

IN THE MATTER OF  
THE APPLICATION OF  
DARIN L. KEISER  
(Special Exception - LDR)

BEFORE THE CECIL COUNTY  
BOARD OF APPEALS  
CASE NO.: 3591

OPINION

Application of Darin L. Keiser (“Keiser” or the “Applicant”), for a special exception to operate a home occupation business at property located at 64 Manor Circle, Elkton, Maryland 21921, which is designated as Parcel 623, Lot 5, on Tax Map 38, in the Second Election District of Cecil County (the “Property”), in an area presently zoned Low Density Residential (“LDR”). The property is owned by Darin L. Keiser.

This application is brought under the provisions of Article V, Part III, Section 79 and Section 54.4 Table of Permissible Uses 3.05.000 of the Ordinance, which permits a home occupation as a Special Exception in the LDR zone provided that: (1) Home occupations are in the same building as the residence, and do not change the residential character and appearance of the dwelling; (2) No type of advertisement for the home occupations shall be carried out on the property, except one (1) unlighted sign identifying the home occupation, limited to three (3) square feet in size; (3) No goods for sale or rent shall be stored on the property in a manner as to be seen from off the premises; (4) Parking is provided in accordance with Article XIV of the Ordinance; and, (5) No equipment or process shall be used which creates noise, vibration, glare, fumes, odors, or electrical interference detectable outside of the dwelling unit.

Article XVII, Part II, Section 311 of the Ordinance specifies that no special exception shall be approved by the Board of Appeals after considering all facts in the case unless the following findings are made:

1. Such use or any operations thereto will not be detrimental to or endanger the public health, safety, or general welfare.

2. The use will not be unduly injurious to the peaceful use and enjoyment of other property in the neighborhood, nor substantially diminish or impair property values in the neighborhood.

3. The establishment of the use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the zone.

4. The use will not, with respect to existing development in the area and development permitted under existing zoning, overburden existing public facilities, including schools, police and fire protection, water and sewer, public road, storm drainage, and other public improvements.

5. The use shall not adversely affect critical natural areas or areas of ecological importance.

6. The use shall, in all other respects, conform to the applicable regulations of the zone in which it is located.

7. That the particular use proposed at the particular location proposed, would not have any adverse effect above and beyond those inherently associated with such special exception use irrespective of its location in the zone. (*Schultz v. Pritts*, 291 MD. 1)

8. That adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.

9. That the proposed special exception is not contrary to the objectives of the current Comprehensive Plan for the County.

Applicant requests a special exception on the Property in order to operate an in-home internet business conducting online auctions. The Applicant testified that he plans to operate the business part time, and that he needs to obtain a business license from the Clerk of Court's office in order to do so. The Applicant testified that he has not decided on a product line as of yet, and that wholesalers will not do business with him until he obtains a business license. The Applicant did testify that he will not be selling firearms or dangerous objects, or pornography. The Applicant is interested in selling small items only, such as small electronics, due to space limitations at the Property. The Applicant will use his furnished basement and two (2) car garage for storage of for-sale items, and the Applicant testified that there will be no signage on the Property, and that the home occupation will not be noticeable from the exterior of the dwelling.

There was no testimony in opposition to, or in favor of, the Application.

Clifford Houston, Cecil County Department of Planning and Zoning, testified that the Planning Commission recommended approval of the application for two (2) years, or as long as the Applicant owns the Property and operates the business, whichever shall sooner occur.

From the evidence, the Board makes the following findings of facts pursuant to the requirements of Section 311:

1. That the special exception will be detrimental to or endanger the public health, safety, or general welfare. The Applicant provided no testimony or evidence demonstrating what he would be selling as part of the proposed venture. Although the

Applicant was able to say what he will not be selling (e.g., firearms, dangerous objects, or pornography), the Board finds that the Applicant failed to meet his burden as to this element because there is no evidence as to what the Applicant will be selling and, therefore, no evidence from which the Board could conclude that the home occupation will not be detrimental to or endanger the public health, safety or general welfare.

