

IN THE MATTER OF : HOWARD COUNTY  
HASAN OZCAN & HUSEYIN OZCAN : BOARD OF APPEALS  
Petitioners : HEARING EXAMINER  
 : BA Case No. 13-025C

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**DECISION AND ORDER**

On November 26, 2013, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Hasan Ozcan and Huseyin Ozcan to modify Condition No. 2 of Board of Appeals Case No. 12-023C for a Hair Salon Conditional Use in an R-20 (Residential: Single Family) Zoning District, filed pursuant to Section 131.0.N.7 of the Howard County Zoning Regulations (the "Zoning Regulations").<sup>1</sup>

The Petitioners certified to compliance with the notice, posting, and advertising requirements of the Howard County Code. The Hearing Examiner viewed the property as required by the Hearing Examiner Rules of Procedure.

Petitioners were not represented by counsel. Hasan Ozcan testified in support of the petition. No one appeared in opposition to the petition.

**FINDINGS OF FACT**

Based upon the Technical Staff Report (TSR), petition, and site visit, the Hearing Examiner finds as follows:

1. Property Identification. The subject property is situated on the south side of US

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<sup>1</sup> The Decision and Order granted Petitioners a conditional use for a "beauty parlor." The October 6, 2013 Zoning Regulations re-characterized "beauty parlors" as "hair salons."

40/Baltimore National Pike about 1,100 feet west of Centennial Lane and is also known as 10207 Baltimore National Pike (the "Property"). The Property is located in the 2nd Election District and is identified as Tax Map 24, Grid 1, Parcel 544, Lot 107. The Property is part of the Pine Orchard subdivision (Plat Book 4, Page 9, recorded December 1950).

2. Property Description. The 0.60-acre Property is improved with a one-story single-family dwelling located about 19 feet from the west property line and 51 feet from the front property line. To the east of the residence is a detached garage. To the rear of this garage is a shed and in-ground pool. A wire fence runs along the rear property and portions of the west property lines. A solid fence on the Property's east side screens the rear yard. The Property is currently paved with a driveway and parking area with nine striped parking spaces, including one disabled space next to a ramp providing access to the front entrance. Access to the Property is provided via a dead-end service road, which is accessible only from the eastbound lane of US 40. The Property is the last lot on this service road. Frederick Road terminates immediately east of the Property.

3. Vicinal Properties. All properties to the east, west and south are zoned R-20. Lot 106 to the west is improved with a single-family detached dwelling. Signage on the building indicates a hair salon operating on the property. To the east is the strip of land identified as Orchard Lane. Properties to the south are each improved with a single-family detached dwelling. Across Frederick Road, to the northeast, are B-2 (Business: General) zoned properties. The closest, Parcel 420, is the site of a gasoline service station. Properties across US 40 are zoned B-1 (Business: Limited) and are improved with commercial buildings.

4. Roads. The service road portion of US 40 near the Property has two travel lanes and a variable paving width within a variable width right-of-way (ROW). US 40 on the north side of the median has two eastbound and two westbound travel lanes as well as various acceleration and deceleration lanes. The posted speed limited is 45 MPH.

5. Water and Sewer Service. The Property is served by public water and sewer.

6. General Plan. PlanHOWARD 2030 depicts the Property as Established Community on the Designated Place Types Map. US 40 is depicted as an Intermediate Arterial on the PlanHOWARD 2030 Functional Road Classification Map.

7. Additional Zoning History. DPZ issued the property owner/petitioners, apparently, a formal notice of violation (CE-1384) for the expansion of an approved conditional use and for changing the driveway to a lined parking lot. The case is open.

8. The Request to Modify Condition No. 2. In BA Case No. 12-023C (the Original Case), the Hearing Examiner granted Petitioners' request to operate a hair salon within the existing residence on the Property. The Conditional Use Plan as approved depicted two salon chairs within a room adjacent to the living room. Condition No. 2 specified that the conditional use area be no larger than 525 s.f.

Petitioner is formally requesting an additional 200 s.f. area for an existing ADA bathroom (as depicted on the plan), which he testified the Department of Licenses and Permits (DILP) required. Mr. Ozcan further testified to being the sole operator, but that his mother sometimes helps with phones. Additionally, the August 24, 2013 Conditional Use Floor Plan in this case depicts five stylist stations, which the Petitioner explained when the Hearing Examiner asked is

simply to make use of stations (chairs) from his prior salon for appearance purposes. The TSR emphasizes the Petitioners' expansion of the paved driveway from that depicted on the Conditional Use Plan in the Original Case to include a former landscaped island within a turnaround and the creation of nine stripped parking spaces, including one disabled space. The TSR recommends approval subject to the condition that the number of parking spaces be brought into compliance with the Decision and Order in the Original Case.

