

Case No. DDS-590

Applicant: Steven B. Behr

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

ORDER REVERSING PLANNING BOARD DECISION

IT IS HEREBY ORDERED, after review of the administrative record, and after reviewing and acting on the special exception case, S.E. 4611, filed by this applicant, that the Planning Board's decision in PGCPB No. 09-176, approving a departure from design standards for a driveway on property described as 0.23 acres of land, located on the north side of College Avenue, approximately 150 feet west of Rhode Island Avenue (US Route 1), College Park, is:

REVERSED, for the reasons stated below, which are hereby adopted as the findings of fact and conclusions of law of the District Council in this matter:

A. To begin, this design departure application is moot, after the District Council's decision to deny S.E. 4611, for an alleged "adaptive reuse" of a designated historic site. The Council has decided not to allow the use of the premises as a two-family dwelling for the reasons articulated by the City of College Park, whose officials appeared in opposition to both applications. The driveway on the subject property is certainly adequate for the one-family dwelling use permitted there, and a departure from driveway design standards is not warranted.

B. Moreover, the applicant failed to prove that waiver of the driveway standard, as requested, to allow an 11-foot driveway (at its narrowest point) where one twice as wide, 22 feet, is required, was reasonable under the circumstances, or the least that could be approved.

The reason the driveway must be 22 feet is that the applicant, or his predecessor – apparently without notice to or approval by Historic Preservation, Environmental Resources, or College Park

officials – modified the property’s rear yard, replacing a grass lawn with a graveled surface used as a parking area for about six vehicles. These cars cannot back in and out, from the rear yard to the street, and even if they could a driveway accommodating two-way traffic would be required. The applicant did not prove by evidence that his request was reasonable, in accord with zoning or historic preservation regulations, or the smallest waiver that would meet the problem.

C. Perhaps the chief difficulty with the applicant’s case is that it represents nothing more than an after-the-fact effort to legalize unauthorized use and structural modifications on the subject property, a historic site to be preserved as is, subject to Historic Preservation Commission modification approvals. If the applicant had done things the right way, preserving the one-family use while proposing (but not constructing or using) a two-family dwelling, and if he had obtained Historic Preservation, Planning Commission, and Environmental Resources approvals for the conversion, then the driveway standards modification might be made a part of the approvals, or might be unnecessary.

The District Council will not, however, approve either the special exception or the design departure for an applicant whose property was reasonably used as a one-family dwelling until its unlawful conversion. The applicant’s suggestion that he should not be blamed for the sins of his predecessor cannot be accepted. In purchasing the subject property, the applicant should have but apparently did not ascertain the uses historic preservation and zoning regulations permitted, and uses on his property must be limited to those the regulations allow.

D. The records for both the special exception, S.E. 4611, and the design departure, DDS-590, both demonstrate what is argued by the City of College Park. This applicant and his predecessor have consistently failed to follow applicable law and rules for the subject property. The applicant has failed to prove the reasonableness of the proposed departure from driveway standards, and he also failed to prove that his property meets the special exception standards for the conversion of a historic site.

Ordered this 14<sup>th</sup> 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