

ARAVINDAN VEERASAMY * BEFORE THE
PETITIONER * PLANNING BOARD OF
PLANNING BOARD CASE NO. 454 * HOWARD COUNTY, MARYLAND

* * * * *

DECISION AND ORDER

The Planning Board of Howard County Maryland held a public hearing on July 21, 2022, in accordance with Section 125.0.F.2 of the Howard County Zoning Regulations, to consider the petition of Aravindan Veerasamy, Owner, to approve a Final Development Plan, FDP-204-A-1, which proposes to allow an accessory apartment use at 5005 Straight Star Place. The 10,295 square foot lot is located in the Village of Harper’s Choice, Section 7, Area 4 identified as Parcel 362, Lot 2, on Tax Map 29, in the Fifth Election District of Howard County, Maryland. It is zoned New Town (NT) and designated as single-family low-density land use.

The notice of hearing, which is required by Section 1.105(B) of the Planning Board’s Rules of Procedure, was published and the subject property was posted in accordance with the Planning Board’s requirements, as evidenced by certificates of publication and posting, all of which were made part of the record of the case. Pursuant to the Planning Board’s Rules of Procedure, the reports and official documents pertaining to the petition, including the Technical Staff Report of the Department of Planning and Zoning, the County Code, the Howard County Zoning Regulations, the Final Development Plan Amendment and Planning Board Hearing Application were made part of the record in this case.

Mr. Aravindan Veerasamy represented himself as the petitioner.

Mr. Joel Hurewitz appeared in opposition.

Based on all the information presented, the Planning Board makes the following findings of fact and conclusions of law:

DEPARTMENT OF PLANNING AND ZONING’S TECHNICAL STAFF REPORT

Julia Sauer presented the Technical Staff Report (TSR) for the Department of Planning and Zoning. Mrs. Sauer’s presentation included a general over of the request, the location of the property, and the process needed to allow an accessory apartment use on the subject property. Mrs. Sauer’s testimony included the following information: the Zoning Regulations permit an accessory apartment use provided that the area of the lot is at least 12,000 square feet; the subject property is less than 12,000 square feet and does not meet the criteria to be considered administratively by Planning and Zoning; to allow the use, the petitioner is required to submit an amendment to the final development plan specifically for this lot. The TSR lists the two review criteria that the Planning Board must consider under Section 125.0.F.2.c of the Zoning Regulations when evaluating the Final Development Plan, whether:

- 1. The use is consistent with the land use designation of the property as established on the recorded Final Development Plan and compatible with existing or proposed development in the vicinity; and
- 2. The use will not adversely affect vicinal properties.

Mr. Veerasamy represented himself as the petitioner. Mr. Veerasamy testified the presentation provided by Mrs. Sauer and the Technical Staff Report were sufficient and concluded his testimony. Mr. Veerasamy entered Applicant’s Exhibit #1, a plot plan of the property, into the record.

Board Member Engelke asked Planning and Zoning about the parking requirement.

Mrs. Sauer stated that a minimum of three off-street parking spaces are required.

Board Member Cecil and Board Member Engelke asked Planning and Zoning if the Final Development Plan Amendment applies only to this lot within the Final Development Plan and if there is a limitation to the number of accessory apartments allowed by the Final Development Plan.

Mrs. Sauer confirmed the request only applies to the Petitioner's lot. Mrs. Sauer explained that lots within the Final Development Plan that are over 12,000 square feet may be permitted administratively by the Department of Planning and Zoning through the Accessory Apartment Application process, and other lots that are less than 12,000 square feet would be required to file a Final Development Plan Amendment to allow an accessory apartment use.

Board Member Cecil asked Planning and Zoning if parking for an accessory apartment is evaluated through a traffic study.

Mrs. Sauer explained a traffic study is not required to establish an accessory apartment use.

Board Member McAliley mentioned HoCo By Design and asked Planning and Zoning if the accessory apartment use would encourage and allow an opportunity for affordable housing for individuals in Howard County.

Mr. Cataldo, Chief of DPZ Land Development, acknowledged that an accessory apartment could be an opportunity to address affordable housing needs; however, the Department cannot confirm the petitioner's intention for this request.

Board Member Coleman asked Planning and Zoning to confirm that accessory apartments are not considered in density calculations. He also asked if an entranceway is needed between the home and apartment.

Mrs. Sauer confirmed the definition of density excludes accessory dwelling units. Mr. Moore read the definition of "Density" per Section 103.0.D of the Zoning Regulations. Mrs. Sauer explained it is the owner's decision to provide access between the home and apartment.

Board Members Coleman and Engelke asked Planning and Zoning if the accessory apartment use remains with the property and how the Department ensures the house or apartment is owner occupied.

Mrs. Sauer explained that the accessory apartment use would remain with the property and, if sold, the subsequent owner would be required to comply with the accessory apartment regulations. Mrs. Sauer and Mr. Moore explained noncompliance with the accessory apartment regulations would be enforced through the code enforcement process.

Mr. Hurewitz testified in opposition. Mr. Hurewitz stated that he does not oppose this use for this property but asked the Board to consider revising the Final Development Plan Amendment language to specify that the use is only permitted at a certain architectural location in the structure as it exists today. Mr. Hurewitz also asked the Board to require architectural approval from the Village Board. Mr. Hurewitz expressed his concern that the Planning Board decision may set a precedent for Final Development Plan Amendments to allow an accessory apartment use and asked the Board to consider setting criteria that would be specific to the request.