9. Mr. Oscan testified that DILP required the disabled parking space and the stripping for the nine parking spaces. During the proceeding, the Hearing Examiner discussed the TSR recommendation about reducing the number of parking spaces and the stripping, which are incompatible with a home-occupation use. When the Hearing explained she could not require the Petitioners to bring the number of parking spaces into compliance with the Decision and Order in the Original Case because it is a code enforcement matter, Mr. Oscan stated he was planning to do so anyway, including painting over the stripping.

#### **CONCLUSIONS OF LAW**

**Based upon the foregoing Findings of Fact, the Hearing Examiner concludes as follows:**

##### **I. General Criteria for Conditional Uses (Section 131.0.B)**

Sections 131.0.B.1-3 requires the Hearing Authority to evaluate whether the proposed Conditional Use will be in harmony with the land uses and policies indicated in the Howard County General Plan for the district in which it is located through the application of three standards: harmony with the General Plan, intensity of use, and atypical adverse impacts.

**A. Harmony and Intensity of Use**

**131.0.B.1. The proposed Conditional Use plan will be in harmony with the land uses and policies in the Howard County General Plan which can be related to the proposed use.**

**131.0.B.2. The nature and intensity of the use, the size of the site in relation to the use, and the location of the site with respect to streets giving access to the site are such that the overall intensity and scale of the use(s) are appropriate for the site.**

The proposed 200 s.f. expansion of the Conditional Use area for an ADA compliant bathroom will not change the nature of the use as approved in the Original Case.

However, when assessing the proposed intensity of a use, or in this case, a modification to a condition of approval of an existing use, the Hearing Examiner must evaluate the use at its greatest intensity, in this case a hair salon operating at full capacity. Although the petition formally requests only a modification to Condition No. 2 of the Original Case and Mr. Ozcan testified to be the sole operator, Hearing Examiner does not find credible his testimony that the five existing stations are there for appearances only, given that the Petitioners have established nine parking spaces in front of the dwelling. As the sole hair salon operator, Mr. Ozcan may "work on" a few clients at any time, but the evidence persuades the Hearing Examiner that the salon has the potential to operate at an intensity of use far exceeding that of a hair salon home-occupation use. To ensure the use as modified operates at a reasonable level of intensity, the Hearing Examiner is granting the requested modification/expansion in use area subject the condition that the number of stations remain at two, the number requested and granted in the Original Case and, further, that the parking area/parking spaces/driveway remain as they were

depicted on the Conditional Use Plan in the Original Case.<sup>2</sup> The TSR reasons two spaces are sufficient to support the home-occupation use.

**B. Adverse Impacts**

Unlike Section 131.0.B.1, which concerns the proposed use's harmony or compatibility with the General Plan, compatibility with the neighborhood is measured under §131.B.2's four "adverse effect" criteria": (a) physical conditions; (b) structures and landscaping; (c) parking areas and loading, and; (d) access.

Inherent in the assessment of a proposed conditional use under these criteria is the recognition that virtually every human activity has the potential for adverse impact. The assessment therefore accepts some level of such impact in light of the beneficial purposes the zoning body has determined to be inherent in the use. Thus, the question in the matter before the Hearing Examiner is not whether the proposed uses would have adverse effects in an R-20 district. The proper question is whether there are facts and circumstances showing the particular uses proposed at the particular location would have any adverse effects above and beyond those inherently associated with such a special exception (conditional) use irrespective of its location within the zones. *People's Counsel for Baltimore County v. Loyola College* in

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<sup>2</sup> Finding of Fact No. 2 in the Original Case described the Property in this manner: The 0.60-acre Property is improved with a one-story single-family dwelling located about 19 feet from the west property line and 51 feet from the front property line. To the east of the residence is a detached garage. To the rear of this garage is a shed and in-ground pool depicted on the Conditional Use Plan as a ruin. A wire fence runs along the rear property and portions of the west property lines. A solid fence on the Property's east side screens the rear yard. A paved driveway near the northeast corner of the Property provides access to the garage. According to the TSR, the Record Plat depicts a 40-foot wide strip of land denoted as Orchard Lane adjoining the east side of the Property. This partially paved strip provides access to the paved driveway, forming a "U" shaped drive around a landscaped island.

Maryland, 406 Md. 54, 956 A.2d 166 (2008); Schultz v. Pritts, 291 Md. 1, 432 A.2d 1319 (1981); Mossburg v. Montgomery County, 107 Md. App. 1, 666 A.2d 1253 (1995).

For the reasons stated below, and as conditioned, the Petitioners have met their burden of presenting sufficient evidence under Section 131.0.B.2 of the Zoning Regulations to establish the proposed modification of use area will not have adverse effects on vicinal properties beyond those ordinarily associated with a hair salon in an R-20 zoning district.