2. That there was no evidence indicating that the use will be unduly injurious to the peaceful use and enjoyment of other property in the neighborhood, however, the Applicant failed to produce evidence or testimony demonstrating that the proposed use will not substantially diminish or impair property values in the neighborhood. The Board finds that the operation will be conducted inside the dwelling situated on the Property, that the Applicant will have no signage, and that merchandise will be stored in the dwelling and/or two (2) car garage. The Applicant testified that the home occupation will not be noticeable from the exterior of the dwelling, however, because there is no evidence or testimony demonstrating what will actually be sold in the business, the Board is unable to find that the proposed use will not substantially diminish or impair property values in the neighborhood. To this effect, the impact of the proposed use on property values is directly related to its compatibility with surrounding properties and the character of the neighborhood. On this record, the Board is without evidence from which it can make a finding as to whether the proposed use will be compatible with, and therefore have an impact upon the value of, properties in the neighborhood.

3. There is no evidence that normal and orderly development and improvement of the surrounding properties will be impeded by the proposed use. Rather, the Board finds that the home occupation will be confined to the interior of the existing

dwelling and two (2) car garage on the Property, and will not be noticeable from the exterior of the premises.

4. That there was no evidence indicating that the use will not, with respect to existing development in the area and development permitted under existing zoning, overburden existing public facilities, including schools, police and fire protection, water and sewer, public road, storm drainage, and other public improvements. As set forth above, although the proposed use will be confined to the interior of the existing dwelling and two (2) car garage on the Property, there is no evidence or testimony demonstrating what product(s) will be sold by the Applicant. Although the Applicant testified that he would not be selling dangerous objects, the meaning of the term “dangerous” is, without further definition, inherently subjective. Thus, for example, the Applicant may not consider the storage, shipping and sale of fireworks, ammunition, or flammable objects to be “dangerous,” while others, without objective criteria to measure the use against, may reasonably disagree. To this effect, the nature of the item(s) being stored on the premises and offered for sale is directly related to whether the home occupation will increase the need, for example, of police or fire protection. While the proposed use may not materially increase traffic, or require additional water, sewer or septic (the Health Department has opined, and the Board so finds, that the onsite well and septic system are adequate for the proposed use), the Board finds that the Applicant has failed to meet his burden of demonstrating that the home occupation will not increase the need for police or fire protection.

5. That there is no evidence that the proposed use will adversely affect critical natural areas or areas of ecological importance. The Board finds that the Property

is not in the critical area, the 100 year flood plain, or the Critical Area Buffer and, as set forth above, that the onsite well and septic system are adequate for the proposed use.

6. There is, on this record, insufficient evidence for the Board to find that the proposed use will, in all other respects, conform to the applicable regulations of the zone in which it is located. As set forth above, the Applicant was unable to produce evidence or testimony demonstrating precisely what items will be stored on site and offered for sale. As such, there is insufficient evidence from which the Board can find that the Applicant has met his burden as to this element.

7. That there is no evidence that the particular use proposed at the particular location proposed, will have any adverse effect above and beyond those inherently associated with such special exception use irrespective of its location in the zone. (*Schultz v. Pritts*, 291 MD. 1). While the Board finds that the operation of a home occupation will not have any adverse effect above and beyond those inherently associated with such a use irrespective of its location in the LDR zone, it is worth noting that there is a dearth of evidence and/or testimony in this record demonstrating precisely what items will, as set forth above, be stored and sold at this Property. While the operation of a home occupation appears to be generally suitable for this Property, the specific nature of the home occupation bears directly on the Board's finding as this element and, without additional evidence and/or testimony identifying the merchandise to be stored and sold at the Property, the Board is unable to find that the Applicant has met his burden as to this element.

8. That adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets. The Applicant

will be offering merchandise for sale utilizing the internet, phone, and fax, and no customers will be served on the Property.

