

# Kent County

## Department of Planning Services Division of Planning

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### STAFF RECOMMENDATION REPORT January 3, 2019

<b>Application Number</b>	:	C-18-09 Mears, Jennifer
<b>Present Zoning District</b>	:	AC (Agricultural Conservation)
<b>Present Use</b>	:	Residential
<b>Proposed Use</b>	:	Same with Home Occupation ( <i>Home Daycare</i> )
<b>Relation to Growth Zone</b>	:	Inside
<b>Area and Location</b>	:	0.23 $\pm$ acre on the southern side of Golder Street, across from the eastern entrance of Burns Way, further described as lot #23 of the Barrett Farm subdivision, east of Camden

#### **I. STAFF RECOMMENDATION:**

The staff recommends **CONDITIONAL APPROVAL** of the application with a requirement that the rear yard be enclosed with fencing at least 4' in height. This condition is based on the home's close proximity to a stormwater maintenance pond. Based on the information submitted 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 for a home occupation 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. The use of property shall not change the general character of the neighborhood.
- E. The occupation shall create no noise, traffic, 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 wherein located.
- F. The need for parking generated by such use shall be provided off street and shall be prohibited in the required front yard. Required parking shall be provided in accordance with provisions of Article XVII, Parking.
- G. The following types of uses shall not be considered home occupations: Child-care centers (more than nine children).

Pursuant to Kent County Code §205-251, a conditional use should be approved only if the public health, safety and general welfare will not be adversely affected, and necessary safeguards will be provided for the protection of surrounding property and persons. Based on the close proximity of the subdivision's stormwater maintenance pond to the subject site, Staff recommends that approval be granted with a condition that the applicant install fencing at least 4' in height to enclose the rear yard.

## **II. BACKGROUND INFORMATION:**

- The 0.23± acre site is currently improved with a two-story single family dwelling. The character of the area is residential in nature, being lot #23 of the Barrett Farm subdivision.
- The applicant began the administrative process of a home occupation for an at-home daycare serving no more than nine children on or around September 21, 2018.
- One letter of objection was received from a neighboring property owner causing the application to move to a Conditional Use process. The cited reason for concern is as follows:
  - *I feel if she is granted her daycare that others could come into the development and the development is too small for more.*

Although not a formal objection, one additional concern was expressed by another neighboring property owner as follows:

- *Back of her property is pond water.*
- There have been no previous land use applications on the subject property.
- There have been no previous home occupation or conditional use applications within Barrett Farm.
- As part of the conditional use application requirements, the applicant submitted a copy of the deed restrictions for Barratt Farms. Section 15 of that document includes the following language specific to home occupations:

- *Business and Institutional Use. Home occupations as defined by local ordinance shall be permitted if in compliance with such ordinance and if approved by 75% of the members of the Lot Owners.*

- This request is in compliance with the 2018 Comprehensive Plan.

### **III. AGENCY COMMENTS**

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

##### **Requirements & Sources:**

1. If there are additional water using fixture units, then additional sanitary sewer impact fee assessments may be warranted.

##### **Comment:**

1. If the prior requirement is applicable, then the Engineering Division grants “conditional approval”.
2. If the prior requirement is not applicable, then the Engineering Division grants “approval”.

#### **B. Delaware Department of Transportation - Contact: Joshua J. Schwartz**

##### **Comments:**

1. Plans shall be submitted to DelDOT subdivisions for review. The entrances shall be designed in accordance with the DelDOT Development Coordination Manual.
2. For a Daycare, the traffic ADT shall be generated based on the number of students, not the daycare staff. Update traffic diagram accordingly.

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