

IN THE MATTER OF : BEFORE THE

The Kennard Warfield Jr. Family, LLLP : HOWARD COUNTY
Petitioner : HEARING EXAMINER
: BA Case No. 23-010C

.....

DECISION AND ORDER

On October 18, 2023, and November 27, 2023, 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 **The Kennard Warfield Jr. Family, LLLP**, Petitioner, for a Conditional Use for Limited Social Assemblies (Section 131.0.N.33) (“Petition”). 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. I viewed the property as required by the Rules.

William E. Erskine, Esq., represented the Petitioner.

At the commencement of the October 18, 2023, hearing, Mr. Erskine orally corrected the Petition and stated that the easement on the Property is not a County dedicated easement, but is an easement owned by the Howard County Conservancy.

The following people testified at the October 18, 2023, hearing on behalf of the Petitioner: Frank Manalansan, a registered land surveyor; and John Warfield, a partner in The Kennard Warfield Jr. Family, LLLP. Several people observed but did not oppose the petition.

At the conclusion of the October 18, 2023, hearing, which was a hybrid hearing with the Hearing Examiner and several participants appearing via WebEx and the Petitioner and Petitioner’s witnesses appearing in person, a person who had appeared in person (but who

did not sign in) complained that they had not been afforded an opportunity to testify. The Hearing Examiner then ordered that the hearing should be reopened and the hearing continued to allow this person to testify. The hearing was continued to November 27, 2023. At that hearing, only one person appeared, Ronald Anderson. The person who had appeared at the October 28, 2023, hearing, and who complained about not being able to testify, did not appear at the November 27, 2023, hearing.

FINDINGS OF FACT

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

A. Conditional Use Plan. In support of the Petition, Petitioner submitted its Revised Conditional Use Plan, on property owned by Witching Hour Farm, LLC, prepared by Fisher, Collins and Carter, Inc., dated June 2023 (“Plan”).

B. Technical Staff Report. The Department of Planning and Zoning (“DPZ”) submitted its Technical Staff Report (“Staff Report”). The Staff Report is part of the record and many, but not all, of the technical findings are adopted as set forth herein.

C. Property. The subject property, known as 15475 Old Frederick Road, Tax Map 8, Grid 1, Parcel 249 (the "Property"), comprises 78.35 acres and is in the RC-DEO (Rural Conservation-Density Exchange Option Overlay) zoning district. See, Staff Report. The Property is encumbered by a Howard County Conservancy easement.

D. Vicinal properties. To the east and west of the Property are RC-DEO zoned Single-Family Detached homes and agricultural uses. To the north across Old Frederick

CASE NO. BA 23-010C
The Kennard Warfield Jr. Family, LLLP

Road are RC-DEO zoned Single-Family Detached homes. To the south across MD Route 70 are RC-DEO parcels used for agricultural purposes. See, Staff Report.

E. Roads. Old Frederick Road has two travel lanes within an 80-foot right-of-way. The speed limit is 30 miles per hour. No traffic count data was available. See, Staff Report.

F. Water and Sewer Service. The Property is not in the Metropolitan District or the Planned or Public Service Area for Water and Sewer. The Property is served by private water and septic facilities. See, Staff Report.

G. General Plan. The Property is designated Rural Resource on the Designated Place Types Map of PlanHoward 2030. Old Frederick Road is a Major Collector. See, Staff Report.

H. Zoning History. There is no record of prior zoning authority decisions. See, Staff Report.

I. Current Use. The Property consists of a farm, an existing single-family detached residence, and several existing barns and agricultural structures. The Property topography rises from an elevation of 540 feet along the west property line to 580 feet along the north property line. See, Staff Report.

J. Proposal. The Petitioner seeks conditional use approval for limited social assemblies to include picnics, reunions, weddings, anniversary/retirement parties, bridal/baby showers, banquets, rehearsal dinners, and other similar events. The area of the Property to be used for the conditional use is comprised of part of the Property and is approximately 0.89 acres (“Site”). The Site will include a 6,600 SF tent over an existing concrete pad and a

parking lot with 69 spaces, including three (3) handicapped parking spaces, south of the tent location. The proposed operating hours are 9:00 am to 10:00 pm Monday through Thursday; 12:00 pm to 12:00 am on Friday/Saturday; and 12:00 pm to 10:00 pm on Sunday. Events at the Property will be limited to 25 per year and have a maximum of 150 attendees.

