals or natural communities at this project site.

#### **C. DHSS: Division of Public Health – Office of Engineering -**

**Contact:** William J. Milliken, Jr., Engineer III

This project should not require plan review from the Office of Engineering.

#### **D. Delaware Department of Transportation -**

**Contact:** Jonathan Moore

**Comment:**

1. DelDOT has no objection to the proposed request.

**E. Kent Conservation District –**

**Contact:** Jessica L. Verchick, EIT

**Source:**

2014 Delaware Sediment and Stormwater Regulations

**Requirements:**

1. The Kent Conversation District has no objection to approving the proposed conditional use of the above referenced property.

**Comments:**

1. If at any time expansion or earth disturbing activity (clearing, grubbing tree clearing etc.) takes place and exceeds 5000 square feet; a detailed Sediment and Stormwater Control Plan must be submitted and approved to the Kent Conversation District

This recommendation is offered 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 Regional Planning Commission shall give considerable weight to public testimony received during public hearing in considering its recommendation to Levy Court in this matter.

**ENC:** Data Sheet

Exhibit A – Location and Zoning Map

Exhibit B – Plot Plan