

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

BEFORE THE CECIL COUNTY
BOARD OF APPEALS
CASE NO.: 3608

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 offering online retail sale of wireless/bluetooth headsets and bookshelf speakers for MP3 players. The Applicant testified that he plans to operate the business part time, and that he will take orders by phone and fax, as well as over the internet. The Applicant testified that the business will be operated from his finished 900 square foot basement, that there will be no outside storage of his merchandise, and that he will take items for shipment to customers to a local USPS/Fed Ex/UPS store for shipment, with UPS/Fed Ex delivery to his home approximately once a month. According to the Applicant, such shipments to the Property will be no different in intensity than what he already experiences from family based/personal use shopping deliveries. The Applicant testified that, although the business will be part-time, it will allow him the flexibility to operate anytime that his schedule permits, day or night, weekend or weekday, for example, after hours when he returns from his full time job in the evening. The Applicant testified that no customers will be provided services at the Property, that there will be no signage on or about the Property, and that the home occupation will not be visible from the exterior of the premises.

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.

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

1. That the proposed use or any operations thereto will not be detrimental to or endanger the public health, safety, or general welfare. The home occupation will consist of the sale of small, non-hazardous home electronics equipment for his customers' personal use, and the home occupation will entail virtually no traffic to or from the Property.

2. That the use will not be unduly injurious to the peaceful use and enjoyment of other property in the neighborhood, nor will the home occupation substantially diminish or impair property values in the neighborhood. The Board finds that the Applicant's business will be conducted over the internet, and via phone and fax, from the interior (basement) of the dwelling situated on the Property. The home occupation will cause little, if any, additional traffic or noise, the Applicant will have no signage or additional exterior lighting associated with the home occupation, and merchandise will be stored in the dwelling and will not be visible from the exterior of the premises. The home occupation will involve little, if any, additional deliveries beyond that currently associated with the Applicant's current personal and family use purchases, and the home occupation will be virtually indiscernible from the exterior of the premises, and therefore compatible with surrounding properties and the character of 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, will entail little if any increased traffic, and no signage or additional exterior lighting..

4. That there was no evidence indicating that the use will, 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, the proposed use will be confined to the interior of the existing dwelling, will have little if any effect on existing traffic, and will serve no clients on-site. The home occupation will utilize existing water and sewer, without increased use, and the goods offered for sale are non-hazardous and stored within the interior of the dwelling.

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 existing water and sewer is adequate for the proposed use.

6. That the proposed use will, in all other respects, conform to the applicable regulations of the zone in which it is located.

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). The home occupation will not increase traffic, will not involve hazardous goods, will emit no noises discernible from the exterior of the premises, and will from evidence and testimony before the Board, be generally indistinguishable from wholly residential uses in this location of the zone. As such, the operation of a home occupation appears to be generally suitable for this Property.

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;

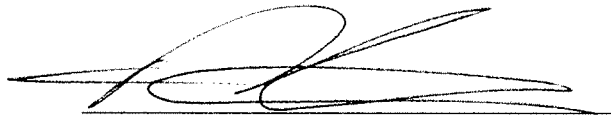
(c) No goods for sale or rent shall be stored on the property in a manner as to be seen from off the premises;

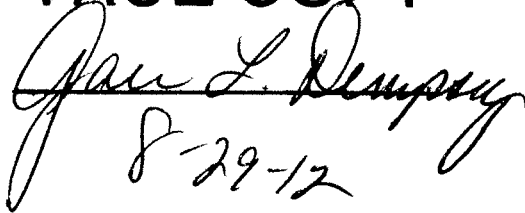
(d) Customers will not be served on the Property and, as such, there is no need for additional parking on the Property. The Applicant credibly testified that UPS and/or FedEx currently deliver to the Property one time per month, without issue related to ingress, egress and regress; and,

(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, and goods to be sold are non-hazardous.

For the reasons stated, by unanimous vote, the Board is 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, APPROVED for a period of two (2) years.

