

IN THE MATTER OF : BEFORE THE  
DEBORAH HUMPHRIES : HOWARD COUNTY  
Petitioner : BOARD OF APPEALS  
 : HEARING EXAMINER  
 : BA Case No. 13-019C

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**DECISION AND ORDER**

On July 22, 2013, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Deborah Humphries for an addition to an existing two-family dwelling conditional use in an RC-DEO (Rural Conservation: Density Exchange Option) Zoning District, filed pursuant to Section 131.N.52 of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioner certified to compliance with the advertising, notice and posting requirements of the Howard County Code. The Hearing Examiner viewed the subject property as required by the Hearing Examiner Rules of Procedure.

Thomas Meachum, Esquire, represented the Petitioner. At the outset of the hearing, Mr. Meachum stated the Petitioner agreed with the Technical Staff Report and would present no additional evidence.

**FINDINGS OF FACT**

Based upon the preponderance of evidence presented at the hearing, I find the following facts:

1. Property Identification. The subject property is located in the 1st Election District on the south side of Foxspur Court about 250 feet east of Farside Road. It is referenced as Tax Map 23, Grid 21, Parcel 126, Lot 31 and has a street address of 11662 Foxspur Court (the "Property").

2. Site Description. The 3.414-acre Property is improved with a two-story, frame and brick two-family detached dwelling. The original dwelling has a three-car side-loading garage and is located more than 180 feet from the right-of-way and about 41 feet from the closest (eastern) lot line. The second dwelling adjoins the southwest side of the main dwelling. A narrow paved driveway in the eastern portion of the Property rises in elevation from the road and then widens into a level circular area in front of the house, and continues southwest to wider paved areas in front of each garage grouping. A patio area and an inground pool lie to the dwelling's south. To the southwest is a tennis court. The rest of the lot is predominately lawn, with landscaping around the house, and trees along the south, rear lot line screening the Property from Homewood Road.

3. Vicinal Properties. All adjoining properties are zoned RC-DEO and are part of the same subdivision. All adjoining lots are each improved with one-or two-story dwellings.

4. Roads. Foxspur Court has about 22 feet of paving within a 50-foot right of way. The posted speed limit is 25 MPH. The estimated sight distance from the driveway entrance is about 400 feet to the west and more than 5600 feet to the east.

5. Water and Sewer. The Property is served by private well and septic systems.

6. General Plan. PlanHOWARD2030 designates the Property as "Rural West" on the Designated Place Types Map. The Functional Road Classification Map depicts Foxspur Court as a Local Road.

7. The Petition. Petitioner proposes to expand an existing two-family detached dwelling by constructing a 918 sq. ft. addition to the rear of the dwelling. This is intended to provide living space for the owner's daughter and her family. The previously approved two-family dwelling constructed for the owner's parents is currently unused because one parent has passed away and the other parent now resides with the Petitioner. As approved in Board of Appeals Case No. 06-036C, the original dwelling comprised 6,480 sq. ft. and a 2,173 sq. ft. second family addition was approved. The proposed 918 sq. ft. addition would result in an approximately 9.4 percent increase in floor area, with the total dwelling area increasing to 9,571 sq. ft. The addition would be lower than the highest point of the existing dwelling. An elevation plan on the Conditional Use Plan indicates the addition would be 24 feet from grade to the topmost point of the roof. Existing evergreen trees on the Property's west side will screen the addition.

#### CONCLUSIONS OF LAW

##### I. General Criteria for Conditional Uses (Section 131.B)

1. **Harmony with the General Plan.** Section 131.B.1 requires me to evaluate whether the proposed conditional use plan will be in harmony with the land uses and policies indicated

in the Howard County General Plan for the district based on in which it is located. In making this evaluation, I am required to consider:

- a. The nature and intensity of the use, the size of the site in relation to the use, and the location of the site with respect to streets giving access to the site; and
- b. If a conditional use is combined with other conditional uses or permitted uses on a site, whether the overall intensity and scale of uses on the site is appropriate given the adequacy of proposed buffers and setbacks.

The proposed expansion is for a low intensity, residential use comprising only a small percentage of the Property. The addition will be constructed on the rear of the existing dwelling and it will be screened by an evergreen buffer.

