

IN THE MATTER OF	:	BEFORE THE
Curtis Farm, LLC	:	HOWARD COUNTY
Petitioner	:	BOARD OF APPEALS
	:	HEARING EXAMINER
	:	BA Case No. 17-032C

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DECISION AND ORDER

On January 23, 2020, 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 Curtis Farm, LLC (Petitioner) for a Conditional Use for Historic Building Uses (Professional Office) in the R-20 (Residential: Single) Zoning District, filed pursuant to Section 131.0.N.27 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. Thomas G. Coale, Esquire represented the Petitioner. Stephen Ferrandi and Frank Manalansan testified in support of the Petition. James Stewart and Lynden Renwick testified in opposition to the Petition.

Petitioner introduced into evidence the following exhibit:

1. Revised Conditional Use Plan (January 22,2020).

Opposition introduced into evidence the following exhibit:

2. National Register of Historic Places 5 page excerpt.

FINDINGS OF FACT

Based upon the evidence of record, the Hearing Examiner finds as follows:

1. Property Identification. The 7.46-acre subject property is located on the north side of Waterloo Road, approximately 698 feet west of the intersection with Snowden River Parkway. It is located in the 1st Election District, identified as Tax Map 0037, Grid 0001, Parcel 751, and known as 5771 Waterloo Road (the Property).

2. Property Description. The irregularly shaped Property is improved with a 2,855 square foot historic house currently used as an office, a detached single car garage, a dairy/smokehouse, two (2) sheds, three (3) barns, and a cemetery. (Howard County Historic Site Inventory HO-37-7) The primary structure is listed in the Historical Sites Inventory as HO-439, Curtis-Shipley House, and has been designated a historic structure by resolution of the Howard County Council. There is a Maryland Historic Trust easement on the subject Property and the Trust will need to grant approval for any modifications to the Property or structures. The highest elevation on the subject property is approximately 432 feet at the northern corner descending to an elevation of approximately 398 feet at the southern corner.

3. Vicinal Properties. To the north of the subject property are Open Space and single-family attached dwellings in the R-A-15 Zoning District. To the south are single-family attached and single-family detached dwellings in the R-A-15 and R-20 Zoning Districts. To the east of the Property are single-family attached dwellings in the R-A-15 Zoning District. To the west of the subject Property is Open Space and across Waterloo Road are single-family detached dwellings in the R-A-15 and R-20 Zoning Districts.

4. Roads. Waterloo Road is a Minor Arterial road and has four (4) lanes within a 100-foot right of way. Access on Waterloo Road consists of one ingress/egress point and one right turn only exit. The speed limit is 45 miles per hour. As of 2018, Waterloo Road had a daily traffic count of 12,590 AADT.

5. Water and Sewer Service. The Property is served by public water and private sewer and is located within the Planned Service Area for water and sewer.

6. General Plan. PlanHOWARD 2030 depicts the Property as Established Community on the Designated Place Types Map. Waterloo Road is depicted as a Minor Arterial on the PlanHOWARD 2030 Functional Road Classification Map.

7. The Requested Conditional Use. Petitioner is requesting approval of a 2,855 square foot professional office which is currently operating within the Curtis-Shipley House historic structure. The Property is currently used as office space for a real estate brokerage firm (Maryland Land Advisors) having seven (7) employees which they are anticipating expanding to 14 employees within the next five (5) years. The hours of operation will be limited to 7 a.m. to 9 p.m. Monday-Friday and 9 a.m. to 6 p.m. Saturday-Sunday. Maryland Land Advisors does not customarily have clients on site and does not anticipate having client visitors in conjunction with the proposed Conditional Use. Vehicles and equipment on site will be limited to passenger vehicles of staff or guests. Seventeen parking spaces are required (12 employee spaces and 5 guest spaces) and 20 parking spaces are proposed (19 standard spaces and one (1) handicapped space). Outdoor lighting will be limited to the lighting currently existing on the Property.

8. TSR Recommendation. The TSR recommends approval of the instant request for professional offices in a Historic Building Conditional Use with the caveat that the parking area be relocated outside the 50-foot stream buffer. Petitioners Exhibit 1, the Revised Conditional Use Site Plan, has relocated the parking area outside the 50-foot stream buffer.

9. Agency Comments.

Department of Planning and Zoning, Development Engineering Division: On December 16, 2019 this Division noted no objection, finding: (1) no adverse engineering impact on adjacent property, and (2) all improvements must comply with current Howard County design criteria including APFO (Adequate Public Facilities Ordinance) requirements and stormwater management.

Maryland Department of Transportation/State Highway Administration: On December 16, 2019, MDOT/SHA commented, "All work within MDOT/SHA R/W must be reviewed and approved by

MDOT/SHA. All work within MDOT/SHA R/W will require an access permit for construction. Current Plan shows the southern access being partially reconstructed. This is unacceptable. The access, back to the R/W line, must be reconstructed to match either the depressed curb standard or the commercial entrance standard".