8/28/12
Date


Mark Saunders, Acting Chairperson

TRUE COPY

8-29-12

BOARD OF APPEALS APPLICATION
CECIL COUNTY, MARYLAND

MEET. MONTH: July, 2012
FILE NO. 3608

THIS REQUEST IS FOR:
SPECIAL EXCEPTION RENEWAL
SPECIAL EXCEPTION
VARIANCE
APPEAL

() RECEIVED
()
()

DATE FILED: June 1, 2012
AMOUNT PD: -
ACCEPTED BY: CZH

JUN 1 2012

no charge

A. APPLICANT INFORMATION

Darin L. Keiser CECIL COUNTY OFFICE OF PLANNING & ZONING
APPLICANT NAME - PLEASE PRINT CLEARLY
64 Manor Circle Elkton MD 21921
ADDRESS CITY STATE ZIP CODE
Darin L. Keiser 410-620-0659
APPLICANT SIGNATURE PHONE NUMBER

B. PROPERTY OWNER INFORMATION

Darin L. Keiser
PROPERTY OWNER NAME - PLEASE PRINT CLEARLY
64 Manor Circle Elkton MD 21921
ADDRESS CITY STATE ZIP CODE
Darin L. Keiser 410-620-0659
PROPERTY OWNER SIGNATURE PHONE NUMBER

C. PROPERTY INFORMATION

64 Manor Circle 2ND 02 040557
PROPERTY ADDRESS ELECTION DIST. ACCT. NUMBER
0038 006 0623 5 .757 LDR
TAX MAP # BLOCK PARCEL LOT # #ACRES ZONE

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

Special exception for a home occupation to operate an internet retail business.

E. 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. All within confines of existing structure.

F. 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

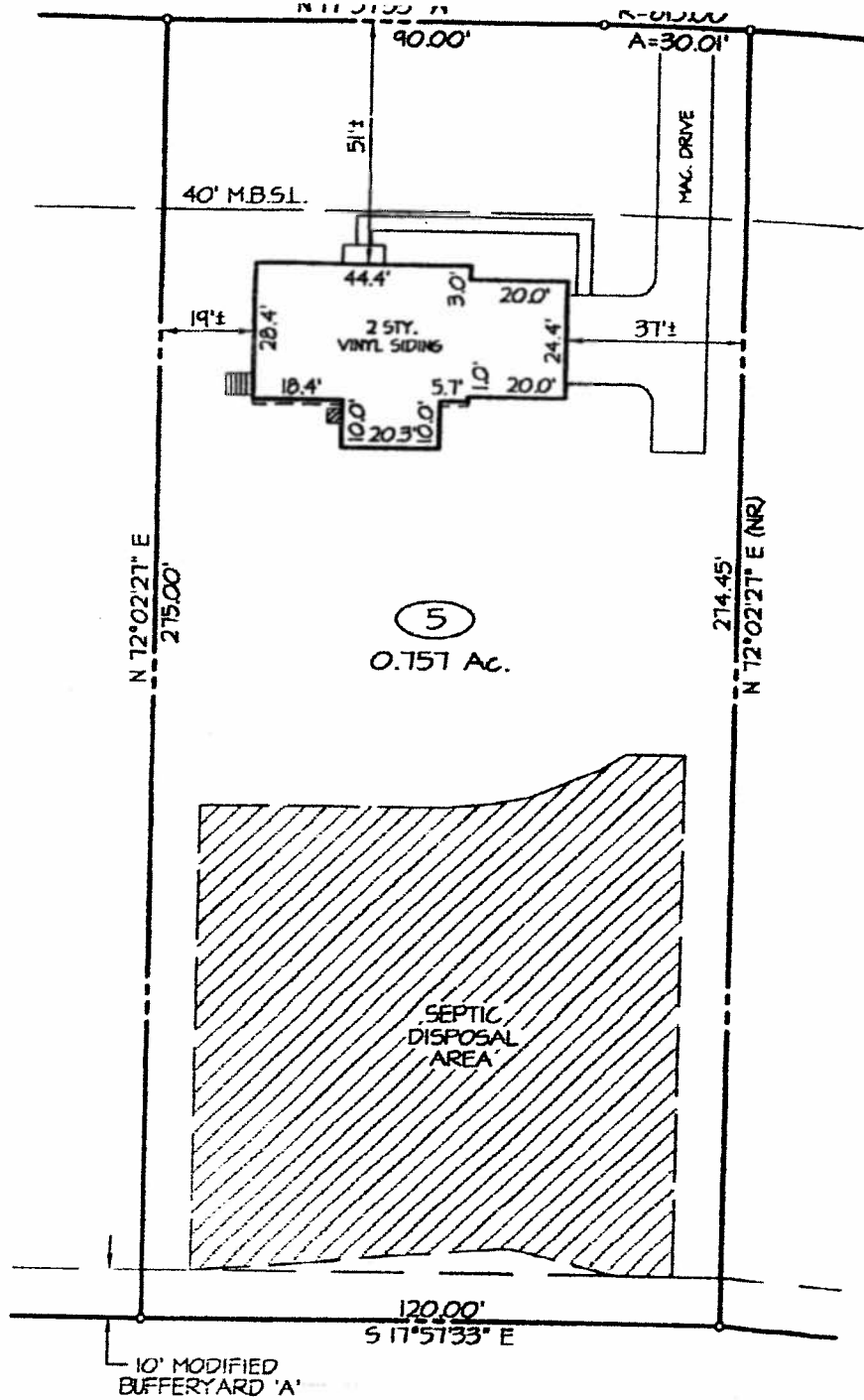
If property is located in the Critical Area, all provisions and requirements must be met as outlined in Article XVII, I art I, II & III of the Zoning Ordinance.

