

IN THE MATTER OF : BEFORE THE
ROBERT SHAHVERDIAN : HOWARD COUNTY
Petitioner : BOARD OF APPEALS
 : HEARING EXAMINER
 : BA Case No. 17-016C

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DECISION AND ORDER

On February 28, 2018, 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 Robert Shahverdian (Petitioner) for a Temporary Accessory Family Dwelling Conditional Use, in an RC-DEO (Rural Conservation: Density Exchange Option) zoning district, filed pursuant to Section 131.0.N.18 of the Howard County Zoning Regulations (HCZR).

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.

Petitioner was not represented by counsel. Boris Thomas G. 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, the Hearing Examiner finds as follows:

1. Property Identification. The subject property is located in the 4th Election District on the south side of Sobrina Farms Court, about 82 feet east of Woodbine Road. It is identified as Tax

Map 0002, Grid 0024, Parcel 39, Lot 1 and known as 600 Sobrina Farms Court (the Property).

2. Property Description. The 4.57-acre, wedge-shaped Property is improved with a 3,585sf, two-story single-family detached dwelling and an accessory structure. There is a large paved parking area between the two buildings. The western portion of the Property is predominantly wooded and the remainder is grass and scattered trees. From the 660-foot high elevation in the center of the Property, the elevation drops about 75 feet to the southwest corner and 32 feet to the rear lot line. According to a supplemental statement, the structure is currently an art studio approved through building permit #B00116064.

3. Vicinal Properties. All but one adjoining property is zoned RC-DEO; these RC-DEO properties are each improved with a single-family detached dwelling. The B-2 zoned property to the south is vacant.

4. Roads. Sobrina Farms Court has about 22 paving feet within an existing 50-foot right-of-way. The speed limit is 25 MPH. According to the Technical Staff Report (TSR), sight distance is about 340 feet to the southwest and 450 feet to the northwest.

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

6. General Plan. PlanHOWARD2030 designates the Property as "Rural Resource" on the Designated Place Types and Land Use Maps. The Transportation Map depicts Sobrina Farms Road as a Minor Arterial.

7. Zoning History. There is no Board of Appeals, Zoning Board, or DPZ zoning case for the Property.

8. The Requested Conditional Use. Petitioner is seeking approval to use the 920sf,

approximately 18-foot high, detached accessory structure (art studio) on the Property as a Temporary Accessory Family Dwelling Conditional Use for his 87-year old father and his 79-year old mother. No caretaker will reside with them.

9. Agency Comments. DPZ recommends the petition be granted. The Bureau of Environmental Health advises Petitioner a second 10,000sf sewerage disposal area and a well area are required and that it may not be possible to establish a second sewerage disposal area on the lot. The Department of Inspections, Licenses and Permits advises Petitioner the dwelling must have an automatic fire suppression system (sprinklers).

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the Hearing Examiner concludes as follows:

I. General Criteria for Conditional Uses (Section 131.0.B)

Sections 131.0.B.1-3 requires the Hearing Authority to evaluate whether the proposed Conditional Use will be in harmony with the land uses and policies indicated in the Howard County General Plan for the district in which it is located through the application of three standards.

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.

There are no land uses and policies directly related to the proposed Temporary Accessory Family Dwelling. The TSR references positively Policy 9.4, "Expand housing options to accommodate the County's senior population who prefer to age in place and people with special needs."

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.

Petitioner is seeking to use the 920sf accessory structure for the use. This structure occupies less than one percent of the 4.57-acre Property and Sobrina Farms Court is a local road that ends with a cul-de-sac and is appropriate for the accessory residential use. The overall intensity and scale of use, which is a predominately-indoor use, is therefore appropriate.

3. The proposed use at the proposed location will not have adverse effects on vicinal properties above and beyond those ordinarily associated with such uses. In evaluating the proposed use under this standard, the Hearing Authority shall consider whether or not:

a. 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 be greater at the proposed site than it would generally be elsewhere in the same zoning district or other similar zoning districts.

Unlike HCZR §§ 131.0.B.1 and B.2, which concern the proposed use's harmony or compatibility with the General Plan and the on-site characteristics of the proposed use, compatibility with the neighborhood is measured under § 131.0.B.3's six, off-site "adverse effect" criteria: (a) physical conditions; (b) structures and landscaping; (c) parking areas and loading, (d) access, (e) impact on environmentally sensitive area; and (f) impact on the character and significance of historic sites. These six adverse impact tests gauge the off-site effects of the proposed conditional use.

Inherent in the assessment of a proposed conditional use under these criteria is the recognition that virtually every human activity has the potential for adverse impact. The assessment therefore 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

the Hearing Examiner 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 the particular uses proposed at the particular location would have any adverse effects above and beyond those inherently associated with such a special exception [conditional] use irrespective of its location within the zones. *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).

In this case, there is no evidence of adverse physical effects on vicinal properties beyond those ordinarily associated with a Temporary Accessory Family Dwelling in the RC district.

b. 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.

The approximately 18-foot high accessory structure is less than the 25-foot maximum accessory structure height. It will be well separated by distance from adjacent properties. The use will not be readily noticeable.

c. 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.

The proposed Temporary Accessory Family Dwelling has a wide paved area in front and a long driveway, which is adequate for the two parking spaces required for the use.

d. 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 existing ingress/egress driveway will provide safe access with adequate sight distance.