K. Testimony.

1. Frank Manalansan, Professional Land Surveyor.

Mr. Manalansan is a professional land surveyor with many years of experience in Howard County. He and his firm prepared the Plan. He testified in detail about the Plan. He stated that there is an historic structure on the site. The tents for events will be temporary and will be placed on the existing concrete pad. The tents will be paid for and supplied by the guests renting the venue. The tent area will be 6700 SF and the tents will be under 25 feet high. There will be handicap accessibility at the front of the tent. Restrooms will be portables – mobile restrooms. All food prep will be by caterers in the caterers’ trucks. He stated that there will not be a dumpster, and that the closest residence is 400 feet away. He stated that there will be enhanced landscaping along Frederick Road. There will be a pull-off area along the driveway when cars are ingressing and egressing in both directions. A parking attendant will assist with traffic flow.

2. John Warfield, partner in The Kennard Warfield Jr. Family, LLLP.

Mr. Warfield confirmed that a minimum of 2 parking attendants will be provided by the Petitioner at every event to direct traffic to facilitate the safe and efficient ingress and egress of vehicles from the site, as well as safe and efficient parking on-site. He said that the active and working farm on the Property includes livestock, and row crops. The events will

not interfere with the farming activities. There will be no added use to the septic facilities because temporary portable restrooms will be supplied by guests.

3. Ronald Anderson, 14640 Old Frederick Road.

Mr. Anderson stated he is concerned about the traffic that will be produced by the events, because the intersection of Old Frederick Road and Morgan Station Road is a difficult intersection because there is not a 4-way stop sign.

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 the Howard County General Plan policies do not expressly address conditional use requests for limited social assembly uses in the rural west, such uses can be considered compatible with residential and agricultural land uses. As set forth on page 34 of PlanHoward 2030, enhancing the “ability to farm efficiently is critical to the growth of Howard County and its ability to maintain a diverse economy. *However, new development plans and conditional uses should include better buffers to reduce conflicts with neighboring residents.*” PlanHoward 2030, p. 34 (emphasis added).

The General Plan recognizes the importance of buffers between certain uses and neighboring residents. While farming uses and the sights and sounds from such uses are expected and normal in the RC district, the sights and sounds from “wedding receptions on farm parcels

CASE NO. BA 23-010C
The Kennard Warfield Jr. Family, LLLP

have been a source of tension between some neighboring property owners. “PlanHoward 2030, p. 33-34.

The scale and siting of the proposed use, as shown on the Plan, are compatible with the neighboring residential uses, as there are existing and proposed vegetation buffers to the emanation of sight and sound from the Site to neighboring residences across Old Frederick Road. The south boundary adjoins Interstate 70. The residence to the east is buffered by existing vegetation and by existing farm structures. To the west, the Site is over 1000 feet to the Property boundary, and beyond the boundary is farmland.

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.**

The use is an ancillary business which supports the economic viability of the farm. According to the Petition, limited social assembly events shall have the following limitations: (1) Maximum capacity is not to exceed 150 attendees; (2) No more than 25 of these events shall be held within a one-year period; (3) Operation hours shall be restricted to between 9:00 a.m. and 10:00 p.m., Monday thru Thursday; between 12:00 p.m. and 12:00 a.m., Friday and Saturday; and between 12:00 p.m. and 10:00 p.m., Sunday.

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.**

There was no evidence that the proposed use will generate atypical noise and vibrations such that the adverse impact at this proposed Site will be greater than generally elsewhere in the same or similar zoning district.

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

With the exception of restroom facilities if required by the Health Department, no additional structures are proposed. The existing landscaping will not hinder the use of adjacent land or structures.

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.**

A total of sixty-nine (69) off-street parking spaces, including three (3) handicapped parking spaces, will be provided. Trash and refuse will be collected in residential-sized trash

CASE NO. BA 23-010C
The Kennard Warfield Jr. Family, LLLP

receptacles and will be removed from the site by a private contractor at the conclusion of each assembly event.

The number of parking spaces is 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.**

A sight distance analysis was conducted, and the report attached to the Petition. The available sight distance at the existing access location exceeds the minimum sight distance required for safe ingress and egress under the Howard County Design Manual, Volume 111—Roads and Bridges. The proposed driveway access is not shared with other residential properties.

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 Subject Property contains a farm pond and 2 streams located more than 1,000 feet away from the proposed Site and they will not be impacted in any way by the proposed use. The closest off-site sensitive environmental feature (a stream) is similarly located approximately 1,000 feet from the Site and will not be impacted by the proposed use.

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.

Knock-Franklin Farm, an historic site, is located approximately 0.4 miles from the proposed Site on the east side of Morgan Station Road. This historic site is well buffered from the proposed Site by distance.

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.33 (Specific Criteria for a Conditional Use for a Limited Social Assembly):

A Conditional Use may be granted for limited social assemblies in the RC District, provided that:

a. The lot is the site of a historic structure as defined in these Regulations.

