

IN THE MATTER OF : BEFORE THE
BRIAN SCHWENK : HOWARD COUNTY
 : BOARD OF APPEALS
Petitioner : HEARING EXAMINER
 : BA Case No. 13-003N

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DECISION AND ORDER

On April 8, 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 Brian Schwenk (Petitioner) for confirmation and expansion of a nonconforming use for a full bathroom and residential use of a detached accessory garage, in an RR (Rural Residential) Zoning District, filed pursuant to Section 129.E of the Howard County Zoning Regulations (the "Zoning Regulations").

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

Richard Talkin, Esquire, represented Petitioner. Richard Campbell and Brian Schwenk testified in favor of the petition. No one testified in opposition to the petition.

Petitioner introduced into evidence the exhibits as follows.

1. Property map
2. Aerial photograph showing Property and garage
3. Second aerial photograph showing Property and garage

FINDINGS OF FACT

Based upon the preponderance of evidence presented at the hearing, the Hearing Examiner finds as follows:

1. Property Identification. The subject property is located in the 2nd Election District on the south side of Church Road about 570 feet southeast of Deanwood Avenue. It is identified as Tax Map 25, Grid 8, Parcel 283 and is also known as 3552 Church Road (the Property).

2. Property Description. The 2.76-acre Property is located in the Ellicott City Historic District and is principally improved with a two-story, frame, single-family detached dwelling originally constructed in the 1890s and located in the front portion of the lot. Some 92 feet to the dwelling's southwest is a large detached non-historic, 30'x52', accessory building (the Accessory Building). The Property is accessed from a curved driveway running past the dwelling to the Accessory Building. The Property drops in elevation from the level area to the dwelling's northwest. The rear portion of the Property is wooded.

3. Vicinal Properties. All but one adjoining property is zoned RR. The southwest Parcel 161 is zoned R-ED (Residential: Environmental Design). These properties are each improved with a single-family detached dwelling.

4. Roads. Church Road has about 16 feet of paving within an existing 33-foot right-of-way. According to the Technical Staff Report (TSR), sight distance is not a problem, the access to/from Church Road access being long-standing.

5. Water and Sewer Service. The Property is served by public water and private sewer.

6. General Plan. PlanHOWARD2030 designates the Property as "Established Communities"

on the Designated Place Types and Land Use Maps. The Transportation Map depicts Church Road as a Local Road.

7. Nonconforming Use Confirmation. The petition and submitted floor plan identifies the Accessory Building as a garage, but the Technical Staff Report observes that the 3-car garage portion of the Accessory Building comprises only the southeastern half of the structure, with other residential use areas in the remainder of the Accessory Building, including a full bathroom.

Date of Nonconformance. The Petitioner requests confirmation of a nonconforming use for the residential uses and full bathroom within the Accessory Building. The petition states the Accessory Building use became nonconforming on January 4, 2005.

Documentation provided to establish existence of the use on the date it became nonconforming. The items submitted with the petition included an affidavit wherein Petitioner states he purchased the Property at the beginning of January 2004, and since that time has used the Accessory Building for various residential uses and the full bathroom.

8. Proposed Expansion. The floor plan submitted with the petition depicts the existing floor area as 1,980-sq. ft. in area. Petitioner is requesting approval to enlarge this area of nonconformance by 210 sq. ft. for a 13.5'x15.5' addition identified as a Hobby Room on the southeastern side of the addition and a 10'x13.5 foot deck.

9. Richard Campbell, the builder/remodeler testified about the existing use of the Accessory Building, which includes a bedroom, a workshop, hobbies and exercise space, cabinets, and an eating area, which includes a refrigerator and provision for eating.

10. Mr. Schwenk testified that prior owners had used the Accessory Building for residential use.

CONTROLLING LAW

On January 4, 2005, through Zoning Regulation Amendment (ZRA) 53, the County Council amended the Zoning Regulations to control the use of detached accessory garages more strictly. As amended, Zoning Regulations Section 128.A.12.(3)(c) prohibits full baths and commercial or residential uses in detached garages located in the RR district. Additionally, the Zoning Regulations define a dwelling unit as "[a] single unit providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation." Section 103.A.61.

In the context of the residential use of garages, accessory or other types of structures, DPZ and the Hearing Examiner have read together Zoning Regulations Sections 128.A.12.(3)(c) and 103.A.61 as barring kitchens or other areas for eating or cooking as part of the residential use of these structures. The intent here is to preclude the use or conversion of garages or other structures in residential use from being converted to a dwelling unit, including an accessory apartment, a rental unit or any other type of dwelling unit. To ensure that property owners do not improperly make such conversions, DPZ and the Hearing Examiner prohibit the installation or use of any 220-volt outlet to accommodate the four-prong plug on the end of a range cord, which would provide permanent provision for eating and cooking.¹

¹ In Code Enforcement Case CE 12-014, for example, at DPZ's request, the Hearing Examiner required a property owner with an existing but unapproved accessory apartment conditional use to remove the 220-volt electrical

Section 129.A of the Zoning Regulations defines a nonconforming use as "any lawful existing use, whether of a structure or a tract of land, which does not conform to the use regulations of the zoning district in which it is located, on the effective date of those regulations or because of any subsequent amendment thereto."

