

IN THE MATTER OF : BEFORE THE  
**Josh Yoltay** : HOWARD COUNTY  
Petitioner : BOARD OF APPEALS  
: HEARING EXAMINER  
: BA Case No. BA-22-002C

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### **DECISION AND ORDER**

On July 5, 2022, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure (“Rules”), heard the petition of **Josh Yoltay**, Petitioner, for a Conditional Use for a Two-Family Dwelling (Section 131.0.N.54). The Petitioner provided certification that notice of the hearing was advertised and certified that the property was posted as required by the Howard County Code.

The Petitioner was represented by Andrew H. Robinson, Esq. of Offit Kurman, P.A. The following people testified in support of the petition: Petitioner, Josh Yoltay and Brian Collins, Landscape Architect, KCI Technologies. Others appeared only to observe. No one appeared in opposition.

### **FINDINGS OF FACT**

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

**A. Property.** The subject property, currently known as 7079 Guilford Road, Columbia, Maryland 21029 (the "Property"), comprises 1.1473 acres (50,086 SF) and is in the R-20 (Residential: Single) zoning district. The Property is the site of an existing single family dwelling unit at Tax Map 35, Grid 21, Parcel 222.

The Property is subject to a subdivision plat (F-18-118) (“Plat”) which has received “technically complete” status and which, if recorded, will create two lots. Future Lot 1, on which the proposed two-family dwelling will be located, will be 23,493 SF, and future Lot 2 will be 26,592 SF. Lot 2 is the location for a proposed newly constructed home. The current access to the Property is located toward the southeast corner of the Property. Once subdivided, the two new lots will share a driveway which will be located approximately in the center of the southern boundary of the Property. The current dwelling on the Property is not connected and uses well and septic. The area of the Property on which the well and septic are located is within the area of future Lot 2.

The Property is an irregular shaped lot containing a single family detached dwelling and several accessory structures. The site rises from an elevation of 460 feet at the northwest corner to an elevation of 470 feet at the southeast corner.

**B. Conditional Use Area.** The Conditional Use Area, which includes all of Lot 1 and parts of Lot 2 is currently 28,448 square feet (“Site”), and includes the existing two-story residential dwelling improvements, existing (and proposed) driveway/parking improvements, and related well/septic and landscaped areas related thereto. If the Plat is recorded, the existing well and septic systems on Lot 2 will be abandoned when the dwelling on Lot 1 is connected to public water and sewer and that area on Lot 2 will not be a necessary part of the Site.

**C. Vicinal properties.** To the north, east and west are parcels located in the New Town (NT) zoning district used for single family residential. To the west directly adjacent is a parcel used as open space and owned by the Columbia Association. To the south is Guilford Road and across Guilford Road are properties located in the RR-DEO (Rural Residential-Density Exchange Option Overlay) zoning district and used for single family residential.

**D. Roads.** Guilford Road has two lanes within an 80-foot-wide right-of-way. The speed limit is 40 miles per hour. Traffic count data is not available for this portion of Guilford Road.

**E. Water and Sewer Service.** The Property is within the Metropolitan District and the Planned Service Area for Water and Sewer. However, the current dwelling on the Property is not connected and uses well and septic.

**F. General Plan.** The Property is designated Established Community on the Designated Place Types Map of PlanHoward 2030. Guilford Road is a major collector.

**G. Zoning History.** There is no record of prior zoning authority decisions.

**H. Current Use.** The Property is currently used for a single family residential dwelling and several accessory structures.

**I. Proposal.** The Petition was filed on or around January 27, 2022. A Revised Conditional Use Plan (“Plan”) dated March 22, 2022, was submitted on or about March 25, 2022. The Petitioner proposes no structural changes to the exterior of the existing two-story single-family dwelling but wishes to create a two-family dwelling consisting of the existing structure. One unit will be on the first floor and the other unit will be on the second floor. The Site (28,448 square foot total) consists of the entire future Lot 1 (23,490 square feet) as well as additional area for the shared driveway and the existing well and septic area.

**J. Technical Staff Report.** The Howard County Department of Planning and Zoning prepared and submitted a June 21, 2022, Technical Staff Report (“Staff Report”).