9. That the special exception is consistent with the objectives of the current Comprehensive Plan for the County. The proposed use is permitted as a special exception, with conditions, in the LDR zone. The Applicant meets all supplemental requirements under Section 79 of the Ordinance; specifically, the Board finds from the evidence and testimony set forth above that:

(a) The proposed home occupation is in the same building as the residence, and does not change the residential character and appearance of the dwelling;

(b) There will be no exterior signage or advertising on the premises;

(c) No goods for sale or rent shall be stored on the property in a manner as to be seen from off the premises;

(d) There is ample parking available on the Property, and the Property provides a suitable means of ingress, egress and regress; and,

(e) There is no evidence that equipment or processes used in the business will create noise, vibration, glare, fumes, odors, or electrical interference detectable outside of the dwelling unit. Rather, the business will be conducted entirely via the internet, phone, and fax.

For the reasons stated, by unanimous vote, the Board is not satisfied that the requirements of Sections 79, 54.4 sub-part 3.05.000, and 311, along with *Schultz v. Pritts*, 291 Md. 1 (1981) have been met, and the application is, therefore, DENIED.

5/29/2012  
Date

  
David Willis, Chairperson

**BOARD OF APPEALS APPLICATION**  
**CECIL COUNTY, MARYLAND**

MEET. MONTH: Apr. 2012  
 FILE NO. 3591

**THIS REQUEST IS FOR:**

- SPECIAL EXCEPTION RENEWAL ( )  
 SPECIAL EXCEPTION (X)  
 VARIANCE ( )  
 APPEAL ( )

DATE FILED: 2/17/12  
 AMOUNT PD: 980.00 Cash  
 ACCEPTED BY: [Signature]

FEB 17 2012

**A. APPLICANT INFORMATION**

Darin L. Keiser  
 APPLICANT NAME - PLEASE PRINT CLEARLY

64 Manor Circle Elkton MD 21921  
 ADDRESS CITY STATE ZIP CODE

[Signature] 410-620-0659  
 APPLICANT SIGNATURE PHONE NUMBER

CECIL COUNTY OFFICE OF  
 PLANNING & ZONING

**B. PROPERTY OWNER INFORMATION**

Darin L. Keiser  
 PROPERTY OWNER NAME - PLEASE PRINT CLEARLY

64 Manor Circle Elkton MD 21921  
 ADDRESS CITY STATE ZIP CODE

[Signature] 410-620-0659  
 PROPERTY OWNER SIGNATURE PHONE NUMBER

**2. PROPERTY INFORMATION**

64 Manor Circle 2ND 02-040557  
 PROPERTY ADDRESS ELECTION DIST. ACCT. NUMBER

0038 0006 0623 5 .757 LDR  
 TAX MAP # BLOCK PARCEL LOT # #ACRES ZONE

**1. PURPOSE OF APPLICATION** - Indicate reasons why this application should be granted. (attach separate sheet if necessary)

The nature of my business does not create retail traffic, visitors, or any sort of increased traffic at all. It is conducted entirely over the internet and phone/fax. This will not disrupt or disturb the community in any way. Internet Business

**2. On an attached sheet, PLEASE submit a sketch of the property indicating the proposed project. Show distances from the front, side and rear property lines and the dimensions of the project.** N/A

**3. LAND USE DESIGNATION**

Is property in the Critical Area? \_\_\_\_\_ YES \_\_\_\_\_ X NO  
 If yes, Pertinent provision of the Chesapeake Bay Critical Area Program: \_\_\_\_\_  
 Is property in the 100 year Floodplain? \_\_\_\_\_ YES \_\_\_\_\_ X NO  
 Is property an Agricultural Preservation District? \_\_\_\_\_ YES \_\_\_\_\_ X NO

If property is located in the Critical Area, all provisions and requirements must be met as outlined in Article XVII, Part I, II & III of the Zoning Ordinance.