G. PROVISION OF ZONING ORDINANCE: Section 79

H. SPECIAL EXCEPTION RENEWAL - PREVIOUS FILE NO. & CONDITIONS FOR APPROVAL: n/a

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

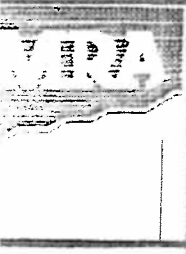
Will unit be visible from the road? n/a If yes, distance: _____
Will unit be visible from adjoining properties? _____ If yes, distance: _____
Distance to nearest manufactured home: _____ Size/Model/Year of Unit: _____
Number of units on property at present time: _____



ACCURACY LIMITATIONS

LOT BOUNDARY - AS CALLED
 BUILDING DIMENSIONS - ± 0.2'
 BUILDING TO BOUNDARY LINE - ± 1'

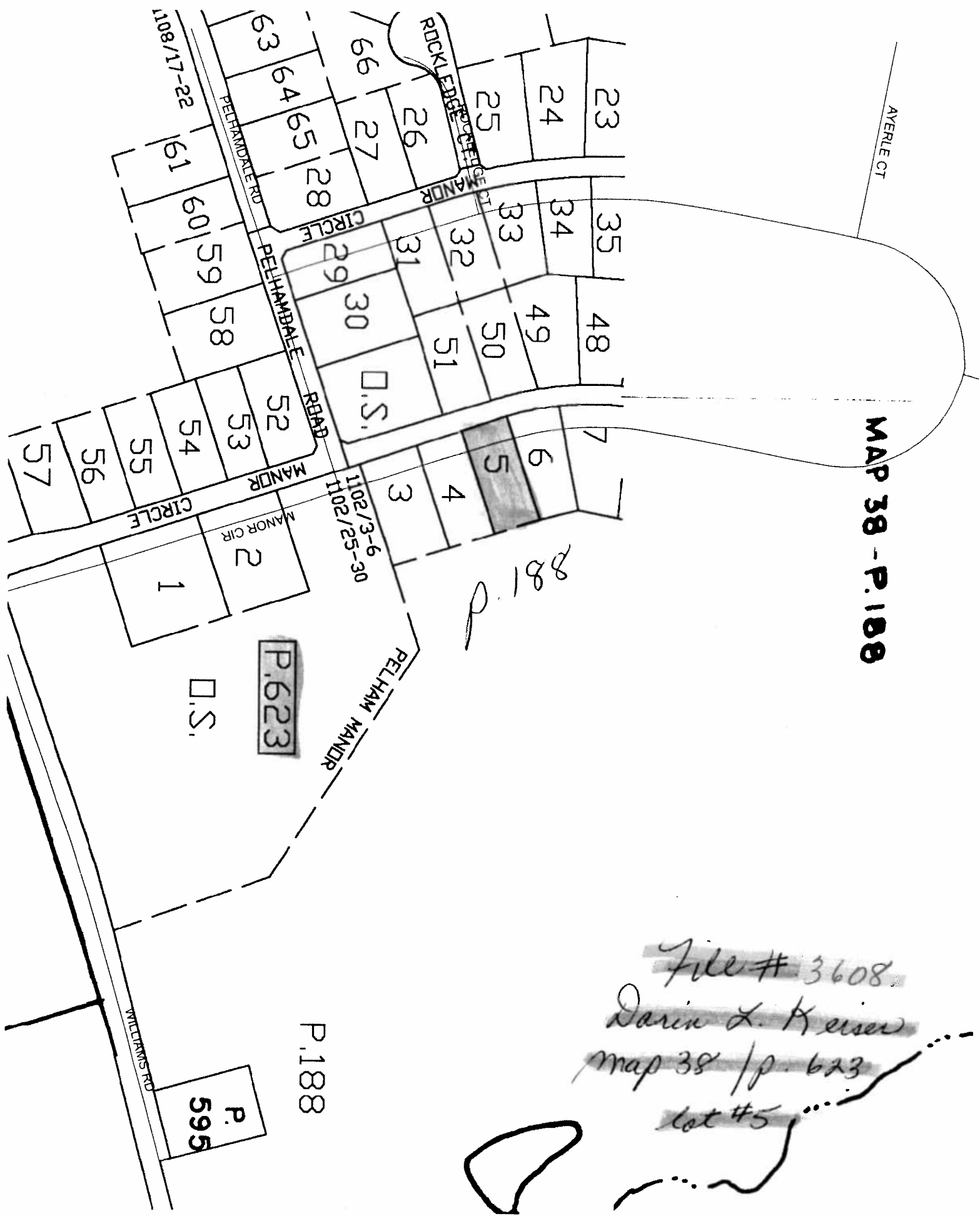
- THIS PLAT IS OF BENEFIT TO A CONSUMER ONLY INsofar AS IT IS REQUIRED BY A LENDER OR A TITLE INSURANCE COMPANY OR ITS AGENT IN CONNECTION WITH CONTEMPLATED TRANSFER, FINANCING OR RE-FINANCING.
