



# Kent County

## Department of Planning Services

Division of Planning

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### STAFF RECOMMENDATION REPORT September 19, 2019

**APPLICATION:** A-19-37

**APPLICANT:** Leland Oakley  
785 Paradise Alley Rd.  
Felton, DE 19943

**OWNER:** Leland T. & Brenda R. Oakley  
785 Paradise Alley Rd.  
Felton, DE 19943

#### NATURE OF REQUEST:

**A-19-37 Leland T. Oakley (Owners: Leland T. & Brenda R. Oakley)** seeks a variance from the provision prohibiting accessory structures to exceed 20 ft. in height to legalize a pole building (§205-71.C of the **Kent County Code**). The property is located on the north side of Paradise Alley Rd. (Co. Rd. 287), approx. 0.48 miles west of S. DuPont Hwy. (US Rt. 13), south of Felton. Levy Court District: 6<sup>th</sup>. Zoning District: AR. **Tax Map No. MN-00-148.00-01-30.04-000.**

The applicant is requesting the variance from the provision stating an accessory structure shall not exceed 20 ft. in height. This measurement is taken at the mid-point between the peak and the eave of the roof. The measured height of this structure, that is currently under construction, is 21 ft., 2 in.

#### I. STAFF RECOMMENDATION:

The staff has reviewed the information presented by the applicant and recommends that the Board strongly consider all public testimony in making their decision. The staff recommends **APPROVAL** of the variance 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). Detached buildings used for a home based contractor's establishment are a permitted use within the zone, contingent upon meeting all size requirements as set by the Zoning Code of Kent County.

**2. The character and uses of the immediate vicinity.**

Applicant Response:

The building is not out of character.

Staff Response:

The character of this area is a mix of agricultural and residential uses. There are residential lots that vary in size from 0.5± acre to 3.0± acres that surround the subject site on Paradise Alley Rd. The remaining area is made up with larger properties that are being actively farmed.

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

Applicant Response:

The building will not seriously affect the neighbors.

Staff Response:

The removal of this requirement will not negatively affect other properties in the area as the neighbors were contacted by mail about the approval of this home based business and the construction of the building. By code, this building can be 20 ft. tall and the difference of 1.16 ft. in height should have no visual impact to these owners. Furthermore, the additional height will not allow increased commercial activities that were not already approved as part of the business if the building was compliant.

**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 removal of the building would cause a big hardship, difficulty, and cause great distress. Building is built unaware of the one foot difference in height.

Staff Response:

The failure to remove the restriction would create an exceptional practical difficulty

as the applicant would have to demolish all or a portion of the building. This would put an economic hardship on the owner as the mistake was made when field changes were made by the builder that was not represented on the approved building plans. Even though this change was made without prior approval by the Kent County department of Inspections and & Enforcement, the difference of approximately one foot is, arguably, an insignificant difference in the code requirement where the benefit of removing the roof of the building does not exceed the hardship that the owner would experience if the variance was denied.

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 applicant is requesting a variance from the provision stating an accessory structure shall not exceed 20 ft. in height.
- The applicant is currently constructing a 6,600 sq. ft. pole building. The structure was measured to be 21 ft., 2 in. tall. The building is to be used for an approved home based contractors business for welding.
- The subject site is 3.0312+/- acres and is improved with a 2,535 sq. ft. dwelling and a 1,200 sq. ft. attached garage.
- There are no previous Board of Adjustment applications for the subject site or any in the surrounding area similar to this request.
- The subject site is zoned AR (Agricultural Residential District). The purpose of the AR District is to provide for a wide range of agricultural use and farm related services while providing for low-density residential development in areas that are rural in character and where farming may not be the optimum land use activity. The Kent County Comprehensive Plan (2018) recommends that this area be utilized for low density residential purposes.

**ENC:** Exhibits A & B