

**DISTRICT COUNCIL FOR PRINCE GEORGE'S COUNTY, MARYLAND
OFFICE OF ZONING HEARING EXAMINER**

**SPECIAL EXCEPTION
4611**

DECISION

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| Application: | Adaptive Reuse of a Historic Site |
| Applicant: | Steven B. Behr/Steven Behr College Avenue Property |
| Opposition: | City of College Park, et. al. |
| Hearing Dates: | February 3, March 9 and March 31, 2010 |
| Hearing Examiner: | Maurene Epps Webb |
| Disposition: | Denied |

NATURE OF REQUEST

(1) Special Exception 4611 is a request for permission to use approximately 0.23 acre (2,694 square feet) of land in the R-18 (Multifamily Medium Density Residential) Zone, located on the north side of College Avenue, approximately 150 feet west of Rhode Island Avenue (U.S. 1), for an Adaptive Reuse of a Historic Site. In particular, Applicant wishes to convert a single-family dwelling unit to a two-family dwelling unit.¹ Such conversions are not permitted in the R-18 Zone absent approval of the instant Application. The subject property lies within the municipal boundaries of the City of College Park, Maryland.

(2) The Technical Staff recommended that the Application be approved subject to certain site plan revisions. (Exhibit 18) The Planning Board recommended approval with conditions. (Exhibit 21(a)) It also granted a Departure to Design Standards (DDS-590) for the 11-foot wide driveway that is required to be 22-feet wide. (Exhibit 65)

(3) The City of College Park and several residents therein appeared in opposition to the request.

(4) At the close of the hearing the record was left open to allow the Applicant and opponents to submit written closing argument. The last of these items was received on June 14, 2010, and the record was closed at that time.

¹ Applicant originally sought a conversion to a three-family (Multi-Family) dwelling unit. However, that request would have required a variance so the Application was amended. See, October 22, 2009 Attachment to Exhibit 18 submitted by Robb A. Longman, Esq.

FINDINGS OF FACT

Subject Property

(1) The subject property is a narrow, rectangular-shaped lot improved with a single-family dwelling (currently divided into three (3) units) that is a designated Historic Site known as the Holbrook House (660021-31). It is located within the College Park Historic District. The house is an Alhambra model sold by Sears as a mail order kit in the early decades of the 20th Century. (Feb. 3, 2010 T. 29). Two (2) changes to the structure were approved by the Historic Preservation Commission over the years: revisions to the second-story windows (1978), and the addition of a second story to the rear of the structure (2002). (Exhibits 9(a), 10(b), 10(d); Feb. 3, 2010 T. 29, 33)

(2) The property is exempt from the requirements of the Woodland Conservation and Tree Preservation Ordinance since it is less than 40,000 square feet in area and contains less than 10,000 square feet of woodland. A letter of exemption was issued on February 21, 2008, and expired on February 21, 2010. (Exhibit 5)

Master Plan/Zoning

(3) The property is located in an area governed by the 1989 Master Plan for Langley Park-College Park-Greenbelt and Vicinity. The Master Plan recommends urban residential land use with a density between 12.0 and 16.9 dwelling units per acre. The 1989 Sectional Map Amendment for Langley Park-College Park-Greenbelt and Vicinity retained the property in the R-18 Zone.

(4) The property is located within the Developed Tier discussed in the 2002 General Plan. The Developed Tier envisions “a network of sustainable, transit-supporting, mixed-use, pedestrian-oriented, medium-to high-density neighborhoods.” (2002 General Plan, p. 31)

Neighborhood and Surrounding Uses

(5) The neighborhood consists of residential properties that include single-family dwellings, sororities/fraternities, garden apartments and a church. It is defined by the following boundaries:

North – Paint Branch Parkway
South – East-West Highway
East – US 1
West - MARC/B&O Railroad line

(6) The adjoining property to the north is developed with a single-family dwelling in the R-55 Zone. The properties to the east and west are developed, respectively, with a

multi-family dwelling and a rooming house in the R-18 Zone. College Avenue is located to the south.