10. Historic Preservation Commission (HPC) Review: The HPC provided advisory comments as required for a future site development plan (HPC-19-07, April 4, 2019). Staff commented that the Curtis-Shipley property is significant architecturally and historically, depicting a great example of a small homestead in the eastern part of Howard County, which has transitioned from rural agriculture to suburban development patterns. Maryland Historic Trust has an easement on the property and will need to grant approval for any modifications to the property or structures. The Secretary of the Interior's Standards for Treatment of Historic Properties recommends "Retaining the historic relationship between buildings and the landscape" and recommends against "Removing or destroying features from the site, such as fencing, paths or walkways, masonry balustrades, or plant material". Staff recommended (1) further evaluation of the proposed parking location, (2) incorporation of a diverse native buffer on the house side to screen any additional paving and parking, and (3) revise the Plans to clearly depict the retaining wall entrance sign.

CONCLUSIONS OF LAW

1. **Neighborhood Preservation Density Exchange Option (Section 128.0.K.2.d.(3))**

A prohibition on future use or development of the parcel for uses incompatible with the Neighborhood Preservation Parcel Easement. Only principal or accessory residential uses, Historic Building Uses Conditional Uses, or principal or accessory Swimming Pool, Community uses are permitted in accordance with the Zoning Regulation.

The Property is subject to a Neighborhood Preservation Easement. The Deed indicates that Historic Building Uses Conditional Uses are permitted. The request is for a Historic Building Uses Conditional Use for a professional office.

2. **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; harmony with the General Plan, intensity of use, and atypical adverse impacts.

A. Harmony and Intensity of Use

Section 131.0.B.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 Historic Building Uses, the proposed use is in harmony with the following PlanHoward 2030 policies and implementing actions that encourage public access/awareness of historic buildings and incentivize restoration and adaptive reuse:

Policy 4.10 "Expand on existing programs to enhance historic preservation and create an historic preservation plan."

Implementing Action b. Programs and Laws "Strengthen historic preservation programs and laws both to prevent demolition and incentive restoration and adaptive reuse."

Section 131.0.B.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 office is within the historic structure. The area of the existing building and parking is approximately 5,000 square feet, which is only 1.5% of the 7.46-acre property. The Property has

sufficient area to accommodate the proposed use and parking. All bulk regulations and Conditional Use criteria are met.

The functional Road Classification Map of PlanHoward 2030 depicts Waterloo Road as a Minor Arterial, which is an appropriate classification for the types and the number of vehicles associated with the proposed use.

The nature and intensity of the use, the size of the Property in relation to the use, and the location of the site with respect to streets that provide access are such that the overall intensity and scale of the use are appropriate.

B. Adverse Impacts

Unlike HCZR Section 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 neighborhood is measured under Section 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 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 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 R-20 Zoning District but whether there are facts and circumstances showing the particular use 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*, 107 Md. App. 1, 666 A.2d 1253 (1995). For the reasons stated below, and as conditioned, Petitioners have met their burden of presenting sufficient evidence under HCZR Section 131.0.B.3 to establish the proposed use will not have adverse effects on vicinal properties beyond those ordinarily associated with a Historic Building Use Conditional Use in the R-20 Zoning District.

Section 131.0.B.3.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.

All activities related to the use will occur within the existing building. 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.

Section 131.0.B.3.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 office is within the historic structure and no additions are proposed. Additionally, no fences or walls are proposed. An entrance sign is proposed approximately 18 feet from Waterloo Road. According to the definition of a Structure in Section 103.0, signs are exempt from bulk regulations. Landscaping is proposed around the parking areas to screen them from adjacent properties and Waterloo Road.

The location, nature and height of the structures and landscaping will not hinder or discourage the development or use of adjacent land and structures more at the Property than generally elsewhere.

Section 131.0.B.3.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.

Pursuant to Section 133.0 of the Howard County Zoning Regulations, the off-street parking requirement for an office is 3.3 spaces per 1,000 square feet. The Petitioner proposes a 2,855 square foot office, which requires 10 parking spaces. The Conditional Use Plan shows 20 spaces, including one handicap space.

The parking lots will be screened from adjacent properties and Waterloo Road by existing and proposed landscaping/vegetation. Additionally, the larger parking lot will be partially screened from Waterloo Road by the office building.

No refuse or loading areas are proposed.

Section 131.0.B.3.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.

Precise sight distance measurements can only be determined by a detailed sight distance analysis, which is typically conducted during Site Development Plan review. The estimated site distance is over 500 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 360 feet for a car going 45 miles per hour, the proposed access points on Waterloo Road appear to provide safe access with adequate stopping sight distance.

Waterloo Road is a Minor Arterial. To verify sight distance for Minor Arterials, AASHTO recommends an intersection sight distance analysis, which will be evaluated during Site Development Plan review.

Section 131.0.B.3.e. The proposed use will not have a greater potential for adversely impacting environmentally sensitive areas in the vicinity than elsewhere.