**4. PROVISION OF ZONING ORDINANCE:** Section 79

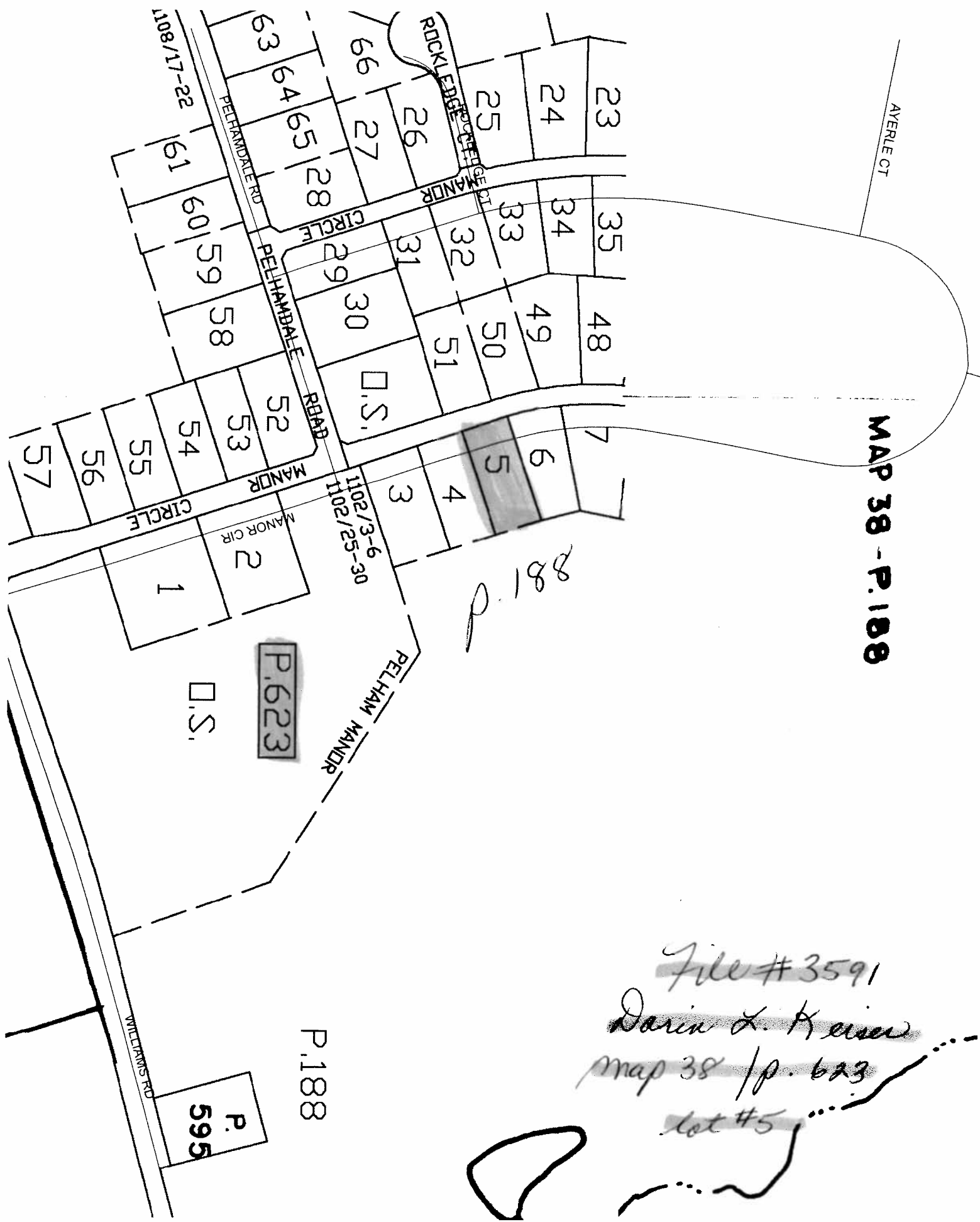
**5. SPECIAL EXCEPTION RENEWAL** - PREVIOUS FILE NO. & CONDITIONS FOR APPROVAL: N/A

**6. SPECIAL EXCEPTION FOR A MANUFACTURED HOME** - Please fill out the following information:

Will unit be visible from the road? N/A If yes, distance: \_\_\_\_\_  
 Will unit be visible from adjoining properties? \_\_\_\_\_ If yes, distance: \_\_\_\_\_  
 Distance to nearest manufactured home: \_\_\_\_\_ Size/Model/Year of Unit: \_\_\_\_\_  
 Number of units on property at present time: \_\_\_\_\_



**MAP 38 - P.188**



*File # 3591*  
*Darin L. Keiser*  
*map 38 / p. 623*  
*lot #5*

