

Case No.: S.E. 4611

Applicant: Steven B. Behr

COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND,
SITTING AS THE DISTRICT COUNCIL

ORDER OF DENIAL

IT IS HEREBY ORDERED, after review of the administrative record, that Application No. S.E. 4611, for a special exception for an Adaptive Reuse of a Historic Site, to convert a one-family residential dwelling historic site to a two-family dwelling, on property described as approximately 0.23 acres of land in the R-18 Zone, located on the north side of College Avenue, approximately 150 feet west of Rhode Island Avenue (US Route 1), also identified as 4618 College Avenue, College Park, is:

DENIED, for the following reasons, which are hereby adopted as the findings of fact and conclusions of law of the District Council:

A. The District Council adopts the facts stated, as to the application and the subject property, in the Technical Staff Report. The property is a relatively small single-family lot, about 0.23 acres, with an existing single-family dwelling and a shared driveway with the adjacent residential lot. It fronts on College Avenue about 150 feet west of Rhode Island Avenue, very near the edge of the campus of the University of Maryland, within the boundaries of the City of College Park and the Old Town Historic District.

Photographic and other exhibits and testimony in the record indicate that the property has been designated as a historic site since 1992 and that the rear yard then was covered with grass. Some time after 1992 the owner caused the rear yard to be cleared of grass and vegetation and covered with gravel, to allow about six motor vehicle parking spaces. The rear yard alteration

appears to be an unauthorized modification of the environmental setting of the historic site, done without Historic Preservation Commission approval. Evidence also indicates that at times the single-family dwelling on the site has been allowed (or purposely modified) to be used as two or three residential units, contrary to what is allowed by the use and occupancy permit. The structural and use modifications appear also to be unauthorized modifications of the historic structure, not reviewed or approved by the HPC, and also not permitted by City or County inspectors.

The present special exception application, to reuse the historic site as a two-family dwelling with attendant parking, is subject to legal restrictions in the Zoning and Historic Preservation ordinances, notwithstanding modifications the owner-applicant may propose in the special exception site plan.

B. The District Council agrees with the City of College Park that the applicant did not meet the burden (of production or of proof) imposed in § 27-330.02 of the Zoning Ordinance, as to adaptive reuse of this historic site. Subsection (a) expressly provides that for this special exception, a new, “adaptive” use of a historic site, a use “not allowed within the existing zone,” the applicant must meet the purpose for this type of exception, which is “to encourage the preservation of [historic or architecturally significant] buildings” that are “important to Prince George’s County heritage” or otherwise “distinctive,” in “architectural and environmental characteristics.” In other words, the applicant must demonstrate that approval of the adaptive reuse will tend to preserve the historic building or site or both, for the use, enjoyment, and education of future generations.

The applicant completely failed to meet the site-preservation requirement in § 27-330.02 (a), and the hearing examiner did not correctly apply it. In the future, the examiner must see to it

that every applicant proves by evidence that a proposed adaptive reuse of historic property will tend to preserve the resource, the building and setting, from disuse, deterioration, or inappropriate development.

This applicant's case for adaptive reuse is apparently founded on allegations that the subject property cannot produce an adequate economic return unless the Council permits a two-family dwelling. The evidence included proof of the amount paid for the property, together with proffers that the structure in some prior years had been used for two- and three-family dwelling purposes, and that these uses were feasible physically and would not be detrimental to the immediately adjacent properties or the special exception neighborhood. But the evidence showed that two- and three-family uses are detrimental to adjacent and neighborhood properties, and also that houses next door and across the street are in single-family use, which continues to be viable for the property.

C. The District Council agrees with the hearing examiner that the applicant failed to meet his burden to prove that the proposed special exception use, the two-family dwelling, would "not be detrimental to the use or development of adjacent properties or the general neighborhood." Zon. Ord., § 27-317 (a) (5). The City of College Park offered considerable testimony, from a City inspector and area residents, that the property lies very close to the University of Maryland; that the university does not allow underage alcoholic beverage consumption on campus; that fraternity houses therefore use nearby off-campus houses for college drinking parties that are noisy and disruptive to residents; and that converting this house to two-family use, with two rental units, would result in increased disturbance to nearby residents. The applicant did not refute this evidence.

D. The District Council agrees with the City of College Park that the applicant did not show compliance with Historic Preservation Ordinance requirements, as to alteration of the structure and alteration of the environmental setting after the 1992 historic site designation. The property since 1992 has been designated a historic site; it is undisputed that the 1992 environmental setting included a grassy rear yard, which has since been converted to a graveled parking lot without Historic Preservation Commission approval; and it is also undisputed that the single-family use for the property, as recognized in 1992, has been modified more than once without HPC or County review or approval.

At a minimum, approval of a special exception for adaptive reuse of a historic structure under § 27-330.02 must be based on proof that the owner and applicant have maintained the historic structure without alteration, or without unauthorized alteration, prior to the special exception application. As indicated above, the purpose of the special exception must be, at least in part, to ensure preservation of the historic structure and site. That purpose is hardly promoted by unauthorized alterations prohibited by the Historic Preservation Ordinance in Subtitle 29 of the County Code.

E. The District Council agrees with the City of College Park that the applicant failed to demonstrate by evidence that the special exception use, if approved, will not have an adverse effect on the environmental setting or the surrounding neighborhood. As to the environmental setting for the historic site, the applicant failed to produce evidence to show what the 1992 historic site setting was, in character or physical content, or how the setting would be changed by the two-family use. As to adverse effects on the surrounding neighborhood, the applicant could not refute the testimony of City and neighborhood resident witnesses that the two-family use would lead to partying and alcohol consumption by student renters, leading then to noise, late-

night driving and automobile noise, and similar disruptions.

F. The District Council agrees with the City of College Park that the applicant did not meet a number of requirements in § 27-317 of the Zoning Ordinance, which sets out the general standards for all special exceptions. First, the two-family use, on 0.23 acres of ground in the R-18 Zone, does not and cannot meet the density requirements for residential uses in that zone. Residential density in R-18 may not exceed 8.00 dwellings per net lot acres. § 27-442 (h) (table vii). The density proposed by the applicant, two units on 0.23 acres, substantially exceeds 8.00 units per acre. Section 27-330.02 (c) does *not* authorize the Zoning Hearing Examiner to use discretion to override density restrictions specifically set out for the subject property's zone. Moreover, this applicant did not show that his use was consistent with Zoning Ordinance requirements or would not substantially impair the Master Plan, or the Historic Sites and Districts Plan for Prince George's County.

Adopted this 14th day of March, 2011, by the following vote.

In Favor: Council Members Campos, Franklin, Harrison, Johnson, Lehman, Olson, Patterson,
Toles and Turner

Opposed:

Abstained:

Absent:

Vote: 9-0

COUNTY COUNCIL OF PRINCE GEORGE'S
COUNTY, MARYLAND, SITTING AS THE
DISTRICT COUNCIL FOR THAT PART OF
THE MARYLAND-WASHINGTON REGIONAL
DISTRICT IN PRINCE GEORGE'S COUNTY,
MARYLAND

BY: _____
Ingrid M. Turner, Chair

ATTEST:

Redis C. Floyd
Clerk of the Council