



Kent County

Department of Planning Services Division of Planning

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STAFF RECOMMENDATION REPORT January 17, 2019

APPLICATION: A-19-02

APPLICANT/OWNERS: Albert and Phyllis Moses
1200 Wheatleys Pond Rd.
Smryna, DE 19977

PROPERTY LOCATION: 1216 Wheatleys Pond Rd., Smyrna, DE 19977

NATURE OF REQUEST:

A-19-02 Albert & Phyllis J. Moses seeks a variance from the provision stating that there may not be more than one principal use or principal structure on a lot to allow a second principal use on a residential lot (**§205-14 of the Kent County Code**). The property is located on the southeast side of Wheatleys Pond Rd. (DE Rt. 300), approx. 1,400 ft. north of Bryn Zion Rd., southwest of Smyrna. Levy Court District: 1st. Zoning District: AC. **Tax Map No. KH-00-036.00-02-04.04-000**

The applicants are requesting a variance from the provision that there can be only one principal use or structure on a lot. The subject site has had a residential dwelling and an approved home business since 1999. The applicant wishes to close the home business and rent this building for an undetermined use.

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 **DENIAL** 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:
See attached letter.

Staff Response:

As shown on Exhibit A, the subject site is zoned AC (Agricultural Conservation), which is a low-density residential zoning district. The nature of this district is to have only one principal use per lot, although accessory uses like home businesses operated by the land owner or agricultural uses are within the nature of this zone.

2. The character and uses of the immediate vicinity.

Applicant Response:

See attached letter.

Staff Response:

The character of this area is both residential and agricultural in nature. Properties to the south and north are improved residentially, while the properties to the east and west are more agricultural in nature but still appear to have residential structures as well. These properties may have accessory structures similar in size to the subject site, but none have an approved second use being located on the site.

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

Applicant Response:

See attached letter.

Staff Response:

Approval of the request may seriously affect the neighboring properties, as the AC district mainly targets low density residential or agricultural uses. Although there are some non-residential uses that are contemplated in this district as Conditional Uses, the approval of more than one principal use may increase the traffic to the site or increase the activity on the property to a level that could impact the rural way of life that the neighbors have established.

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 improve one's business or to stay competitive as a result of area limitations may qualify as a legitimate exceptional practical difficulty.

Applicant Response:

See attached letter.

Staff Response:

Failure to remove the restriction on the subject site would not create an exceptional practical difficulty, as the request to have a second use is an entirely self-imposed

hardship. The owner wants the second use to be able to rent the building for increased income and that isn't generally a true hardship due to the fact that the owner can run a home business of his own, as he has since 1999. Having a non-residential use in addition to the home is not a normal improvement in the AC zoning district.

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.

While Staff cautions the Board to strongly consider the implications of allowing the use of this building for any use allowed in the district, should the Board choose to approve the request, the Staff recommends the following conditions be added:

- a. To limit potential impact to adjacent residential lots by maintaining the residential character of the parcel, the building used for the second use shall not be expanded or altered in any way.
- b. Signage for any use of the property shall be limited to that of a home occupation (§205-232.B.(3)) which allows no attached signage and a detached sign no larger than six sq. ft. or a height of five feet above grade.
- c. No residential use may be approved as a second principal use on the property since §205-400.B.(2) specifically prohibits the Board from having the authority to permit more than one dwelling unit on a property.

III. APPLICATION BACKGROUND INFORMATION:

- The applicants are requesting a variance from the restriction that states there shall be no more than one principal use or structure on the lot.
- The applicants wish to rent their detached building for another use that is undetermined at this time.
- Included with this report would be all uses allowed in the AC zoning district as either permitted by-right or conditional. Depending on what use is requested, an engineered Site Plan may be required to be reviewed by the Regional Planning Commission or a Conditional Use/Conditional Use with Site Plan application to be approved by both the Regional Planning Commission and the Levy Court.
- The subject site is 2.9± acres and is currently improved with a single family dwelling and four detached buildings of various sizes.
- The 2,300 sq. ft. detached building was approved for a home business to be run by the applicant as part of application C-99-15. Mr. Moses operates a TV and electronics repair shop.
- There have been no previous Board of Adjustment applications on the subject site and none in the surrounding area similar to this request.
- The subject site is zoned AC (Agricultural Conservation). The Comprehensive Plan recommends that this area be utilized for low-density residential uses.
- The applicants are advised that, should the request be granted, any use proposed for the building must first be approved by the Department of Planning which may require

site plans, public hearings, and/or structural upgrades for the building to be fully compliant as a commercial structure. For more information, contact the Division of Planning at (302) 744-2471 and the Division of Inspection and Enforcement at (302) 744-2451 between 8:00 a.m. and 5:00 p.m.

ENC: Exhibits A & B
Letter from applicant addressing four criteria
Uses allowed in AC zoning