The Site is located on parcel containing a historic structure as defined by the HCZR. The site contains the Linden Lawn-Maplehurst-Blarney Farm. This historic structure was added to the Howard County Historic Sites Inventory by the passage of CR 187-2022. Due to distance and topography and the proposed location for outdoor events on the subject Site, the proposed use will not diminish or have any negative impact upon, or diminish the character or significance of, this Property.

This criterion is met.

b. The minimum lot size is 5 acres or greater.

The Property is 78.35 acres.

This criterion is met.

c. If the driveway providing access to the proposed site is shared with other properties or has direct access to and frontage on a local road, the petitioner shall demonstrate that the use will not result in damage to or deterioration of the shared driveway or in increased hazards to other users of the driveway or local road. The Hearing Authority shall prescribe appropriate conditions and safeguards to ensure the Conditional Use operator's responsibility for repair of any damage or deterioration of the shared driveway caused by the Conditional Use, including requirements for surfacing of access driveways.

The driveway access is not shared with residential properties.

This criterion is met.

d. The petitioner shall provide a traffic management plan and a sight distance analysis.

Mr. Warfield testified that the Petitioner will provide parking attendants to direct traffic to facilitate the safe and efficient ingress and egress of vehicles from the site, as well as safe and efficient parking on-site. A sight distance analysis was provided with the Petition.

This criterion is met.

e. The limited social assemblies are the following private functions: Picnics, weddings, anniversary/retirement parties, bridal or baby showers, not for profit organization fund raisers, banquets, rehearsal dinners, philanthropic events, or other similar events.

The proposed uses are limited to the above.

This criterion is met.

f. With the exception of restroom facilities if required by the Health Department, no permanent structures, including catering or restaurant facilities shall be constructed on site.

No permanent structures are proposed (with the exception of restroom facilities if required by the Health Department).

This criterion is met.

g. The outdoor assembly area is located and designed to shield residential property from noise or nuisance and screened from adjacent residential properties.

There are existing and proposed vegetation buffers to the emanation of sight and sound from the Site to neighboring residences across Old Frederick Road. The south boundary adjoins Interstate 70. The residence to the east is buffered by existing vegetation and by existing farm structures. To the west, the Site is over 1000 feet to the Property boundary, and beyond the boundary is farmland.

This criterion is met.

h. Limited social assembly events shall have the following limitations:
(1) Maximum capacity is not to exceed 150 attendees;
(2) No more than 25 of these events shall be held within a one year period.
(3) Operation hours shall be restricted to between 9:00 a.m. and 10:00 p.m., Monday thru Thursday; between 12:00 p.m. and 12:00 a.m., Friday and Saturday; and between 12:00 p.m. and 10:00 p.m., Sunday.

The Petition states that these limits will be adhered to.

This criterion is met.

i. All event activities shall occur outdoors except that interior spaces in existing structures over 50 years old, limited to barns or other similar farm structures which are existing at the time of the Conditional Use application, may be utilized. Event activities within enclosed tents are permitted, however.

All event activities will occur outdoors. Existing structures will not be utilized in association with the proposed limited social assembly events. Event activities will also take place within enclosed tents to be temporarily located on the existing tennis court.

This criterion is met.

j. Special events with catered food or food prepared on-site are subject to review by the food protection program of the Howard County Department of Health and may require a special events permit. The Conditional Use may not commence until the applicant has obtained approval of all necessary permits for its operation.

The Petition states that special events with catered food or food prepared on-site will be subject to review by the food protection program of the Howard County Department of Health and may require a special events permit. Limited outdoor social assemblies will not commence until the petitioner has obtained approval of all necessary permits for its operation.

This criterion is met.

k. On an ALPP purchased or dedicated easement property, the following additional criteria are required:

(1) The use shall not interfere with farming operations or limit future farming production.

(2) Any new building or building addition associated with the use, including any outdoor storage and parking area shall count towards the cumulative use cap of 2% of the easement.

The parcel containing the Site is not subject to an ALPP dedicated easement.

This criterion is not applicable.

ORDER

Based upon the foregoing, it is this 18th day of December 2023, by the Howard County Board of Appeals Hearing Examiner:

ORDERED, that the petition for a Conditional Use for Limited Social Assemblies (Section 131.0.N.33) on the property known as 15475 Old Frederick Road, Map 8, Grid 1, Parcel 249, located in the RC-DEO (Rural Conservation-Density Exchange Option Overlay) zoning

CASE NO. BA 23-010C
The Kennard Warfield Jr. Family, LLLP

district 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, and on the Site described in, the Petition and shown on the Plan, and not to any other activities, uses, structures or additions on the Property; and

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.