

IN THE MATTER OF : HOWARD COUNTY
DENNIS COOK, SR. : BOARD OF APPEALS
Petitioner : HEARING EXAMINER
: BA Case No. 09-025C

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DECISION AND ORDER

On October 26, 2009, 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 Dennis Cook, Sr. for a two-family dwelling conditional use in an RC-DEO (Rural Conservation: Density Exchange Option) Zoning District, filed pursuant to Section 131.N.48 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. I viewed the subject property as required by the Hearing Examiner Rules of Procedure.

Dennis Cook, Sr. and Tim Cook testified in favor of the petition. No one testified in opposition to the petition.

FINDINGS OF FACT

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

1. The subject property is located in the 4th Election District on the east side of Old Annapolis Road, about 400 feet northwest of MD 94 and has a street address of 1975 Old

Annapolis Road (the "Property"). It is referenced on Tax Map 7, Grid 21, as Parcel 123, Lot 3.

2. The 3-acre Property, Lot 3 of the Elsie H. Davis subdivision, is generally rectangular, with the front lot line curving gently along Old Annapolis Road. It is about 350 feet wide and 350 feet deep and is improved with a one-story frame and brick single-family dwelling, which is centered on the site and fronts Old Annapolis Road. Attached to the house on its northwest façade is a one-story garage. The dwelling's 36 feet wide by 28 feet deep center section contains the kitchen, dining room, living room, and a half-bath. The 26 feet wide by 45 feet deep southeast section contains three bedrooms and two baths. There is a large deck attached to the rear of the house and a smaller one attached to its front. Access to the house is provided from a driveway situated about 40 feet from the southwest corner of the site. The driveway curves slightly up to the house and ends in a parking/turning area on the garage's west side. The proposed expanded residential use would retain the existing driveway.

3. From the Property's topographical high point in the northwest section, the land gradually slopes to the southeast, where the septic field is situated. Excepting this area, much of the Property's perimeter and front yard lawn is dotted with large deciduous trees and additional landscaping. The well is situated in the lot's northwest corner.

4. Vicinal Properties. All vicinal properties are zoned RC-DEO. Adjoining the northwest lot line are the wooded and unimproved Lots 3, 4, and 5 of the Sartorio Subdivision recorded in 2006. Adjoining the southeast lot line is Lot 2 of the Elsie H. Davis subdivision, which is recently improved with a single-family detached dwelling

fronting on Old Annapolis Road and sited close to the MD 94 intersection. Across Old Annapolis Road to the southwest is the orchard of a large farm subject to an Agricultural Land Preservation Easement.

5. Roads. Old Annapolis Road has two travel lanes, wide, paved shoulders, a variable paving width, and a proposed 60-foot wide right-of-way. The posted speed limit is 30 miles per hour.

6. Water and Sewer. The Property is served by private well and septic systems. Policies Map 2000-2020 of the 2000 General Plan designates the Property as "Rural Conservation." The General Plan Transportation Map depicts Ten Oaks Road as a Local Road.

7. Zoning History. In Board of Appeals Case No. 07-028C (January 10, 2008), the Hearing Authority denied the Petitioner's conditional use petition for a Two-family Dwelling because the proposed additional dwelling as designed did not comport with the definition of "two-family dwelling."

8. The Proposal. The Petitioner, the property's owner's father, is proposing to modify the existing dwelling as a two-family dwelling by remodeling the existing basement through the addition of a kitchen and master bathroom and constructing an 18 by 20-foot sunroom addition on the dwelling's southeast side. The second unit would become the living quarters for the Petitioner and his wife. As proposed, the second unit would be about 2,100-square feet in area. The existing driveway would continue to provide access to the Property.

CONCLUSIONS OF LAW

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

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

A. Harmony and Consistency 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.

Owing to the General Assembly's adoption of a new section §1.02, in Maryland Annotated Code Article 66B, Maryland's primary zoning enabling law, the Hearing Authority may approve a conditional use only upon a determination that the proposal further, and not be contrary to seven items in a comprehensive or general plan: (1) policies; (2) timing of the implementation of the plan; (3) timing of development; (4) timing of rezoning; (5) development patterns; (6) land uses; and (7) densities and intensities.

