

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

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ORDER GRANTING MOTION FOR RECONSIDERATION

The Planning Board of Howard County Maryland held a public hearing on November 3, 2022, on a motion under the Planning Board Rules of Procedure, Section 1.105.E, Revisory Power of the Board, to reopen Planning Board Case 454 for reconsideration based on a mistake or misrepresentation of fact or law that was made at the original hearing on July 21, 2022.

The Board may reconsider or rehear a matter, and may modify a decision, only if evidence is submitted which could not reasonably have been presented at the original hearing, or if some mistake or misrepresentation of fact or law was made at the original hearing.

Mr. Christopher DeCarlo, legal counsel for the petitioner, presented a brief argument for the Planning Board to reconsider this matter for good cause shown. Mr. DeCarlo provided a summary of the petitioner’s written request for a motion for reconsideration that was submitted to the Board on September 6, 2022. Mr. DeCarlo stated that the Board, at the July 21, 2022 public hearing, made a mistake in applying the law because the Board did not correctly apply the criteria under Howard County Zoning Regulations, 125.0.F.2.c. Petitioner asked that the Board reconsider the case under the applicable criteria:

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.

Based on the argument presented, the Board agreed that reconsideration was appropriate and granted the motion by a 4-0 vote. Mr. Engelke abstained.

DECISION AND ORDER

Having granted the Petitioner’s motion for reconsideration, the Planning Board of Howard County, Maryland held a public hearing on November 3, 2022, in accordance with Section 125.0.F.2 of the Howard County Zoning Regulations and Section 1.105.E of the Planning Board Rules of Procedure, to reconsider 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 and July 21, 2022 presentation 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. Christopher DeCarlo, Esquire represented the petitioner.

Mr. Joel Hurewitz participated virtually in opposition.

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

TESTIMONY

Mr. DeCarlo asked Mr. Paul Sill, P.E. with Sill Engineering Group, Inc. to give a general overview of the property, the FDP amendment process and associated with establishing an accessory apartment use, and the review criteria that the Planning Board must consider when evaluating an FDP amendment.

Mr. Sill explained that the existing living area above the two-car garage is proposed to be converted into a 700 square foot one-bedroom accessory apartment, that no exterior improvements to the existing dwelling are proposed, and that the apartment will be accessed by an existing exterior entrance. He further explained that the accessory apartment requirements of the R-SC (Residential: Single Cluster) zoning district apply to residentially zoned properties in the NT (New Town) zoning district and stated that the property meets all requirements, except for the 12,000 square foot minimum lot size. Mr. Sill testified that an accessory apartment is consistent with the low-density land use designation and compatible with existing development in the vicinity. Mr. Sill explained the traffic, parking and density requirements and that the use will not adversely affect vicinal properties. Mr. Sill stated he is not aware of any opposition to this petition.

Board Member Engelke asked Mr. Sill about the 12,000 square foot lot size requirement.

Mr. Sill stated that the 12,000 square foot lot size requirement is in the R-SC zoning and not a criterion of the Final Development Plan.

Board Member Coleman asked Mr. Sill about the lot coverage requirement and if the proposed parking language in Final Development Plan Amendment would allow the parking area to be expanded. Board Member Coleman and Board Member Engelke expressed concerns about increasing or reconfiguring the parking area.

Mr. Sill explained that there are no exterior improvements proposed that would affect the lot coverage. Mr. Sill and Mr. DeCarlo stated that the petitioner does not propose to increase the parking area and is not opposed to modifying the Final Development Plan Amendment language.

Mr. Hurewitz asked Mr. Sill if he is familiar with the layout of the house, if the proposed Final Development Plan Amendment language allows for more than one accessory apartment, if the language would apply to this lot in perpetuity, and about previous final development plan amendments he has processed.

Mr. Sill stated he is not familiar with the layout of the house, except for the area above the garage where the accessory apartment is proposed. Mr. Sill stated that the request is only for one accessory apartment and that it would apply to the lot in perpetuity. Mr. Sill generally talked about other types of final development plan amendments.

Mr. Hurewitz testified in opposition. Mr. Hurewitz stated that he does not oppose this use for this property but has concerns about the proposed Final Development Plan Amendment language. Mr. Hurewitz asked the Board to consider revising the language to specify that only one accessory apartment may be permitted in the structure as it exists today and asked the Board to require architectural committee approval.