Applicant's Proposal

(7) The conversion of single-family dwellings is not permitted in the R-18 Zone, absent approval of the instant Special Exception. The Applicant wishes to legally operate a two-family dwelling in the single family dwelling that is a designated Historic Site (known as the Holbrook House). The dwelling has been used as a rooming house and a multi-family dwelling over the years. (Exhibits 7(a)-(r); March 31, 2010 T. 70-71, 74-75) At the time of Applicant's purchase it was configured as three (3) dwellings with the first unit in the upstairs rear (which was the last approved addition), and the remaining two (2) in the main house. (Exhibit 14 (a)) Moreover, the City of College Park had issued a rental license for the three (3) units at the subject property. (Exhibits 7 (f)-(k); February 3, 2010 T. 12) However, the most recent Use and Occupancy permit issued by the County was for a single-family detached dwelling. (Exhibit 54; February 3, 2010 T. 11)

(8) Five (5) parking spaces are required and six (6) are provided. (Exhibit 37(a); February 3, 2010 T. 12) The parking area has been located to the rear of the dwelling since Applicant's purchase. Applicant proposes to "square out" the west edge of the parking area and install wheel stops to better delineate the spaces. (February 3, 2010 T. 59) A Departure was approved that allows Applicant to place an 11-foot-wide portion of his driveway in the side yard. This was approved, in part, because Applicant has a recorded easement with the adjacent landowner to allow a joint driveway that is 16-feet-wide. The driveway widens to 22 feet at the rear of the property where the parking is located.

(9) Applicant's witness, accepted as an expert in land use planning, testified that the request satisfied all applicable provisions of the Zoning Ordinance, noting that the use fits in with the surrounding properties:

This site is generally characterized by an eclectic mix of single-family dwellings, boarding houses and rooming houses, multi-family dwellings of various characters – some single-family dwellings which had been converted over the years to multi-family dwellings – some in small garden apartments or other mixed multi-family use types ranging from small to the moderately intense – multi-story, stair-access buildings typically – but there is a range.... There is even an occasional smattering of commercial and institutional [uses].... So, the land use is very eclectic throughout the neighborhood but certainly includes a substantial quantity of land uses identical to the one that is proposed by the subject application....

(10) Staff reasoned (noted below) that the language in Section 27-330.02 (c) requires Applicant to satisfy the maximum density regulations found in Section 27-442(h) of the Zoning Ordinance. If Applicant must meet the density requirements of 1.84 two-family dwelling units on the 0.23-acre property, the Application must be denied absent

approval of a variance. The expert witness believed this to be a faulty interpretation for the following reasons:

This planner believes that the applicant's original application was correct: The staff's application of the density regulations of the R-18 Zone to the adaptive use of a historic site would subvert the very purpose of permitting adaptive uses, which is to permit "the adaptation of a building designated as a Historic Site by the Historic Preservation Commission for a use not allowed within the existing zone [emphasis added] in order to encourage the preservation of buildings important to Prince George's County heritage or which have distinctive architectural and environmental characteristics." Staff's application in this case of the Euclidean R-18 density standard makes the preservative incentive of adaptive reuse wholly moot.

This planner believes that the list of regulations provided in 27-330.02 (c) is illustrative rather than prescriptive. If a use is not permitted in a particular zone by right, its permitted density is necessarily zero, yet the intent of the ordinance in permitting the adaptive reuse as an otherwise-impermissible use is quite explicit. Instead of a prescriptive limit of density, the ordinance provides instead for the protections of Section 27-317 (supplemented by 27-330.02) as they may be applied by the reasoned judgment of the Zoning Hearing Examiner and the District Council to protect the public health, safety and welfare, the character of the neighborhood, and the use and development of adjacent properties and the general neighborhood, while at the same time preserving the character and environmental setting of the Historic Site.

(Exhibit 46, p. 5)

Agency Comment

(11) As noted above, the property was designated as a Historic Site in 1992. Staff testified that the following would have occurred at the time of designation as a historic site:

At that time the property was documented in the summer of 1991. The person completing the documentation would examine both the interior and exterior of the building or buildings – in this case there's only one – and also its associated property – in this case it's a subdivided lot in the City of College Park – and develop a physical description of all of those features as well as a statement of historic significance that describes the development of the particular piece of property and any significance attached to that and/or any individuals involved with the development of the property in the context of the community in which this particular property happens to be located.

Based on that documentation, the Staff of the Historic Preservation Commission would make a recommendation to the Commission that a property either does or does not meet at least one of the designation criteria included in the County's Historic Preservation Ordinance, which is Subtitle 29. Based on the Staff recommendations, the HPC would then take an action....

Based on the documentation that we have available to us, I can say that the property is a two and a half story frame house originally built for single-family use from a mail-order

kit sold by Sears, Roebuck and Company It is one of only two identified Alhambra models located in Prince George's County.