General Plan Policies. The General Plan designates the area as a "Rural Conservation" land use, which includes residential uses.

The Nature and Intensity of the Use. In this case, the Petitioner is proposing a low intensity, residential use of the existing dwelling. The proposed use will have minimal impact on the site.

The size of the site in relation to the use. In creating the second dwelling unit, the Petitioner proposes to add an 18 by 20-foot sunroom to the existing dwelling, which is sited in the center of the 3-acre Property. The Site is an appropriate size in relation to the use.

The location of the site with respect to streets giving access to the site. The Site will be accessed from an existing driveway located on a rural local road with very little traffic, apparently. The Site has adequate access.

The appropriateness of the conditional use in combination with a permitted use on the site. This section does not apply.

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.

When assessing a proposed conditional use under these criteria, we must first recognize that virtually every human activity has the potential for adverse impact. 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 a B-2 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 below, I conclude the Petitioner has met his burden under Section 131.B.2 of the Zoning Regulations to establish this proposed use will not have adverse effects on vicinal properties beyond those ordinarily associated with a two-family dwelling in an RC-DEO zoning district.

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.

The expanded residential use is principally an indoor use and there is no evidence the use would generate inordinate noise or other physical effects detectable from adjacent properties. I therefore conclude that any inherent operational adverse effects resulting from the proposed conditional use will not be 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 residential dwelling is located some distance from the residential uses on vicinal properties and existing vegetation provides additional buffer.

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.

Four parking spaces are required for a two-family dwelling. The existing driveway, the garage, and the parking pad would provide adequate parking. No loading or refuse areas are proposed. There is no evidence that the existing driveway causes or would cause adverse impacts.

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 driveway appears to provide continued safe access, with adequate sight distance.

II. Specific Criteria for Two-Family Dwellings (Section 131.N.48.a)

Section 131.N.48 permits two-family dwellings in the RC zoning district, provided 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. In this case, the proposed 320-square foot sunroom addition is a typical improvement to a single-family dwelling and so, would not be out of character in this location, in accordance with these general requirements.

Section 131.N.48.a requires the two-family dwelling to be sited on an individual lot recorded at the time of application, with only one two-family dwelling permitted on one lot. In this case, the proposed two-family dwelling will be located on an existing recorded lot, in accordance with Section 131.N.48.a.

Section 131.N.48.b concerns accessory apartments and is thus inapplicable.

Section 131.N.48.c concerns age-restricted multi-plex dwellings and is thus inapplicable.

III. Compliance with the Definition of a Two-Family Dwelling (Section 103.A.47)

Section 103.A.47 defines a "two-family dwelling" as "[a] building which contains two dwelling units, of which neither is an accessory apartment, and which is arranged, designed, or used for occupancy by two families. The dwelling units in a two-family dwelling unit are not separated by an attached garage or by an open or enclosed breezeway."

According to the floor plan submitted with the petition, the net floor area of the house, including the one-story house, basement, and sunroom less the crawl space on the basement level and garage is about, 4,240 square feet. The second dwelling unit would comprise about 2,100 square feet, which exceeds the permitted 1,500 square foot maximum for accessory apartments for dwellings 1,500-square feet or more in size. Based on this square footage, the petition meets the definition of a Two-family Dwelling.

ORDER

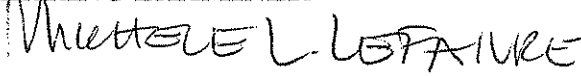
Based upon the foregoing, it is this 2nd day of November 2009, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the petition of Dennis Cook, Sr. for a two-family dwelling conditional use in an RC-DEO (Rural Conservation--Density Exchange Option) Zoning District, is hereby **GRANTED;**

Provided however, that;

1. The Conditional Use shall be conducted in conformance with and shall apply only to the proposed two-family dwelling as described in the petition and shown on the Conditional Use Plan.
2. The Petitioner shall consult with the Department of Inspections, Licenses and Permits to determine if a rental housing license is required for the two-family dwelling.
3. The Petitioner shall obtain all required permits.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**


Michele L. LeFaivre

Date Mailed: 11/4/09

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.