

IN THE MATTER OF : BEFORE THE
Adrien Abrams and Ha Abrams : HOWARD COUNTY
Petitioner : BOARD OF APPEALS
: HEARING EXAMINER
: BA Case No. BA-21-011C

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DECISION AND ORDER

On November 3, 2021, 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 **Adrien Abrams and Ha Abrams**, 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, Jean-Adrien Abrams and Paul Sill, Sill Engineering Group, LLC. 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, known as 5073 Ten Oaks Road (the "Property"), comprises 11.7 acres and is in the RR-DEO (Rural Residential-Density Exchange Option Overlay) zoning district. The Property is the site of an existing single family dwelling unit at Tax Map 28, Parcel 62. The Conditional Use Area is 71,758 square feet (“Site”). The Property is an irregular shaped lot containing a single family detached dwelling, a barn and a six-space parking

lot. There is a 0.6-acre pond and a stream located on the northern portion of the lot and a stream/floodplain area are located along the west property line. The site rises from an elevation of 477 feet at the northern corner to an elevation of 522 feet at the southern corner.

B. Vicinal properties. To the north and west are RR-DEO zoned parcels Preservation Parcels. To the east is Route 32 and across Route 32 are properties located in the RR-DEO (Rural Residential-Density Exchange Option Overlay) zoning district and used for single family residential. To the south are parcels zoned RR-DEO (Rural Residential-Density Exchange Option Overlay) and used for single family residential.

C. Roads. Ten Oaks Road has two lanes within a 50-foot-wide right-of-way. The speed limit is 30 miles per hour. Traffic count data is not available for Ten Oaks Road.

D. Water and Sewer Service. The Property is not in the Metropolitan District or the Planned Service Area for Water and Sewer. The Property is served by private water and septic facilities.

E. General Plan. The Property is designated Low Density on the Designated Place Types Map of PlanHoward 2030. Ten Oaks Road is a major collector.

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

G. Current Use. The Property is currently used for a single family residential dwelling and includes a barn.

H. Proposal. The Petitioner proposes to expand the existing 4,350 square foot two-story single-family dwelling to create a two-family dwelling consisting of the existing structure and a proposed 2,720 square foot two-story addition. The Site (71,758 square foot total) consists of 50,525 square feet for the two-family dwelling, parking area, and related improvements and a

21,233 square foot area along the east property line for proposed landscaping. The Petition was filed on or around March 30, 2021. A Revised Conditional Use Plan (“Plan”) dated July 23, 2021, was submitted on or about August 18, 2021.

I. Technical Staff Report. The Howard County Department of Planning and Zoning prepared and submitted an October 18, 2021, Technical Staff Report (“Staff Report”).

J. Exhibits. The following exhibits were admitted at the hearing by the Petitioner:

- **Exhibit 1** – Aerial photo of Property and Site
- **Exhibits 2-5** – Photos of existing home from various angles
- **Exhibits 6-10** – Photos of Gaither’s Chance neighborhood homes
- **Exhibits 11-12** – Photos of Greenberry neighborhood homes
- **Exhibit 13** – SDAT printouts (5 pages)
- **Exhibit 14** – Elevations of new front of new house and current front of house
- **Exhibit 15** – Elevations of new side and rear elevations
- **Exhibit 16** – Photos (3 pages) of various views toward Route 32 from the Property looking at Greenberry subdivision and the reforestation area.

K. Testimony.

1. Adrien Abrams. Mr. Abrams provided the history of the Property and a detailed explanation of the proposal. The intent is for the two-family dwelling to house Mr. Abrams and his wife, Ha Abrams, and their two children in the new addition. The existing connecting structure will be modified and Mr. Abrams’ parents will reside there. Mr. Abrams explained the photos submitted in support of the

Petition. The photos show current site conditions and show the existing structure from all angles. He stated that the current side of the home would become the front of the new home. The current front of the home would become one side of the home. The current rear of the home would become the side of the new structure.

He testified that the existing home has been added to over the years. The oldest portion of the home (to the right when viewing the current home from the front and from the driveway) is a cabin with a stone fireplace chimney (called the “Downs Log House” which is an historic structure known as HO839). The middle section, added in the mid-late 19th century, has a stone façade. The newer portion, a large two-story frame addition, was added in the mid-20th Century. The historic cabin will remain intact. He testified that the current home includes a home office that was previously used by Mr. Abrams’ mother for her medical practice but that she is retired and the home will not be used for commercial purposes.

Mr. Abrams stated that the new structure would include similar colors and materials as the existing structure and that the overall height would not be changed.