The property at that time did include two modifications to its original form. One was the revision to the second-story windows on the front of the house which were revised in 1978 because those windows had deteriorated. They were replaced with the windows that are still present on the property. The second alteration ... there was a one-story addition to the rear of the property....

In 2002, Mr. Modell submitted a Historic Area work permit to add a second story to the existing one-story rear addition. That application was reviewed and approved by the Historic Preservation Commission in 2002.

(February 3, 2010 T. 28-29)

(12) Applicant submitted his request to the Historic Preservation Commission ("HPC") as required by the Zoning Ordinance. He included pictures of the dwelling as well as the parking area to the rear. (Exhibits 14 (a)-(b)) The HPC held a hearing on the instant request on November 17, 2009. Shortly thereafter it issued a recommendation that the request be approved. The information received by the HPC in its hearing was placed into the instant record. (Exhibit 36)

(13) The Technical Staff ultimately recommended approval with conditions that were addressed by Applicant in his revised Site Plan. (Exhibits 37 (a)-(b)) The Transportation Planning Section noted that a traffic study was not required because the proposed use would not generate more than 100 net trips in any peak hour and no new construction is proposed. It further opined that the Application would not create a traffic safety problem since it has operated for several years without any adverse impact on the neighborhood and the Site Plan provided suitable access and circulation. The Community Planning Section also noted that the use does not strictly conform to the recommendation of the Master Plan that there be urban residential land use with a density between 12.0 and 16.9 dwelling units per acre, but does meet the vision of the Developed Tier concerning sustainable, transit-supporting, pedestrian-oriented neighborhoods.

(14) The Planning Board recommended approval of the request, reasoning as follows:

The proposed two-family dwelling will arguably result in less impact to the character of the surrounding community than the existing three-unit arrangement. The applicant is removing the entire basement unit and replacing it with a storage area. There is no indication from the referral responses that the legal conversion of a single-family dwelling to a two-family dwelling will have any greater impact on the surrounding area than the existing use, or that it would have anything but a de minimus impact over that of a single-family dwelling....

The Zoning Ordinance expressly prohibits the conversion of single-family homes in the R-18 Zone, but allows the conversion of single-family historic sites as long as specific required findings are met. Non-designated dwellings have the option of being torn down and replaced with multifamily uses; however, a Historic Preservation Work Permit would

be required to determine the impact of the proposed use on adjacent historic sites and the historic district. Therefore, the Planning Board does not anticipate that the conversion of the Holbrook House to a two-family dwelling would set an undesirable precedent....

(Exhibit 21(b), pp. 5, 9-10)

Opposition's Concerns

(15) The City of College Park and a few of its residents noted their opposition to the Application for several reasons. The City initially posits that the request does not satisfy Section 27-330.02 of the Zoning Ordinance, *infra*, because Applicant has not shown that the request is *needed* to encourage the preservation of the historic building. (February 3, 2010 T. 13, 41) The City also believed that the HPC did not consider the environmental setting in its review of the Application since it never addressed the graveled parking to the rear of the dwelling. However, HPC staff noted, *supra*, that there was no substantive change to the parking area and, therefore, the HPC did not have reason to focus on the environmental setting in its review of the Application.

(16) The City noted that there had been several violation notices issued for infractions that occurred on site ranging from noise complaints to failure to remove litter. (Exhibit 31; March 31, 2010 T. 97-99) It was argued that the close proximity to the University of Maryland further exacerbates the problem: more students housed together leads to more loud parties and more littering. (February 3, 2010 T. 118-121; March 31, 2010 T. 100-101)

APPLICABLE LAW

(1) The adaptive reuse of a Historic Site may be permitted in the R-18 Zone upon approval of a Special Exception. Such approval is premised upon satisfaction of the criteria set forth in Sections 27-317(a) and 27-330.02 of the Zoning Ordinance.

(2) Section 27-317 (a) provides as follows:

- (1) The proposed use and site plan are in harmony with the purpose of this Subtitle;
- (2) The proposed use is in conformance with all the applicable requirements and regulations of this Subtitle;
- (3) The proposed use will not substantially impair the integrity of any validly approved Master Plan or Functional Master Plan, or, in the absence of a Master Plan or Functional Master Plan, the General Plan;
- (4) The proposed use will not adversely affect the health, safety, or welfare of residents or workers in the area;
- (5) The proposed use will not be detrimental to the use or development of adjacent properties or the general neighborhood; and
- (6) The proposed site plan is in conformance with an approved Tree Conservation Plan.