The closest environmentally sensitive area is the terminus of an intermittent stream located on the Property. A portion of the larger parking lot was located within the 50-foot stream buffer but has been removed. Petitioner Exhibit 1. With the removal of the parking area from the buffer, the proposed use will not have a greater potential for adversely impacting environmentally sensitive areas in the vicinity than elsewhere.

Section 131.0.B.3.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 closest off-site historic site, the "Peter Harmon House" (HO-438), is located approximately 400 feet west of the Property. Three houses and Waterloo Road separate the two properties and will obstruct view of the office from this historic site. Therefore, the proposed use will not have a greater potential for diminishing the character and significance of historic sites in the vicinity than elsewhere.

According to 131.0.N.27, exterior alterations to historic structures associated with Historic Building Uses shall be reviewed by the Historic Preservation Commission (HPC). The HPC evaluation is discussed *supra*.

3. Specific Criteria Historic Building Use (Section 131.0.N.27)

A Conditional Use may be granted for the conversion of a historic building in the RC, RR, R-ED, R-20, R-12, R-SC, R-SA-8, R-A-15, R-APT and R-MH Districts to business and professional offices, specialty stores, standard restaurants, arts and crafts classes, antiques shops, art galleries, craft shops, bakeries (provided all goods baked on the premises shall be sold at retail from the premises), furniture upholstering, and similar services, personal service establishments, and seasonal sale of Christmas trees or other decorative plant materials, provided that:

Section 131.0.N.27.a. The building is a historic structure as defined in these regulations.

The proposed professional office is located within a structure listed in the County

Historic Sites inventory as HO-439, Curtis-Shipley House, and has been designated a historic structure by resolution of the Howard County Council. The Petition complies with Section 131.0.N.27.a.

Section 131.0.N.27.b. The maximum number of dwelling units permitted shall be one dwelling unit for every 800 square feet of building area.

No dwelling units are proposed. This Section is not applicable.

Section 131.0.N.27.c. Extension or enlargement of the principal historical structure and all accessory structures may not exceed 50% of the gross floor area of each individual building above that which existed on August 1, 1989, when ZB 88ZR was adopted adding the historic building use category to these regulations.

No extension or enlargement of the historic structure is proposed. This Section is not applicable.

Section 131.0.N.27.d. Exterior alterations to the historic structure shall be architecturally compatible with the historic structure as determined by the Historic District Commission, prior to the approval of the Conditional Use.

No exterior alterations to the historic structure are proposed, however 20 additional parking spaces are proposed along the driveway. Seventeen parking spaces were originally proposed along the driveway behind the historic structure, however Resource Conservation Division staff suggested locating a double loaded parking lot behind the historic structure and relocating spaces to the immediate right of the southern driveway entrance. Staff commented that "the addition of 17 parking spaces in the location that is proposed along the looped driveway behind the house will both physically and visibly divide the historic parcel, separating the main house and two outbuildings from the open space that was traditionally associated with the farmette."

In response to this comment, the Petitioner incorporated Staff's recommendation into a Revised Conditional Use Plan showing 20 parking spaces and submitted it at the March 7, 2019 Historic Preservation Commission (HPC) meeting. The HPC reviewed the Revised Conditional Use Plan and concurred with Staff's recommendation that the revised parking layout is more compatible with the historic structure. *Supra*

Section 131.0.N.27.e. An historic building converted into a community meeting hall or offices shall be subject to the following standards:

- (1) No material or equipment shall be stored outside of structures.
- (2) Parking areas shall be set back a minimum of 30 feet from all property lines or public street rights-of way and screened from the roadway and adjacent properties.
- (3) The site shall have frontage on and direct access onto a collector or arterial road designated in the General Plan.

No outdoor storage is proposed. The parking areas are located more than 30 feet from all property lines and are screened from adjacent properties and Waterloo Road by existing/proposed landscaping. The property has direct access to Waterloo Road, a Minor Arterial road.

Section 131.0.N.27.f. On an ALPP purchased or dedicated property, the following additional criteria are required:

- (1) The use shall not interfere with the farming operations or limit future farming production.
- (2) Any new building or building addition associated with the use, including any outdoor storage and parking.

The Property is not subject to an ALPP easement. This Section is not applicable.

ORDER

Based upon the foregoing, it is this 19th day of February 2020, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the Petition of Curtis Farm, LLC for an Historic Building Use Conditional Use in a R-20 (Residential: Single) Zoning District, is **GRANTED**;

Provided, however, that:

1. The Petitioner shall obtain all required approvals and permits.
2. All development shall be in accordance with the Revised Conditional Use Plan dated January 22, 2020
3. The hours of operation shall be limited to 7 a.m. to 9 p.m. Monday-Friday and 9 a.m. to 6 p.m. Saturday-Sunday.

HOWARD COUNTY BOARD OF APPEALS

HEARING EXAMINER



Joyce B. Nichols

Date Mailed: March 3, 2020

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.