**K. Testimony.**

**1. Josh Yoltay.** Mr. Yoltay provided the history of the Property and a detailed explanation of the proposal. He purchased the property in December 2016.

The intent is for him to continue to lease the proposed two-family dwelling which at this time is only used by one family. The existing dwelling is approximately 3900 to 4000 SF and was constructed in 1948 or 1949. The access to the lower unit is via the home's front and side doors, and the access to the upper level is via an exterior stairway around the back of the home.

**2. Brian Collins, Landscape Architect, KCI Technologies.** Mr. Collins is a landscape engineer by profession with over 23 years of experience and testified that he is familiar with the requirements for conditional uses found in the zoning regulations. He and his office prepared the Conditional Use Plan and ensured that the plans are compliant with the zoning regulations. Mr. Collins explained in detail the Conditional Use Plan submitted with the Petition. He also explained the Plat.

He stated that the plan shows that all setbacks are complied with and that there are no encroachments. He stated that the existing parking is adequate and that the height of the structure will not exceed the current height. He testified that the General Criteria and Specific Criteria are met.

### CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, I conclude as follows:

**A. General Criteria for Conditional Uses (Section 131.0.B of the Howard County Zoning Regulations).**

**1. The proposed Conditional Use plan will be in harmony with the land uses and policies in the Howard County General Plan which can be related to the proposed use.**

While Howard County General Plan policies are not directly related to Conditional Use requests for two- family dwellings, properly-sited two-family dwellings are generally compatible with residential areas.

*Thus, the proposed use will be in harmony with the Howard County General Plan and PlanHoward 2030.*

- 2. 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 are such that the overall intensity and scale of the use(s) are appropriate for the site.**

There is no minimum lot size for a two-family dwelling in the RC-20 zoning district. The Petitioner, under its Plan, is merely proposing to use the existing improvements upon the property under an approved two-family dwelling use. The conditional use shall maintain the residential land use classification and continue to provide a low-density residential development.

*Therefore, 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 are such that the overall intensity and scale of the use is appropriate for the site.*

- 3. The impact of adverse effects such as, but not limited to, noise, dust, fumes, odors, intensity of lighting, vibrations, hazards or other physical conditions will not be greater at the proposed site than it would generally be elsewhere in the same zoning district or other similar zoning district.**

The proposed use is a residential two-family dwelling. There is no evidence of adverse effects such as noise, dust, fumes, odors, vibrations, increased lighting, hazards or other physical conditions that would be greater at the subject site than generally elsewhere.

*Therefore, the impact of adverse effects will not be greater at the proposed site than it would generally be elsewhere in the R-20 zoning district.*

- 4. The location, nature and height of structures, walls or fences, and the nature and extent of the existing and/or proposed landscaping on the site are such that the use will not hinder or discourage the development and/or use of adjacent land and structures more at the subject site than it would generally elsewhere in the same zoning district or other similar zoning districts.**

As stated in the Staff Report, and as demonstrated at the hearing by the plans and testimony, the existing dwelling unit will continue to be buffered from adjacent properties by the

existing landscaping and tree buffers along the northern, eastern, and western lot lines.

*Therefore, the use will not hinder or discourage the development and/or use of adjacent land and structures more at the subject site than generally elsewhere.*

- 5. The number of parking spaces will be appropriate to serve the particular use. Parking areas, loading areas, driveways and refuse areas will be appropriately located and buffered or screened from public roads and residential uses to minimize adverse impacts on adjacent properties.**

Single-family detached homes require 2.0 spaces per dwelling unit plus 0.5 spaces per dwelling unit for visitor parking. Upon approval of the Petition and Plan, the Site shall consist of two (2) separate dwelling units, thus, requiring a total of five (5) parking spaces. The existing parking facilities within the Site consists of two separate parking and turnaround areas which can easily accommodate up to five (5) motor vehicle parking spaces. No outdoor refuse areas are proposed hereunder. All parking facility improvements upon the subject property will continue to be screened by the existing landscaping and vegetation.

