

IN THE MATTER OF	*	BEFORE THE CECIL COUNTY
THE APPLICATION OF	*	BOARD OF APPEALS
KENNETH R. MCMULLEN	*	CASE NO.: 3938
	*	
(Special Exception – NAR)	*	
* * * * *		

OPINION

The Cecil County Board of Appeals (the “Board”) is now asked to consider the application of Kenneth R. McMullen (the “Applicant”). Applicant seeks a special exception to operate a home occupation on property owned by Applicant and Paul D. McMullen located at 462 Linton Run Road, Port Deposit, Maryland 21904, designated as Parcel 378, Block 18 on Tax Map 23 in the Seventh Election District of Cecil County (the “Property”), in an area zoned Northern Agricultural Residential (“NAR”) in accordance with Article V, Part III, Section 79 of the Cecil County Zoning Ordinance (the “Ordinance”).

Section 79 of the Ordinance provides:

Home occupations may be permitted in the RMU zone and permitted as a Special Exception in the NAR, SAR, RR, LDR, ST, VR, UR, MH, RM, and MEA zones provided that:

1. Home occupations are conducted on the same property as the residence and do not change the residential character of the property.
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.
5. No equipment or process shall be used which creates noise, vibration, glare, fumes, odors,

or electrical interference detectable from adjoining properties.

In determining whether to grant an application for a Special Exception the Board must consider Section 311 of the Ordinance, which states:

No special exception shall be approved by the Board of Appeals after considering all facts in the case unless such Board shall find:

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 (1981).
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.

Article XVII, Part II, Section 311, Cecil County Zoning Ordinance.

Applicant appeared and testified in favor of the application. Applicant seeks permission to operate a home occupation at the Property. The proposed home occupation is the assembly and

delivery of scooters and electric power chairs for disabled individuals, consisting largely of veterans. Applicant would use the existing building on the Property for the work, which will consist of receiving the unassembled scooters and chairs from the manufacturer and assembling the items then delivering them or preparing them for pick up. The items will be delivered via FedEx, which will lead to minimal additional traffic. Applicant anticipates assembling and delivering 1 to 3 items per week.

Bryan Lightner, Zoning Administrator, testified that the Office of Planning and Zoning recommended approval for two years and the Planning Commission recommended approval for two years provided that Applicant continues to own the Property..

Pursuant to Section 311 of the Ordinance, the Board finds as follows:

1. The special exception is not detrimental or an endangerment to the public health, safety, or general welfare. The Board heard no evidence that the operation of the contemplated business on the Property would constitute a danger to the public health, safety, or welfare.

2. The use will not be unduly injurious to the peaceful use and enjoyment of other property in the neighborhood, or substantially diminish or impair property values in the neighborhood. There is nothing in the nature of the proposed home occupation that would diminish or impair property values in the neighborhood.

3. The use will not impede the normal and orderly development and improvement of the surrounding properties for uses permitted in the zone. The Board does not find that the operation of the contemplated business as proposed by the Applicant is an impediment to the preservation of the character of the area or to the reasonable and orderly residential development permissible within the zone.

4. The proposed use will not overburden existing public facilities, including schools, police and fire protection, water and sewer, public road, storm drainage, and other public

improvements. The Board heard no evidence that the proposed use contributes to an increased burden upon public facilities or municipal services.

5. The proposed use will not adversely affect critical natural areas or areas of ecological importance. The nature of the use will not negatively impact the critical natural area.

6. The continued use will, in all other respects, conform to the applicable regulations of the zone in which it is located. Based upon the evidence presented, the Board finds that the operation of the proposed business as contemplated by the Applicant is not inconsistent with neighboring uses.

7. The particular use proposed at the particular location proposed will not have any adverse effects above those inherently associated with such special exception use irrespective of its location in the zone. *Schultz v. Pritts*, 291, Md. 1 (1981). The Board finds that, because of the residential density of the zone and the nature of the activities undertaken in the area, the impact of Applicants' proposed use in this particular area of the NAR zone is no different than the impact of the operation of an in-home occupation of this sort in other areas of the NAR zone.

8. Adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion on the public streets. No evidence was presented evincing potential issues related to traffic and parking. The deliveries from FedEx present minimal impact to the traffic flow in the neighborhood.


9. The use is not contrary to the objectives of the Comprehensive Plan for the County. The special exception is presumptively valid and the Board finds nothing in the record to indicate that the proposed use is contrary to the objectives of the Comprehensive Plan.

For the reasons stated above, by unanimous vote, the Board is satisfied that the requirements of Article XVII, Part II, Section 311, of the Ordinance have been met and the

application for the special exception under Article V, Part III, Section 79 is therefore **APPROVED**, for a period of two years, provided that Applicant continues to own the Property.

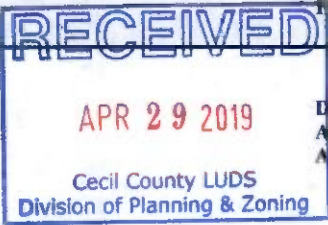
All Applicants are hereby notified that they are required to obtain any and all necessary licenses and permits required for the use described herein.