(3) Section 27-330.02 provides as follows:

(a) For the purposes of this Section, the adaptive use of a Historic Site is defined as the adaptation of a building designated as a Historic Site by the Historic Preservation Commission for a use not allowed within the existing zone in order to encourage the preservation of buildings important to Prince George's County heritage or which have distinctive architectural and environmental characteristics.

(b) Use of Historic Sites under the provisions of this Section are limited to:

- (1) One-family, two-family, three-family, or multifamily dwellings; or
- (2) Commercial office or retail trade; and
- (3) The proposed use is not a use prohibited in all zones.

(c) The approved Special Exception site plan for the adaptive use shall be controlling with regard to net lot area, lot coverage, green area, lot frontage, yards, building height, distance between buildings, and location, height, and use of accessory buildings.

(d) All proposals for the adaptive use of a Historic Site shall comply with the standards listed below.

(1) Lighting.

(A) Lighting shall be subdued, consistent with the nature of the historic resource, and shall not shine or glare off the premises. Low-intensity seasonal or decorative lighting is permitted.

(2) Parking and surfacing.

(A) The design of parking lots shall minimize, to the extent practicable, the impact of the parking needs associated with the proposed adaptive use on the environmental setting and the surrounding neighborhood.

(B) Where deemed appropriate by the District Council, innovative paving techniques, such as dust-free, pervious surfaces, unusual textures, and configurations that minimize paved surfaces, may be required.

(e) Upon filing the Special Exception application, the applicant shall submit the following information:

(1) Evidence of Historic Preservation Commission approval of an established environmental setting for the proposed adaptive use;

(2) A written justification statement, including:

(A) The nature and scope of the use proposed;

(B) The hours of operation; and

(C) The impact of traffic generated by the proposed use on local roadways, including the type, amount, and distribution of anticipated traffic, as well as the adequacy of proposed access points to the site, existing levels of service on surrounding roadways, and the peak hour service level at the nearest major intersection below the minimum adopted by the Planning Board in the "Guidelines for the Analysis of the Traffic Impact of Development Proposals," as may be amended from time to time;

(3) In addition to the site plan requirements in Section 27-296(c), the site plan shall show the following:

(A) A delineation by metes and bounds of the established environmental setting; and

(B) The topography of the subject property and abutting lots (for a depth of at least fifty (50) feet).

(f) The applicant shall demonstrate to the satisfaction of the District Council that:

(1) Any proposed multiple uses within the historic structure are compatible with each other;

(2) The proposed adaptive use will not change the existing character of the surrounding community by virtue of noise, lighting, unsightliness, parking, signs, traffic, or other impacts; and

(3) The proposed adaptive use will not adversely affect distinguishing exterior architectural features or important natural features in the established environmental setting.

(4) The requested use must meet the purposes of the R-18 Zone, set forth in Section 27-436(a) of the Zoning Ordinance:

(a) **Purposes.**

(1) The purposes of the R-18 Zone are:

(A) To make available suitable sites for multifamily developments of low and moderate density and building bulk;

(B) To provide for this type of development at locations recommended in a Master Plan, or at other locations which are found suitable by the District Council;

(C) To provide for this type of development at locations in the immediate vicinity of the moderate-sized commercial centers of the County; and

(D) To permit the development of moderately tall multifamily buildings, provided they are surrounded by sufficient open space in order to prevent detrimental effects on the use or development of other properties in the general vicinity.

(5) Finally, a Special Exception may only be denied if any adverse effect of the proposed use at the proposed site is greater than the adverse effect inherent in said use irrespective of its location within the particular zone:

The local legislature, when it determines to adopt or amend the text of a zoning ordinance with regard to designating various uses as allowed only by special exception in various zones, considers in a generic sense that certain adverse effects, at least in type potentially associated with (inherent to, if you will) these uses are likely to occur wherever in the particular zone they may be located. In that sense, the local legislature puts on its "Sorting Hat" and separates permitted uses, special exceptions, and all other uses. That is why the uses are designated special exception uses, not permitted uses. The inherent effects notwithstanding, the legislative determination necessarily is that the uses conceptually are compatible in the particular zone with otherwise permitted uses and with surrounding zones and uses already in place, provided that , at a given location, adduced evidence does not convince the body to whom the power to grant or deny individual applications is given that actual incompatibility would occur....