Board Member Coleman asked Planning and Zoning if this is the first Final Development Plan Amendment request for an accessory apartment use and if the Final Development Plan Amendment will allow the accessory apartment use in perpetuity.

Mrs. Sauer stated that it is unknown if this is the only Final Development Plan Amendment presented to the Planning Board for an accessory apartment use. Mrs. Sauer confirmed the use would be in perpetuity. Mr.

Moore explained that the Final Development Plan is a planning approval document that has the effect of Zoning Regulations and that the Final Development Plan Amendment would remain unless a subsequent amendment removes it.

The Board discussed the requirement for architectural review by the Village Board. Board Member Coleman asked Mr. Moore to confirm that the Board does not enforce the Village Board private covenants nor require that they be enforced.

Mr. Moore confirmed the statement.

FINDINGS OF FACT

1. The proposed Final Development Plan Amendment, FDP-204-A-1, is a request to allow an accessory apartment use on a 10,295 square foot lot known as 5005 Straight Star Place in the Village of Harpers Choice, Section 7, Area 4, Lot 2.
2. The Planning Board has the authority to review the Final Development Plan Amendment in accordance with the criteria set forth in Section 125.0.F.2 of the Zoning Regulations.
3. The first applicable criterion for the Planning Board to consider in its review of this proposed Final Development Plan Amendment is "the use is consistent with the land use designation of the property as established on the recorded final development plan and compatible with existing or proposed development in the vicinity." As noted in the Technical Staff Report the land use designation of the property on the final development plan is single-family low density residential and that properties in this land use designation are permitted to have an accessory apartment if the lot size is 12,000 square feet or greater. The Petitioner did not provide oral testimony, other than acknowledging the Technical Staff Report, to support the request. Opposition questioned if a favorable decision would set a precedent for similar requests in the future and result in an unintended consequence.
4. The second applicable criterion for the Planning Board to consider in its review of this proposed Final Development Plan Amendment is "the use will not adversely affect vicinal properties." As noted in the petitioner's Planning Board Hearing Application and Technical Staff Report the petitioner does not propose external modification to the subject property and that there would be no change in appearance of the subject property from vicinal properties. The Report also stated the property currently has more than three required parking spaces available to accommodate the uses. The Petitioner did not provide oral testimony, other than acknowledging the Technical Staff Report, to support the request. Opposition questioned if a favorable decision would set a precedent for similar requests in the future and result in an unintended consequence.

CONCLUSIONS OF LAW

1. Petitioner, as one seeking approval of a Final Development Plan Amendment to allow an accessory apartment use on the subject property, has the burden of demonstrating that it has satisfied the criteria listed in Section 125.0.F.2 of the Zoning Regulations that: 1.) The use is consistent with the land use designation of the property as established on the recorded final development plan and compatible with existing or proposed development in the vicinity, and 2.) The use will not adversely affect vicinal properties.
2. There is sufficient evidence in the record, as identified in the Board's Findings of Fact above, for the Board to evaluate the petition to amend the Final Development plan to allow an accessory apartment use on the subject property. The petitioner did not provide oral testimony, other than

acknowledging the Technical Staff Report, to support the request. The opposition disagreed with the Final Development Plan Amendment language and asked the Planning Board to revise the language and questioned if a favorable decision would set a precedent for similar requests in the future and result in an unintended consequence.

3. Based on the information presented, the Board motioned to approve the plan and rendered a 2-2 vote. The burden of proof is one of a preponderance of the evidence and is on the petitioner to show, by competent, material and substantial evidence, that he or she is entitled to the relief requested and that the request meets all prescribed standards and requirements.
4. A decision of the Board shall have the concurrence of a majority of all members of the Board unless a greater number of votes are required by law. Petitioner's failure to achieve the necessary affirmative votes to find that he has met his burden and that his petition should be granted acts as a denial of the relief requested.
5. The petitioner has failed to meet his burden sufficiently to achieve a majority vote by all members of the Board to grant his petition, and, accordingly, the requested relief is denied.

For the foregoing reasons, the petition of Aravindan Veerasamy, to approve a Final Development Plan Amendment, FDP-204-A-1, to allow an accessory apartment use at 5005 Straight Star Place in the Village of Harper's Choice, Section 7, Area 4, Lot 2, is this 25th day of August, 2022 is DENIED by the Planning Board of Howard County, Maryland.

HOWARD COUNTY PLANNING BOARD

DocuSigned by:

 F0F5EF3282DC401...
 Ed Coleman - Chairperson

DocuSigned by:

 17D7DFE9D4214A8...
 Kevin McAilley - Vice Chairperson

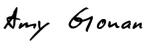
DocuSigned by:

 7DA1123B1D2D404...
 James Cecil

DocuSigned by:

 6C830193985E497...
 Phillips Engelke

PB Case No. 454

ATTEST: DocuSigned by:

 5B4D5DD9470C4D4...
 Amy Gowan
 Executive Secretary

REVIEWED FOR LEGAL SUFFICIENCY BY:
 HOWARD COUNTY OFFICE OF LAW
 Gary W. Kuc, County Solicitor

DocuSigned by:

 4GB7A491BEF9447...
 David Moore
 Senior Assistant County Solicitor

LIST OF APPLICANT'S EXHIBITS:

Applicant's Ex. #1 Plot Plan

LIST OF OPPOSITION'S EXHIBITS:

None Accepted