He explained in detail the photos of the existing structure and the drawing of the proposed structure.

The neighborhood adjacent to the Property is called Gaither’s Chance which was developed around 2018. Across Route 32, is Greenberry, another subdivision. Mr. Abrams explained that the homes in Gaither’s Chance are large with sizes ranging from 5,000 to 7,000 square feet.

Mr. Abrams stated that his family has already planted trees along the Route 32 area of the Property and that they intend to install further plantings. No changes to the driveway or parking areas existing on the Property.

2. Paul Sill, Sill Engineering Group, LLC. Mr. Sill is an engineer by profession with over 30 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 the plans for the additions to the structure and ensured that the plans are compliant with the zoning regulations. Mr. Sill explained in detail the Conditional Use Plan submitted with the Petition.

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 also stated that the Plan shows both required plantings as well as additional plantings that will be and have been added. He stated that there are 5 specimen trees that will remain and that there will be no impact to any environmental features. Mr. Sill 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 RR-DEO zoning district. However, the Property, at 11.7 acres, exceeds the 3-acre minimum lot size for a single-family dwelling in the RR-DEO zoning district. The proposed addition is over 150 feet from all property lines. The structure will not exceed 19.55 feet tall, which is less than the 34 foot maximum height allowed. The existing parking lot can accommodate six parking spaces, which exceeds the four that are required. The Functional Road Classification Map of Plan Howard 2030 classifies Ten Oaks Road as a Major Collector, which is an appropriate classification for the number and types of vehicles associated with the proposed use.

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 photos, plans and testimony, the proposed addition complies with all bulk regulations, will be constructed using similar materials to match the existing dwelling in terms of appearance and height, and is located to avoid any visual impact to surrounding homes. According to the Staff Report, “the proposed site plan, architecture design, and elevations were reviewed by Historic Preservation Commission (“HPC”) at its June 3, 2021, meeting. The HPC commented that the overall massing and location of the addition were appropriate and noted that the addition will not be easily seen from off-site. The Route 32 right-of-way abuts the Property on the east side and a 27-acre preservation parcel is located to the north and west of the Property.” I agree with this assessment.

Existing vegetation along Ten Oaks Road will screen the proposed addition from single family detached homes located to the south across Ten Oaks Road. Most of the Property's perimeter, except for a section along the east property line, contains existing dense vegetation for which the Petitioner is seeking credit toward the required buffer. The landscape plan indicates 360 feet of evergreen and deciduous trees along the east property line adjacent to screen to the two-family dwelling from Route 32.

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.**

Four parking spaces are required for a two-family dwelling. Six (6) spaces are provided. The driveway and parking area will be screened appropriately. There is no refuse area proposed.

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 Ten Oaks Road exceeds 300 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 200 feet for a car going 30 miles per hour, the existing access point on Ten Oaks Road appears to provide safe access with adequate stopping sight distance.

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 environmentally sensitive areas in the vicinity consist of a stream/pond on the northern portion of the Property and a floodplain/stream west of the conditional use area. The proposed addition is over 100 feet from floodplain and approximately 250 feet from the closest stream.

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 existing single-family dwelling on the Property is listed on the County's Historic Inventory (HO-839). According to the Staff Report, "the Petitioner presented the proposed site plan, architecture design, and elevations to the HPC at their June 3, 2021, meeting. The HPC commented that the proposed design was both distinct from, yet complimentary to, the historical structure and made several suggestions for minor changes to the windows and trim of the addition to better complement the existing house." The Petitioner made the requested changes. Further, the Staff Report states: "The two closest historic sites in the vicinity are located over a third of a mile from the Property and are not visible, due to existing trees 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.

The Petition included aerial photographs showing similarly sized homes on smaller lots in the immediate vicinity. The Petitioner admitted photos and SDAT data of neighboring homes that show that the proposed structure with the additions is similar in scale and size to existing homes in the Gaither's Choice and Greenberry subdivisions. Mr. Abrams testified that the

proposed additions will be similar in materials and colors to the existing home on the Property and thus will be compatible with the neighboring homes.

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 is within the RR-DEO zoning district, is not an ALPP property, is not encumbered with any other dedicated easements, and is an existing recorded lot.

This criterion is met.

ORDER

Based upon the foregoing, it is this 8th day of December 2021, 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 (a) the Petition filed on or around March 30, 2021; (b) the Revised Conditional Use Plan dated July 23, 2021, which was submitted on or about August 18, 2021; and (c) the elevations submitted at the hearing as Petitioner's Exhibits 14 and 15; and not to any other activities, uses, structures or additions on the Property.

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

HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER

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.