Peoples Counsel for Baltimore County v. Loyola College in Maryland, 406 Md. 54, 94-95, 956 A. 2d 166 (2008).

CONCLUSIONS OF LAW

(1) The Application furthers the purposes of the Zoning Ordinance set forth in Section 27-102 since the proposed use does not include any new development of the property and will not negatively impact any public facilities or services; the use will not alter existing relationships between uses in the area; the use will satisfy all applicable codes and will not create a dangerous situation on site; and the use will not negatively impact the transportation system in the area since no additional traffic, other than that experienced since its inception several years ago, is anticipated. (Section 27-317(a)(1))

(2) The Application does not require the grant of a variance and the Planning Board approved the requisite Departure. Accordingly, it is in conformance with all applicable requirements of the Zoning Ordinance. (Section 27-317(a)(2))

(3) The proposed use does not substantially impair the intent of the Master Plan since it is a use that supports suburban residential land uses, and since the Developing Tier envisions medium-to-high-density, transit-supporting, pedestrian-oriented neighborhoods. (Section 27-317(a)(3))

(4) The property is exempt from the requirements of the Woodland Conservation and Tree Preservation Ordinance. Accordingly, there is no required Tree Conservation Plan. (Section 27-317 (a)(6))

(5) The language in Section 27-330.02 (c), *supra*, did not expressly note that the Special Exception Site Plan governs as to the proper density for the site. As a result, it was argued that the Application must be denied since Section 27-442 (h) of the Zoning Ordinance requires a density of two (2) dwelling units on .23 acre in the R-18 Zone. It is important to remember that the use is described in the various use tables as the “Adaptive use of a Historic Site when not otherwise allowed.” In the commercial and industrial zones there are *no* density regulations provided for this use. See, Sections 27-462 and 27-473(b). Accordingly, one could argue that *no* density is permitted in these zones, but that would be illogical since the use is listed as one permitted by Special Exception therein. In the residential zones there are density requirements for two-family dwellings but the instant request should not be bound by these requirements. If the Special Exception use is *otherwise not allowed* it would render the provisions in Sections 27-317 and 27-330.02 moot to also impose the density requirements set forth for uses that *are otherwise allowed* in the Zone. It would be more logical to assume that density would be addressed on a case by case basis as a particular Special Exception Application is reviewed. Additionally, I agree with Applicant’s land use witness that the language in Section 27-330.02(a) is introductory in nature and does not require an Applicant to show that the historic site would be abandoned/demolished if the request is not approved.

(6) Those opposed to the request further argued that the HPC did not properly consider the environmental setting of the property when it issued its recommendation of approval since it did not discuss the graveled parking area to the rear that was gradually introduced over the years and was never approved via the Historic Area Work Permit process. (March 31, T. 50-54) The law requires Applicant to submit “evidence of [HPC] approval of an established environmental setting for the proposed adaptive reuse.” The matter was referred to the HPC solely for it to apply its expertise and render a recommendation. Applicant submitted what he received from the HPC. I don’t believe he should be penalized because the HPC recommendation did not expressly address the rear yard parking.

(7) The use has existed on site for a few years. The Opposition submitted evidence that it has negatively impacted the health, safety or welfare of residents/workers in the area for many of these years – at least since the dwelling was no longer owner occupied.

(8) It was difficult for me to arrive at my decision because I recognize that many of the uses permitted by right in the R-18 Zone (such as a private or public community spa, boardinghouse, congregate living facility or rooming house) could have a greater adverse impact on the neighboring properties. I also note that Applicant expended a considerable sum for a property that had been used as a three-family dwelling for many years, and which he thought to be a legal use. However, the test in approving a special exception is whether it adversely impacts the neighboring property at the particular location and would not have the same negative impact elsewhere in the R-18 Zone. Applicant's property sits in an area a stone's throw from the University of Maryland. This area suffers from an abundance of issues that arise from having multiple occupants in non owner-occupied single-family homes. Such problems would be compounded if the instant request is approved since Applicant could not be required to reside there and "police" his lessees, and there is insufficient acreage to "buffer" noise. Therefore, I cannot find compliance with Sections 27-317(a)(4) and (5) or caselaw concerning the grant of a special exception.

DISPOSITION

Special Exception 4611 is hereby Denied.