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the Hearing Examiner confirms the requested nonconforming use of the Accessory Building for residential use, including a full bathroom, and also approves the requested expansion, pursuant to Zoning Regulations Section 129.D.1 and 129.E.

I. Confirmation of Nonconforming Uses (Section 129.D.1)

Zoning Regulations Section 129.D.1 requires a property owner who seeks confirmation of a nonconforming use to include with the nonconformance petition the information as follows

a. A statement and plans or other illustrations fully describing the magnitude and extent of the nonconforming use.

The petition included a description of the nonconforming uses as a full bathroom and residential use of an existing 1,980-sq. ft. two-story building. The petition included a floor plan depicting includes a full bathroom, bedroom, a workshop, hobbies and exercise spaces.

b. A statement identifying the date the use became nonconforming to the use provisions of the Zoning Regulations.

outlet so that the owner could not reinstall a range for cooking.

The petition states the Accessory Building use became nonconforming on January 4, 2005.

c. Documentation substantiating the existence of the use on the date it became nonconforming and clearly demonstrating the continued and uninterrupted use or operation thereof from the specified date to the time of filing the application. The burden shall be on the property owner to establish the existence of the nonconforming use.

Petitioner's affidavit state he has owned the property since January 9, 2004, and that the Accessory Building contained the full bathroom at that time. The TSR acknowledges aerial photographs indicating the establishment of the Accessory Building between the 1993 and 1998 aerial photographs. It also points to a Historic District Commission decision and order approving the Accessory Building in 1995. The records from this case confirm the then owner's use of the garage portion of what is now the Accessory Building as a guesthouse.

II. Extension, Enlargement, or Alteration of Nonconforming Uses (Section 129.E)

The Hearing Authority may authorize the extension or enlargement of a nonconforming use or the alteration of a structure containing a nonconforming use, with or without conditions, provided the Petitioner demonstrates compliance with five standards.

a. That any changes or additions to the activities taking place in connection with the nonconforming use will not change the use in any substantial way;

The proposed enlargement to the Accessory Building is for a 210-sq. ft. "Hobby Room. These additions will not change the use in any substantial way, in accordance with Section 129.E.1.a.

b. That an enlargement may not exceed 100 percent of the gross floor area of structures or 100 percent of the gross acreage in the case of nonconforming land, above that which legally existed at the time the use first became nonconforming;

The Petitioner is proposing to enlarge the Accessory Building by less than 11 percent, which is less than the 100 percent maximum enlargement permitted by Section 129.E.1.b.

c. That the outdoor land area occupied by a nonconforming use may be enlarged only to provide additional parking area;

This section is inapplicable as no outdoor use is proposed, according to the Technical Staff Report.² The petition complies with Section 129.E.1.c.

d. That an enlargement would not cause a violation of the bulk regulations for the zoning district in which the property is located;

The proposed addition will comply with RR District bulk regulations, in compliance with Section 129.E.1.d.

e. That the extension, enlargement or structural alteration would not cause an adverse effect on vicinal properties.

Existing woods and distance will buffer the enlargement from any adverse effect on vicinal properties, in accordance with Section 129.E.1.e.

² The deck is not an outdoor use in relation to the expansion of a nonconforming use.

ORDER

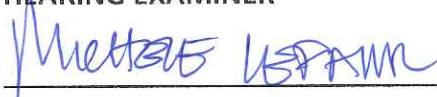
Based upon the foregoing, it is this **25th Day of April 2013**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the petition of Brian Schwenk (Petitioner) for confirmation and expansion of a nonconforming use for a full bathroom and residential use of a detached accessory garage, is **GRANTED;**

Provided, however, that:

1. The enlargement of the Nonconforming Use shall apply only to the 210 sq. ft., 13.5'x15.5' addition identified as a Hobby Room, as depicted on the Nonconforming Use Plan submitted with the petition plan and not to any new uses or structures in the Property.
2. Petitioner shall not install any 220-volt outlet in the Accessory Building.
3. Petitioner shall make no permanent provision for eating or cooking.
3. Petitioner shall not rent the Accessory Building, or use it as an accessory apartment or second dwelling.
4. Petitioner shall obtain all required permits.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**



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.