

Kent County



Department of Planning Services Division of Planning

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STAFF RECOMMENDATION REPORT September 5, 2019

Application Number : C-19-05 Gearhart, John C. & Michele
Present Zoning District : AC (Agricultural Conservation)
Present Use : Residential
Proposed Use : Same with Home Based Contractors Establishment
(*Roofing and Siding*)
Property Identification Number : KH-00-018.00-01-28.32-000

I. STAFF RECOMMENDATION:

The staff recommends **CONDITIONAL APPROVAL** provided the applicant/owner agree to the conditions below and based on the information submitted, as the application demonstrates compliance with conditions outlined in Section §205-397.7 (Home-based Contractor Establishments, No Outdoor Storage.)

Code Requirements

1. The subject property shall remain the primary residence of the home-based contractor business and shall remain the primary residence of the owner of the business for the entire length of time that the business exists on the subject property.
2. Approval of a home-based contractor establishment shall be location-specific and shall not be transferable to another location.
3. Approval of a home-based contractor establishment shall be applicant/owner-specific and shall not be transferred or conveyed to another person without reapproval.
4. Except for vehicles already permitted by the parking regulations of Chapter 205, Zoning, all other vehicles and construction equipment shall be stored within a building.
5. Retail sale of goods and products shall be prohibited on the premises.
6. The hours of operation shall be limited to 7:00 a.m. and 10:00 p.m. as set forth in Section §205.397.7. Home-based contractor establishments, no outdoor storage.

7. The applicant is proposing to use the existing 2,400sq. ft. detached garage, the Code allows for a detached structure to be no larger than 5% of the lot area which on this 2.7± acre parcel would be 5,880 square feet.
8. The required setbacks for a detached garage used for a home based contractor are 15 ft. from the sides and at least 30 ft. beyond the rear elevation of the home. The existing building meets these requirements.
9. The existing sign was placed without a permit and may not meet the Code requirements. The applicants must obtain a permit for a sign that meets the requirements outlined in §205-232(B)(3). Permitted signs identifying an approved home occupation may not exceed 6sq. ft. in area or a height of 5ft above grade.

Recommended Conditions of Approval:

- A. In order to insure that the public health, safety and general welfare will not be adversely affected and that necessary safeguards will be provided for the protection of surrounding properties, the applicants must agree to pave Pee Wee Court to meet the requirements of §187-59 Street design standards.
- B. To insure the continued protection of the public health, safety and general welfare, the applicants must agree to maintain Pee Wee Court to the standard set in §187-59 for as long as the business remains on the property and record a Private Road Maintenance Agreement in accordance with §187-58(J)(6). In the event that the standard set in the Private Road Maintenance agreement is not adhered to the Conditional Use approval may be revoked.
- C. To protect surrounding properties and address objections received as part of this process, the applicant will install a 6ft vinyl fencing or vegetative buffer (6ft tall at the time of planting) along neighboring property lines from the northern most corner of the parcel, down the side property line along the driveway, ending where the driveway turns into the dwelling. See attached Exhibit D.
- D. All business vehicles (trucks, trailers, etc.) must be parked inside a building, except for one in accordance with §205-220(C)(3)

II. BACKGROUND INFORMATION:

- The 2.7± acre site is currently improved by a dwelling, driveway, detached garage and is zoned AC (Agricultural Conservation).
- The character of the surrounding area is mainly residential in nature with residential dwellings existing on all sides of the subject site.
- The County received a complaint that the applicants have been operating their contractor Roofing and Siding business out of the existing detached garage without approval.

- The applicants began the administrative process for a home based contractor establishment, application HP-19-04, on or around April 15, 2019.
- Six letters of objection were received during this process from neighboring property owners causing the application to move to the Conditional Use process. Cited reasons for concern included the following:
 - *“Debris from their construction material has blown into my yard. Construction business would negatively affect the property value of my home.”*
 - *“This is a residential subdivision which is why we moved here. There are too many commercial trucks in and out. Too many trucks parked on lot. Employees coming and going mornings and evening(s). See attached lot restrictions #1 and #9”*
 - *“I’ve had my property for sale for over a year now and several potential buyers have told me that they’ve decided not to buy my lot due to the commercial business next door; in particular the sign they have in the front yard. It’s also my understanding that the property owners living off Pee Wee Ct. are responsible for the upkeep of the road. What affect does the additional business traffic/vehicles have on the road?”*
 - *“We do not want property values to decrease, do not like seeing scrap at rear of property, looks trashy.”*
 - *“Primary reason I purchased my lot was because there were restrictions to prevent commercial activity. It decreases the value of my home. It will make it difficult for resale. I do not like sitting out on my patio and seeing trucks in and out and parked all over their property.”*
 - An additional letter received from a neighboring property owner cited reasons for concern were extensive, and a copy of the objection is attached.
 - One objection was withdrawn, the reason given: *“I was given a copy of the deed restrictions that show the Gearhart’s are not subject to the same restrictions as us so I am withdrawing my vote against.”*
- The subject parcel is lot #2 of 5 lots subdivided from the lands of Roman E & Susie D. Byler, recorded April 12, 2007 plot book 92 page 17. It is not apparent that the lots created in 2007 are subject to any deed restrictions. The deed restrictions referenced in the neighbor’s objections appear to impact lots 1 & 3 through 5 of a minor subdivision, created prior to Pee Wee Court, recorded April 15, 1992 plot book 29 page 97. See attached deed restrictions, subdivision plan and Exhibit C. Regardless, Kent County does not enforce recorded deed restrictions.
- There have been no previous land use applications on the subject property.
- There have been two similar requests in the nearby area:

- HP-15-06 approved a home based contractor establishment – heating and air conditioning contractor at a property north of the subject site, known as 6445 Underwoods Corner Rd.
- HP-18-11 approved a home based contractor – drain cleaning business at a property east of the subject site, known as 3867 Wheatleys Pond Rd.

III. AGENCY COMMENTS

Contact: Joshua J. Schwartz

A. DELDOT

1. The developer shall schedule a meeting with DelDOT to determine projected traffic with the additional use

B. KENT COUNTY DEPARTMENT OF PUBLIC WORKS

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”

IV. OWNER:

The owner shall be aware of and be prepared to comply with all comments regarding this project stated in this report. All comments must be addressed prior to having the violation be cleared.

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 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
Exhibit C- Lots subject to deed restrictions
Exhibit D- Staff Recommendation
Deed Restrictions and Recoded Plan
Exhibits Against