

## ADMINISTRATIVE DECISION

**Wroxeter Road, LLC  
185 Wroxeter Road  
Arnold, MD 21012**

**ASSESSMENT DISTRICT: Third (Southern)  
NC NUMBER: 2016-0322-N  
PREMISE: 185 Wroxeter Road  
Arnold, MD 21012**

### BACKGROUND

This Administrative Decision is the direct result of an application by Wroxeter Road, LLC to register a second, a third, and a fourth principal dwelling on property located at 185 Wroxeter Road<sup>1</sup>, Arnold, Maryland as a nonconforming use pursuant to Article 18, Section 15-101 of the Anne Arundel County Zoning Ordinance. Such registration is a prerequisite to obtaining a Zoning Certificate of Use, as required by Article 18, Section 2-202 and to applying for a special exception to expand a nonconforming use under Article 18, Section 15-103.

The administrative process in this case was undertaken in accordance with the provisions of Article 18, Section 15-101, which charges the Office of Planning and Zoning with the responsibility of determining the nonconforming status of each applicant's use. This has resulted in the compilation of documents, maps, photographs and other material supplied to or collected by this Office. The material supports the following findings of fact.

The subject site consists of 55.81 acres more or less. It is located with 1,100 feet of frontage on the east side of Wroxeter Road; 0 feet south of Old County Road in Arnold. This property is identified as Parcel 51 in Block 9 on Tax Map 39. The site is further described in a Deed recorded in the Anne Arundel County Land Records at Liber 29986, Folio 16.

This property is currently split zoned. The vast majority of the parcel is zoned R1 – Residential District with two small areas zoned OS – Open Space District located along the east side and west side lot lines near the shoreline. The property has been zoned R1 and OS since the second comprehensive rezoning for the Southern Third Assessment District, effective February 13, 1989. The site is partially located within the Chesapeake Bay Critical Area overlay designated as RCA – Resource Conservation Area. Approximately half of the property, including three of the four existing dwellings, is located within the RCA portion of the property.

Section 18-1-101 defines a nonconforming use as a use that was allowed when it came into existence but that is no longer allowed under the law in effect in the zoning district in which the use is located. In order to qualify as a nonconforming use, the use must have started at a time when it was a permitted use and each use of the subject property must satisfy the provisions of Article 18, Title 15 of the 2005 Zoning Ordinance. Section 15-104 requires that a nonconforming use terminates when the use ceases operation for twelve consecutive months or when the scope of the use is so significantly reduced during the 12-month period as to change its nature or character. Further, Section 15-101(c) states that there is a rebuttable presumption that a use in existence continuously for a period of 10 years is a nonconforming use.

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<sup>1</sup> Materials and evidence submitted with this application show that the addresses 185 Wroxeter Road and 185 Wroxeter Drive have been used interchangeably by various entities.

Conforming Uses

- Dwelling #1 – A one story single family detached dwelling located at the north end of the parcel facing Old County Road measuring approximately 66' x 32' with approximately 2,470 square feet of floor area.
- Accessory structures including two barns, a stable, a detached garage, and numerous sheds<sup>2</sup>
- Driveways and walkways

Nonconforming Uses

- Dwelling #2 – A one story single family detached dwelling located in the southeast section of the parcel measuring approximately 40' x 30' with approximately 1,902 square feet of floor area
- Dwelling #3 – A one and a half story single family detached dwelling located near the center of the parcel (to the immediate west of Dwelling #4) measuring approximately 41' x 28' with approximately 1,644 square feet of floor area
- Dwelling #4 – A one and a half story single family detached dwelling located near the center of the parcel (to the immediate east of Dwelling #3) measuring approximately 30' x 20' with approximately 1,166 square feet of floor area

**ZONING HISTORY**

The subject property was zoned A – Agricultural District with a tiny sliver of Light Industrial District at the northeast corner of the parcel at the time of the adoption of the 1952 Zoning Ordinance. Under Section 13-337.2 and Section 13-321 (rear dwellings regulated) of the 1952 Zoning Code, two principal dwellings were permitted as a conditional use, but the Code did not allow four principal structures on one lot.

As a result of the first comprehensive rezoning for the Southern Third Assessment District effective May 6, 1973, the subject property was reclassified as R1 – Residential District. Section 13-304, Uses Permitted, of the 1971 Zoning Ordinance did not include four principal dwellings on one lot as a permitted use.

With the second comprehensive rezoning for the Southern Third Assessment District effective February 13, 1989, the vast majority of the subject property retained its R1 zoning classification; however, two small areas along the east side and west side lot lines near the shoreline were reclassified as OS – Open Space District. All four dwellings are located within the R1 zoned portion of the property. Section 2-302, Permitted Uses, of the 1985 Zoning Ordinance did not include four principal dwellings on one lot as a permitted use. Moreover, Article 28-1-123 set the limitation on the number of single-family detached dwellings on a lot to one.

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<sup>2</sup> It should be noted that the application lists a boathouse among the existing accessory structures located on the subject property; however, no boat house exists.