7/23/19
Date


Mark Saunders, Chairperson

BOARD OF APPEALS APPLICATION
CECIL COUNTY, MARYLAND

MEET. MONTH: June 2019
 FILE NO. 3938



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

DATE FILED: 4/29/19
 AMOUNT PD: \$250.00
 ACCEPTED BY: 83

A. APPLICANT INFORMATION

Kenneth R. McMullen
 APPLICANT NAME - PLEASE PRINT CLEARLY

462 Linton Run Rd Port Deposit MD 21904
 ADDRESS CITY STATE ZIP CODE

KRMcmullen 410-920-7255
 APPLICANT SIGNATURE PHONE NUMBER

B. PROPERTY OWNER INFORMATION

Kenneth R McMullen / Paul D. McMullen
 PROPERTY OWNER NAME - PLEASE PRINT CLEARLY

462 Linton Run Rd Port Deposit, MD 21904 / 41 Dutch Dr. Conowingo, MD 21918
 ADDRESS CITY STATE ZIP CODE

KRMcmullen / Paul D. McMullen 410-920-7255
 PROPERTY OWNER SIGNATURE PHONE NUMBER

C. PROPERTY INFORMATION

462 Linton Run Rd. 07 0807005474 The request
 PROPERTY ADDRESS ELECTION DIST. ACCT. NUMBER

0023 0018 0378 21.7 *NAR
 TAX MAP # BLOCK PARCEL LOT # #ACRES ZONE

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

The request is to use the existing building to assemble scooters and electric power chairs for veterans through the VA. The work will consist of receiving a boxed scooter or power chair from the manufacture (via Fed Ex) unboxing, assembling and then delivering the assembled item to the veteran or have the veteran pick the item up from our location. Based on discussions with the VA it is anticipate on average 1 to 3 items will be assembled / week and delivered to the veteran. SPECIAL EXCEPTION TO OPERATE A HOME OCCUPATION

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.

F. LAND USE DESIGNATION

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

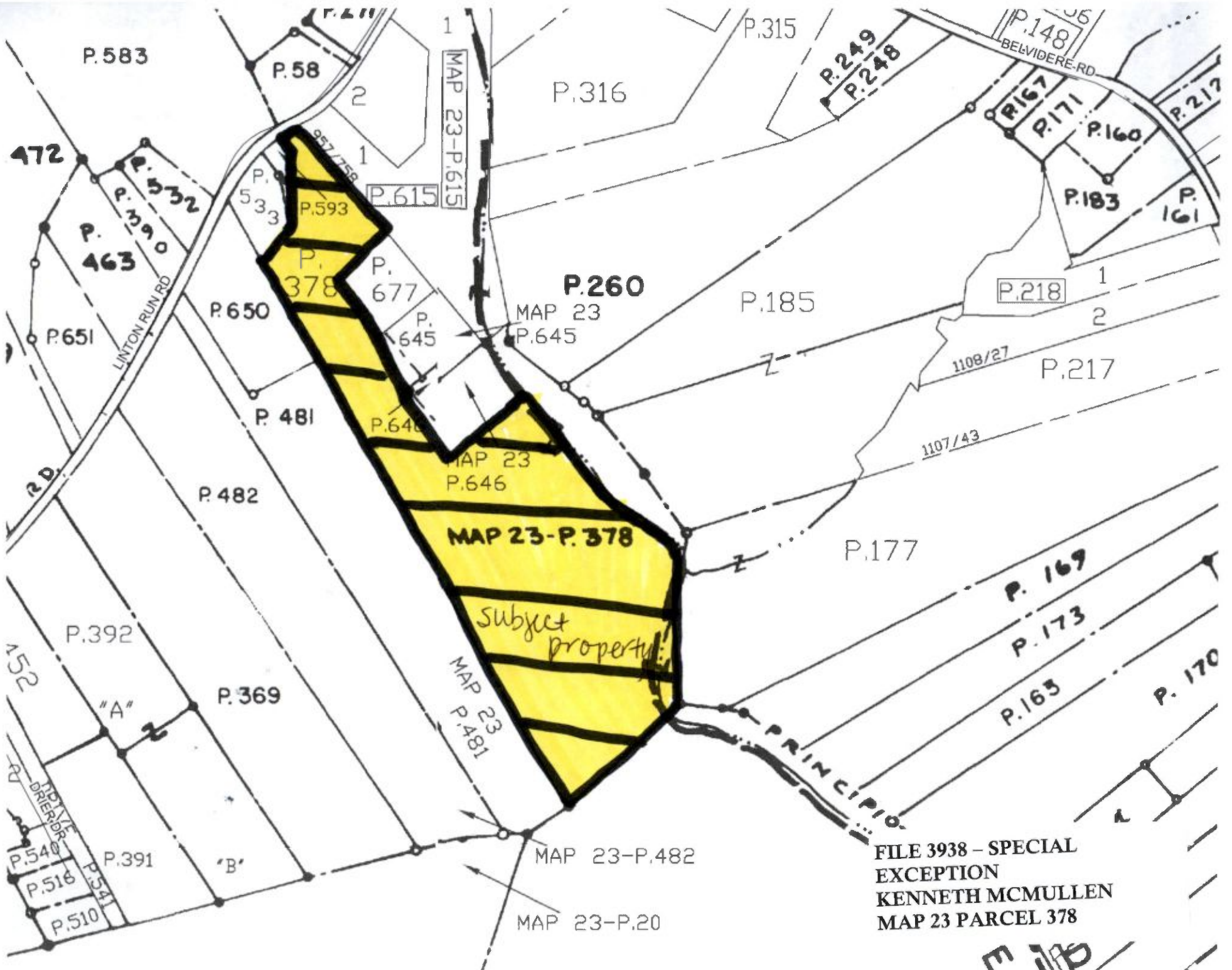
If property is located in the Critical Area, all provisions and requirements must be met as outlined in Article XVII, Part I, II & III of the Zoning Ordinance.

G. PROVISION OF ZONING ORDINANCE: ART. V, PT. III, S. 79, ART. VIII, PT. II, S. 311

H. SPECIAL EXCEPTION RENEWAL - PREVIOUS FILE NO. & CONDITIONS FOR APPROVAL: _____

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

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



MAP 23-P. 378

subject property

FILE 3938 - SPECIAL
EXCEPTION
KENNETH MCMULLEN
MAP 23 PARCEL 378