- THIS PLAT IS NOT TO BE RELIED UPON FOR THE ESTABLISHMENT OR LOCATION OF FENCES, GARAGES, BUILDINGS, OR OTHER EXISTING OR FUTURE IMPROVEMENTS, AND
- THIS PLAT DOES NOT PROVIDE FOR THE ACCURATE IDENTIFICATION OF PROPERTY BOUNDARY LINES, BUT SUCH IDENTIFICATION MAY NOT BE REQUIRED FOR THE TRANSFER OF TITLE OR SECURING FINANCING OR RE-FINANCING.



MORRIS & RITCHIE ASSOCIATES, INC.
 ENGINEERS, ARCHITECTS, PLANNERS, SURVEYORS, & LANDSCAPE ARCHITECTS
 3445-A Box Hill Corporate Center Drive
 Abingdon, Maryland 21009
 (410) 515-4000
 Fax: (410) 515-4002

LOCATION DRAWING
LOT 5
 FINAL PLAT TWO - SECTION ONE - PHASE ONE
PELHAM MANOR
 LOTS 3-8, 21-25, 28, 31-35, 48-51, & COMMON OPEN SPACE
 P.G. NO. 1102 FOLIO 5
 SECOND ELECTION DISTRICT - CECIL COUNTY, MARYLAND
 FOR: RYAN HOMES

MAP 38 - P.188



File # 3608
Darin L. Keiser
map 38 / p. 623
lot #5