The third comprehensive rezoning was the Broadneck Small Area Plan, effective May 26, 2002. The R1 – Residential District and OS – Open Space District zoning classifications were retained and were governed by the zoning laws in the 1985 Zoning Ordinance as set out above.

The 2005 Zoning Ordinance was enacted on May 12, 2005. Section 18-4-106 lists the permitted, conditional and special exception uses for the R1 District. Multiple single-family dwellings on one lot are not permitted. In addition, section 18-4-102 limits the number of dwellings on a lot to one single-family detached dwelling.

The most recent comprehensive rezoning is the result of Councilmanic District 5 zoning effective January 29, 2012. Once again, the R1 – Residential District and OS – Open Space District zoning classifications were retained and were governed by the zoning laws in the 2005 Zoning Ordinance as set out above.

Therefore, the applicant has the burden of proof to show that the nonconforming use existed on the subject property prior to July 1, 1952 (the effective date of the 1952 Zoning Ordinance) and that use of the dwellings continued without cessation in use of more than twelve consecutive months to the present date.

### EVIDENCE

The following evidence was submitted by the applicant or collected by this Office to substantiate the continued use of the subject property:

- A copy of a Confirmatory Deed filed in Book 29986, Page 16 dated August 21, 2016, conveying the subject property from Wroxeter Road, LLC to Wroxeter Road, LLC.
- A site plan prepared by Boyd & Dowgiallo, P.A. dated October, 2016, which depicts the subject property and various existing improvements to include four single family detached dwellings.
- Maryland Department of Assessments and Taxation Residential worksheets for the subject property dating back to 1986. The records reference the existence of five houses originally; however, assessor remarks related to an assessment appeal dated April 2001 indicate that dwelling #5 is now being used as a bath house.
- Letter of explanation dated October 19, 2016 written by Danny G. Boyd of Boyd & Dowgiallo, P.A. The letter describes that the property contains four dwellings, all of which predate the beginning of zoning in 1952.
- A notarized affidavit of Amanda Bohlman stating that each of the four homes has been continuously lived in from 1955 to 2016. She attests that Bohlman family members have lived in the east side house and the Old County house and that renters have occupied the two homes on the hill.
- A memo from Amanda Bohlman displaying a list of occupants and years of occupancy for each of the four dwellings. Two dwellings list known occupants dating back to 1955, one lists an occupant dating back to 1958, and one lists an occupant dating back to 1971.

- Printout of utility billing search results pulled from the Anne Arundel County website. The search shows that there are four separate accounts with an address of 185 Wroxeter Road. The billing history for all four dwellings is shown for all billing dates between March 29, 2007 through December 29, 2016.
- A folder labeled “east side house” containing 57+/- receipts/statements for various products and services provided at 185 Wroxeter Drive and billed to Henry Bohlman, Mildred Bohlman, Amanda Bohlman, or Revel Joint Venture. The statements range in date from March 31, 1987 to December 23, 2010. Also included are three BGE statements that do not contain the first page and do not contain a customer name or address to identify the property. The statements are dated July 12, 2010, October 8, 2010, and January 14, 2011.
- A folder labeled “right side hill” containing a notarized affidavit of Jean Argabright attesting that she and her husband rented the “right hill house” beginning in 1991 and that they continuously resided in the home until 2012 when her husband passed away. Mrs. Argabright attests that she has resided in the house since then and continues to do so today. Also included in the folder is one tax return summary page from 2001 for Robert S. Argabright, III and Jean A. Argabright at 185 Wroxeter Drive.
- A folder labeled “left side hill” containing annual lease agreements titled “Lease of Residence A”. The leases are between Revel Joint Venture (“Landlord”) and J. Greg Rider (“Tenant”), and the annual lease starting dates range from January 23, 2001 through April 10, 2013. Also included is a copy of a notarized affidavit of Greg Rider attesting that he has continually resided in the “left hill house” since at least 2005 and continues to do so today. He attests that he has been renting month to month since the summer of 2014, relying on the last signed lease (from 2013 to 2014).
- Aerial photographs reviewed by this Office show the existing improvements:

1952 – aerial unclear (3 dwellings clearly visible; however, area is too heavily wooded to see the fourth “east side” house.)

1962 – 4 dwellings, 2 barns, multiple accessory structures, pier

1970 – 4 dwellings, 2 barns, multiple accessory structures, pier

1977 – aerial unclear (3 dwgs visible; however, too heavily wooded to see fourth.)

1980 – aerial unclear (3 dwgs visible; however, too heavily wooded to see fourth.)

1984 – 4 dwellings, 2 barns, multiple accessory structures, pier

1988 – aerial unclear (3 dwgs visible; however, too heavily wooded to see fourth.)