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

A stream lies about 450 feet to the west and is separated from the proposed use by dense vegetation. Because the proposed use is well separated from the stream, it will not have a greater potential for adversely impacting it.

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

The Knock-Franklin Farm (HO-980) is more than ½ mile to the southeast of the Property. Therefore, the proposed use will not have a greater potential for diminishing the character and significance of historic sites in the vicinity.

II. Evaluation of the Proposed Temporary Accessory Family Dwelling (Section 131.0.N.18)

A Conditional Use may be granted in the RC, RR, R-ED, R-20, or R-12 Districts for a temporary accessory family dwelling provided that:

a. The minimum lot size shall be 2 acres.

The Property is 4.57 acres, in compliance with § 131.0.N.18.a.

b. The temporary accessory family dwelling shall be accessory to a single-family detached dwelling on the same lot.

The proposed 920sf, temporary family dwelling would be accessory to the 3,585sf single-family detached dwelling, in compliance with § 131.0.N.18.b.

c. If the temporary accessory family dwelling is a removable modular building, the maximum gross floor area of the use shall be less than 1,000 square feet. If the temporary accessory family dwelling is

proposed as an alteration to an existing accessory building, the Hearing Authority may increase the maximum gross floor area of the use to 1,000 square feet or greater, provided that the use clearly remains subordinate to the principal dwelling on the lot. A temporary accessory family dwelling is not subject to the standard lot coverage regulations for accessory structures in Section 128.0.A.

The proposed Temporary Accessory Family Dwelling is not a removable modular building, No increase in floor area of the 920sf existing accessory structure is proposed, in compliance with § 131.0.N.18.c.

d. For newly constructed or installed temporary accessory family dwellings, the petition shall include a plan for appropriate screening as necessary to provide an attractive buffering for neighboring residential properties.

This criterion is inapplicable, the accessory art studio being an existing structure.

e. A resident of the temporary accessory family dwelling shall be a relative of at least one resident of the principal dwelling and shall either be:

(1) 62 years of age or older; or

(2) 18 years of age or older and determined by a qualified medical authority to have physical, mental, or developmental impairments that:

(a) Are expected to be of a long, continued and indefinite duration;

(b) Substantially impede the ability to live independently or are of such a nature that the ability to live independently is facilitated by more suitable living conditions.

Petitioner's 87-year old father and 79-year old mother shall be the sole residents, in compliance with § 131.0.N.18.e.

f. If determined necessary by a qualified medical authority, a long-term caregiver shall also be permitted to reside in the temporary accessory family dwelling.

No long-term caregiver will reside in the Temporary Accessory Family Dwelling. This criterion is inapplicable.

g. No more than one temporary accessory family dwelling or accessory apartment shall be permitted per lot.

The proposed Temporary Accessory Family Dwelling is the sole use, in compliance with Section 131.0.N.18.g.

h. The name of the elderly or disabled family member who will reside in the temporary accessory family dwelling shall be documented with the Conditional Use approval. The temporary accessory family dwelling shall only be used as a dwelling unit for the housing of this elderly or disabled family member of the resident of the principal dwelling unit and a long-term caregiver as provided above, and shall not be used as a dwelling unit by any other person(s).

The elderly residents, Petitioner's parents, shall be Matavous Shahverdi and Vagoji Perjani, in compliance with § 131.0.N.18.h.

i. A Conditional Use for a temporary accessory family dwelling shall become void unless an owner of the property provides an affidavit to the Hearing Authority once a year from the date of approval attesting under penalties of perjury that the accessory family dwelling continues to comply with the specific requirements of this section.

The petition states Petitioner shall comply with this criterion, in compliance with Section 131.0.N.18.i.

j. If the temporary accessory family dwelling is a removable modular building, it shall be removed from the property within 60 days after the documented elderly or disabled family member no longer resides in this dwelling. If the temporary accessory family dwelling is established as an alteration to an existing accessory building, 60 days after the documented elderly or disabled family member no longer resides in this building, the alterations authorized by the Conditional Use shall be removed and the accessory building shall no longer be used as a dwelling.

The petition states Petitioner shall comply with this criterion, in compliance with Section 131.0.N.18.j.

ORDER

Based upon the foregoing, it is this **20th Day of March 2018**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the petition of Robert Shahverdian for a Temporary Accessory Family Dwelling Conditional Use, in an RC-DEO (Rural Conservation: Density Exchange Option) zoning district, is **GRANTED**;

Provided, however, that:

1. The Conditional Use shall be conducted in conformance with, and shall apply only to the proposed Temporary Accessory Family Dwelling as described in the petition and as depicted on the Conditional Use Plan and not to any other activities, uses, or structures on the Property.
2. Matavous Shahverdi and Vagoji Perjani shall be the sole residents of the Temporary Accessory Family Dwelling.
4. Petitioner shall submit an affidavit to the Hearing Authority once a year from the date of approval attesting under penalties of perjury that the accessory family dwelling continues to comply with the specific requirements of this section.
5. Sixty days after Petitioner's parents no longer resides in the Temporary Accessory Family Dwelling, the Temporary Accessory Family Dwelling shall no longer be used as a dwelling. All permanent provision for habitation, including, but not limited to, electrical work, construction, and appliances shall be removed. The Department of Planning And Zoning shall verify this removal.
6. Petitioner shall obtain all required permits and comply with all state and local regulations.

**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.