Mr. DeCarlo asked Mr. Hurewitz about the supplemental zoning regulations for accessory apartments and the requirement to preserve the single-family house as the primary residence.

Mr. Hurewitz stated he did not do the calculations to determine the principal use.

SUMMATION

Mr. DeCarlo reiterated that the 12,000 square foot minimum lot size requirement for accessory apartments is not in the current final development plan, but a requirement of the R-SC zoning district, which is applied to residential land uses in the NT zoning district. Mr. DeCarlo stated that through the testimony of the petitioner's witness it was demonstrated that establishing an accessory apartment use on this particular 10,295 square foot lot remains consistent with the single-family low-density land use designation and is compatible with development in the area. Mr. DeCarlo stated that the accessory apartment will not be noticeable to the public and would not adversely affect vicinal properties because the apartment will be located entirely within the existing structure and parking will be provided by an existing driveway and garage. He reiterated that the only deviation from the accessory apartment regulations the petitioner is seeking is from the minimum lot size requirement, and that all other applicable supplementary regulations would be met.

Mr. Hurewitz stated he does not object to the request for an accessory apartment and asked the Board to revise the Final Development Plan Amendment language based on his testimony.

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 the 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's witness, Mr. Sill, testified that the establishment of an accessory apartment use will not increase density and will remain consistent with the single-family low-density land use. Mr. Sill further testified that the accessory apartment is entirely within an existing structure and would be compatible with the existing development in the vicinity. The Opposition, Mr. Hurewitz, stated he was not in opposition to the request, but asked the Board to refine the Final Development Plan language.
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 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's witness, Mr. Sill, testified that the accessory apartment is entirely within an existing garage structure and would not adversely affect vicinal properties. The Opposition, Mr. Hurewitz, stated he was not in opposition to the request, but asked the Board to refine the Final Development Plan language. No neighbors or other vicinal property owners participated in the case.

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 have considered the testimony of the petitioner and the position in regard to the Final Development Plan Amendment criteria listed above. The petitioner’s engineer testified to the proposed improvements and intent of the accessory apartment use. The opposition disagreed with the Final Development Plan Amendment language and asked the Planning Board to revise the language. The Planning Board was persuaded by the petitioner’s evidence, including the testimony of its engineer, and concludes that the petitioner has met its burden of demonstrating that it has satisfied the above-cited criterion for approval, subject to modifying the Final Development Plan Amendment language to read:

Regarding 5005 Straight Star Place, also known as Lot 2 Parcel 362, Village of Harper’s Choice Section 7 Area 4, Record Plat 9319, an accessory apartment is permitted subject to the supplemental regulations of the Howard County Zoning Regulations provided that:

- a. *Except from an exterior entrance, there shall be no external evidence of the accessory apartment*
- b. *The accessory apartment shall have no more than two bedrooms.*

- 3. For the reasons stated in the above Findings of Fact and the Department of Planning and Zoning’s Technical Staff Report, the Board concludes that the petitioners have conclusively established, through the evidence in the record that the proposed Final Development Plan Amendment, FDP-204-A-1, has satisfied all the approval standards for a final development plan amendment, according to Section 125.0.F.2 of the Howard County Zoning Regulations.

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 16th day of November, 2022 is APPROVED WITH MODIFICATIONS by the Planning Board of Howard County, Maryland.

HOWARD COUNTY PLANNING BOARD

DocuSigned by:

Edward T. Coleman

Ed Coleman - Chairperson

DocuSigned by:

Kerin McAilley

Kevin McAilley - Vice Chairperson

DocuSigned by:

James Cecil

James Cecil

DocuSigned by:

Phillips Engelke

Phillips Engelke

DocuSigned by:

Barbara Mosier

Barbara Mosier

PB Case No. 454

ATTEST: DocuSigned by:

Amy Gowen

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Amy Gowen
Executive Secretary

REVIEWED FOR LEGAL SUFFICIENCY BY:
HOWARD COUNTY OFFICE OF LAW

Gary W. Kuo, County Solicitor

David Moore

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David Moore
Senior Assistant County Solicitor

LIST OF APPLICANT'S EXHIBITS:
None

LIST OF OPPOSITION'S EXHIBITS:
None