1990 – 4 dwellings, 2 barns, multiple accessory structures, pier

Geocortex 1995 – 4 dwellings, 2 barns, multiple accessory structures, pier

Geocortex 1998 – 4 dwellings, 2 barns, multiple accessory structures, pier

Geocortex 2000 – 4 dwellings, 2 barns, multiple accessory structures, pier

Geocortex 2002 – 4 dwellings, 2 barns, multiple accessory structures, pier

Geocortex 2005 – 4 dwellings, 2 barns, multiple accessory structures, pier

Geocortex 2007 – 4 dwellings, 2 barns, multiple accessory structures, pier

Geocortex 2010 – 4 dwellings, 2 barns, multiple accessory structures, pier

Geocortex 2011 – 4 dwellings, 2 barns, multiple accessory structures, pier

Geocortex 2012 – 4 dwellings, 2 barns, multiple accessory structures, pier

Geocortex 2014 – 4 dwellings, 2 barns, multiple accessory structures, pier

Geocortex 2016 – 4 dwellings, 2 barns, multiple accessory structures, pier

## DISCUSSION

In order to qualify as nonconforming, the use of the subject property must have existed at a time when such use was permitted and the use must have remained continuous (without a lapse of more than twelve (12) consecutive months). The first Comprehensive Zoning of Anne Arundel County was enacted on July 1, 1952. The subject property was zoned A – Agricultural District at the time of the adoption of the 1952 Zoning Ordinance. Under Section 13-337.2 and Section 13-321 (rear dwellings regulated) of the 1952 Zoning Code, two principal dwellings were permitted as a conditional use, but the Code did not allow four principal structures on one lot. The first comprehensive rezoning effective May 6, 1973 reclassified the property as R1 – Residential District. Section 13-304, Uses Permitted, of the 1971 Zoning Ordinance did not include four principal dwellings on one lot as a permitted use. As a result of the second comprehensive rezoning, effective February 13, 1989, the vast majority of the subject property retained its R1 zoning classification; however, two small areas along the east side and west side lot lines near the shoreline were reclassified as OS – Open Space District. All improvements are located within the R1 zoned portion of the property. Section 2-302, Permitted Uses, of the 1985 Zoning Ordinance did not include four principal dwellings on one lot as a permitted use. Moreover, Article 28-1-123 set the limitation on the number of single-family detached dwellings on a lot to one.

Four principal dwellings have never been a permitted use in the R1 District. Therefore, in order for the Applicant, Wroxeter Road, LLC, to register the second, third, and fourth dwellings at 185 Wroxeter Road, Arnold, Maryland as a nonconforming use pursuant to Article 18, Section 15-101 of the Anne Arundel County Zoning Ordinance, the evidence must support that the dwellings existed on the subject property prior to July 1, 1952, and that use of the dwellings continued without cessation in use of more than twelve consecutive months to the present date. Section 15-104 requires that a nonconforming use terminates when the use ceases operation for twelve consecutive months or when the scope of the use is so significantly reduced during the 12-month period as to change its nature or character. Further, Section 15-101 (c) states that there is a rebuttable presumption that a use in existence continuously for a period of 10 years is a nonconforming use.

The applicant provided this office with evidence showing that there were four dwellings located on the subject property since at least the mid 1950's. The evidence consists of historic tax records and affidavits. The county aerial photographs confirm the existence of all four dwellings since at least 1962 with the prior 1952 aerial photograph being unclear, as the fourth "east side" dwelling is located within an area too heavily treed to see.

The applicant provided evidence of continuous use of the dwellings in the form of a letter of explanation, historic tax records, receipts for products and services, utility billing search results, affidavits, and leases.

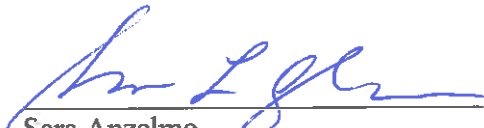
Therefore, it is the decision of the Office of Planning and Zoning that a nonconforming use **DOES** exist on the site, and the extent of that use is as follows:

- Dwelling #2 – A one story single family detached dwelling located in the southeast section of the parcel measuring approximately 40' x 30' with approximately 1,902 square feet of floor area

- Dwelling #3 – A one and a half story single family detached dwelling located near the center of the parcel (to the immediate west of Dwelling #4) measuring approximately 41' x 28' with approximately 1,644 square feet of floor area
- Dwelling #4 – A one and a half story single family detached dwelling located near the center of the parcel (to the immediate east of Dwelling #3) measuring approximately 30' x 20' with approximately 1,166 square feet of floor area

Article 18, Title 15-101(d) requires the Office of Planning and Zoning to determine whether the use may be registered as a nonconforming use and to classify the nonconforming use based on the zoning district in which the use would be allowed. If the use is specified in more than one zoning district, the Office of Planning and Zoning shall classify the use based on what it considers to be the most appropriate district. Therefore, it is the decision of the Office of Planning and Zoning that the nonconforming use of the subject property is hereby classified as an R1 – Residential District type nonconforming use. All other uses on the subject property must conform to the requirements set forth in the Zoning Code for an R1 – Residential District.

This Administrative Decision shall be binding unless appealed to the Anne Arundel County Board of Appeals within thirty (30) days, as provided by Article 3, Subsection 1-104 (c) (Appendix B, Rule #2-101 of the Board of Appeals of Anne Arundel County as revised in 2001).

  
Sara Anzelmo  
Planner II  
Office of Planning and Zoning

2/24/17  
Date

  
Larry R. Tom  
Planning and Zoning Officer

2-24-17  
Date