**2. Adverse Effect.** Unlike Section 131.B.1, which concerns the proposed use's harmony or compatibility with the General Plan, compatibility with the neighborhood is measured under Section 131.B.2's four "adverse effect" criteria: (a) physical conditions; (b) structures and landscaping; (c) parking areas and loading, and; (d) access.

The assessment of a proposed conditional use under these criteria recognizes the potential for adverse impact from virtually every human activity. Zoning recognizes this fact and, when concerned with conditional uses, accepts some level of such impact in light of the beneficial purposes the zoning body has determined to be inherent in the use. Thus, the question in the matter before me is not whether the proposed use would have adverse effects in an RC District. The proper question is whether there are facts and circumstances showing that the particular use proposed at the particular location would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone. *People's Counsel for Baltimore County v. Loyola College in*

Maryland, 406 Md. 54, 956 A.2d 166 (2008); Schultz v. Pritts, 291 Md. 1, 432 A.2d 1319 (1981); Mossburg v. Montgomery County, 107 Md. App. 1, 666 A.2d 1253 (1995).

For the reasons stated herein, the Hearing Examiner concludes the proposed use will not produce atypical adverse impacts on vicinal properties.

**a. Physical Conditions. Whether the impact of adverse effects such as noise, dust, fumes, odors, lighting, vibrations, hazards or other physical conditions will be greater at the subject site than it would generally be elsewhere in the zone or applicable other zones.**

There is no evidence of these adverse effects being greater at the subject site than elsewhere in the zone or applicable other zones.

**b. Structures and Landscaping. The location, nature and height of structures, walls and fences, and the nature and extent of the landscaping on the site are such that the use will not hinder or discourage the development and use of adjacent land and structures more at the subject site than it would generally in the zone or applicable other zones.**

The proposed addition will be lower in height than the existing dwelling and screened by evergreen trees. For these reasons, the Hearing Examiner concludes the proposed addition will not hinder or discourage the development and use of adjacent land and structures more at the subject site than it would generally in the zone or applicable other zones.

**c. Parking and Loading. Parking areas will be of adequate size for the particular use. Parking areas, loading areas, driveways and refuse areas will be properly located and screened from public roads and residential uses to minimize adverse impacts on adjacent properties.**

A two car-attached garage serves the second dwelling unit and there is adequate room on the driveway for additional parking. The parking areas are a substantial distance from the public road and residential uses.

**d. Access. The ingress and egress drives will provide safe access with adequate sight distance, based on actual conditions, and with adequate acceleration and deceleration lanes where appropriate.**

The existing access drive will likely continue to provide safe access with adequate sight distance.

**II. Specific Criteria for Two-Family Dwellings (Section 131.N.52)**

Section 131.N.52 permits two-family dwellings in the RR zoning district, provided the proposed use meets two standards.

**The two-family dwelling must be sited on an individual lot recorded at the time of application, with only one two-family dwelling permitted on one lot.**

The proposed addition will be sited on an individual lot recorded at the time of application, with only one two family dwelling on the lot.

**Any new structures or additions must be designed to be compatible in scale and character with the surrounding residential neighborhood. Compatibility of character may be in architectural style, materials or details. Compatibility shall be demonstrated by architectural elevations or renderings submitted with the petition.**

Although the petition and photographs accompanying the petition states there is no general architectural style, the scale and elevation of the addition will be compatible with the existing dwelling. Based on the photographs, the existing dwelling is compatible in mass and scale with residences in the surrounding neighborhood.

**ORDER**

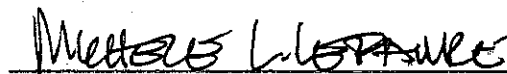
Based upon the foregoing, it is this 8<sup>th</sup> day of August 2013, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the petition Deborah Humphries for an addition to an existing two-family dwelling conditional use in an RC-DEO (Rural Conservation: Density Exchange Option) Zoning District is **APPROVED**. Provided, however, that:

1. The Conditional use shall be conducted in conformance with and shall apply only to the Conditional Use for an expansion of a Two-Family dwelling as described in the petition and as depicted on the Conditional Use Plan submitted on June 11, 2013 and not to any other uses, activities, or structures on the Property.

2. The Petitioner shall obtain all necessary permits.

**HOWARD COUNTY BOARD OF APPEALS  
HEARING EXAMINER**



Michele L. LeFavre

**Date Mailed:** 8/8/13

**Notice:** A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.