*The number of parking spaces will be appropriate to serve the particular use. Parking areas, loading areas, driveways and refuse areas are appropriately located and buffered or screened from public roads and residential uses to minimize adverse impacts on adjacent properties.*

- 6. 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. For proposed Conditional Use sites which have driveway access that is shared with other residential properties, the proposed Conditional Use will not adversely impact the convenience or safety of shared use of the driveway.**

The estimated sight distance on Guilford Road exceeds 400 feet in both directions. According to the American Association of State Highway and Transportation Official (AASHTO) guidelines, based on an estimated stopping sight distance of 305 feet for a car going

40 miles per hour, the existing access point on Guilford Road appears to provide safe access with adequate stopping sight distance.

The driveway is not currently shared with other residential properties. However, according to the Plat (F-18-118) and the Plan, the driveway will be relocated and shared by the two (2) lots. The two-family dwelling is unlikely to impact the convenience and safety of the shared driveway since it is a residential use with limited vehicular traffic.

*Thus, I find that this criterion has been met.*

**7. The proposed use will not have a greater potential for adversely impacting environmentally sensitive areas in the vicinity than elsewhere.**

The closest environmentally sensitive area is a stream located over 800 feet to the west, which exceeds the stream buffer distance required by the Subdivision and Land Development Regulations.

*Therefore, the proposed use will not have a greater potential for adversely impacting environmentally sensitive areas in the vicinity than elsewhere.*

**8. The proposed use will not have a greater potential for diminishing the character and significance of historic sites in the vicinity than elsewhere.**

The two closest historic sites in the vicinity are located over a quarter of a mile from the Property and are not visible due to existing trees, residential structures and topography.

*Therefore, the proposed use will not have a greater potential for diminishing the character and significance of historic sites in the vicinity than elsewhere.*

**B. Evaluation of petition according to Section 131.0.N.54 (Specific Criteria for Two Family Dwellings):**

- 1. A Conditional Use may be granted for two-family dwellings or accessory apartments in the following districts, provided that any new structures or additions will 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.**

No new structures are proposed.

*Therefore, I find that the proposed addition is compatible in scale and character with the surrounding residential neighborhoods. This criterion is met.*

2. **Two-family dwellings: in the RC and RR Districts, on properties that are not ALPP purchased or dedicated easement properties, and in the R-ED, R-20 or R-12 Districts, provided that the two-family dwelling is on an individual lot, with only one two-family dwelling permitted on one lot, and the lot is an existing recorded lot at the time of the Conditional Use application. The minimum lot size shall be at least 16,000 square-feet for two-family dwelling structures in the R-ED and R-12 Districts.**

The Property currently consists of a single existing recorded lot, is zoned R-20, and is 1.1473 acres in size. The Property is not encumbered by an ALPP purchased or dedicated easement. The proposed two-family dwelling shall be the only two-family dwelling on the Property, and upon the recordation of the Plat, no additional dwellings (two-family or otherwise) shall be located upon the future Lot 1 and/or within the Site.

*This criterion is met.*

## ORDER

Based upon the foregoing, it is this 5<sup>th</sup> day of August 2022, by the Howard County Board of Appeals Hearing Examiner:

**ORDERED**, that the petition for a Conditional Use for a Two-Family Dwelling (Section 131.0.N.54) shall be and hereby is **GRANTED**;

Provided, however, that:

1. The uses shall be conducted in conformance with, and the conditional use shall apply only to the uses and structures as described in the (a) Petition filed on or around January 27, 2022, and the (b) Revised Conditional Use Plan dated March 22, 2022 and submitted on or about March 25, 2022.

2. If (a) the subdivision plat (F-18-118) is recorded, and (b) the existing dwelling on the existing lot (which is also on Lot 1 on F-18-118) is connected to public water and sewer, then the well and septic area on the existing lot (which is located on Lot 2 on F-18-118) (“Well and Septic Area”) shall no longer be part of the conditional use area and at such time this Decision and Order shall no longer apply to the Well and Septic Area.

3. Petitioner shall comply with all federal, state, and local laws and regulations.

**HOWARD COUNTY BOARD OF APPEALS  
HEARING EXAMINER**

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Katherine L. Taylor

Date Mailed: \_\_\_\_\_

**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.