**131.0.B.3. The proposed use at the proposed location will not have adverse effects on vicinal properties above and beyond those ordinarily associated with such uses. In evaluating the proposed use under this standard, the Hearing Authority shall consider whether or not:**

**a. The impact of adverse effects such as, but not limited to, noise, dust, fumes, odors, intensity of lighting, vibrations, hazards or other physical conditions will be greater at the proposed site than it would generally be elsewhere in the same zoning district or other similar zoning districts.**

Because the requested modification of use area is related to an indoor use, there are no atypical adverse impacts at the site. The petition complies with Section 131.0.B.3.a.

**b. The location, nature and height of structures, walls or fences, and the nature and extent of the existing and/or proposed landscaping on the site are such that the use will not hinder or discourage the development and/or use of adjacent land and structures more at the subject site than it would generally elsewhere in the same zoning district or other similar zoning districts.**

No changes to the location, nature and height of structures, walls, fencing or landscaping are proposed. The petition complies with Section 131.0.B.3.b.

**c. The number of parking spaces will be appropriate to serve the particular use. Parking areas, loading areas, driveways and refuse areas will be appropriately located and buffered or screened from public roads and residential uses to minimize adverse impacts on adjacent properties.**

As evaluated above, the nine stripped parking spaces are excessive for a single-operator hair salon. However, subject the condition that the parking area/parking spaces remain as they were in the Original Case, the requested modification complies with Section 131.0.B.3.c.

**d. The ingress and egress drives will provide safe access with adequate sight distance, based on actual conditions, and with adequate acceleration and deceleration lanes where appropriate. For proposed Conditional Use sites which have driveway access that is shared with other residential properties, the proposed Conditional Use will not adversely impact the convenience or safety of shared use of the driveway.**

No change to the existing ingress/egress is proposed. The petition complies with Section 131.0.B.3.d.

**e. The proposed use will not have a greater potential for adversely impacting environmentally sensitive areas in the vicinity than elsewhere.**

There is no evidence of a greater potential for adversely impacting environmentally sensitive areas in the vicinity than elsewhere, in compliance with Section 131.0.B.3.e.

**f. The proposed use will not have a greater potential for diminishing the character and significance of historic sites in the vicinity than elsewhere.**

The request modification to increase the interior floor area will not have a greater potential for diminishing the character and significance of historic sites in the vicinity than elsewhere, in compliance with Section 131.0.B.3.e.

## **II. Specific Criteria for Barber Shop, Hair Salon and Similar Personal Service Facilities (Section 131.0.N.7)**

A Conditional Use may be granted in RC, RR or R-20 Districts for a barber shop, hair salon or similar personal service facilities provided that:



**a. The use shall be located within a residence and conducted by the person or persons residing in said residence.**

The expanded use area will be located within the residence and conducted by Mr. Ozcan, a resident, in compliance with Section 131.0.N.7.a.

**b. On lots less than one acre in size, the use shall be limited to one resident operator, with no other employees. On lots of one acre or larger, one additional operator or other employee may be permitted.**

Mr. Ozcan is the resident operator, who testified that his mother sometimes helps with phones. Subject to the condition that no other employee work in the salon, including Mr. Ozcan's mother, the petition complies with Section 131.0.N.7.b.

**c. The road access to the use shall not be from a local road internal to a cluster subdivision and the driveway access to the use shall not be a shared driveway.**

No such assess applies. This section is inapplicable.

**d. On the ALPP purchased or dedicated easement property, the following additional criteria are required:**

- (1) The use shall not interfere with farming operations or limit future farming production.**
- (2) The use shall operate within the principal dwelling unit. The dwelling and the parking associated with the proposed new facility shall count towards the cumulative use cap of 2% of the easement.**

This section is inapplicable, as no ALPP purchased or dedicated easement property is involved.

**ORDER**

Based upon the foregoing, it is this 11<sup>th</sup> day of December 2013, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the petition of Hasan Ozcan and Huseyin Ozcan to modify Condition No. 2 of Board of Appeals Case No. 12-023C for a Hair Salon Conditional Use in an R-20 (Residential: Single Family) Zoning District by expanding the 525 s.f. use area by 200 s.f. for an existing ADA bathroom is **GRANTED**.

**Provided**, however, that:

1. The modification shall be conducted in conformance with and shall apply only to the 200 s.f. ADA bathroom depicted on the October 2, 2013, Conditional Use Modification Plan and not to any other activities, use or structures on the Property.

2. The total Conditional Use area shall be no larger than 725 square feet.

3. Petitioners shall obtain any required Department of Inspections, Licensing and Permits permit for the ADA bathroom.

4. Mr. Ozcan shall be the sole operator. No additional operators or employees, paid or not, are permitted.

5. Only two parking spaces shall support the hair salon use.

6. Petitioners shall comply with the Original Case Finding of Fact No. 2, which described the Property as including a partially paved strip providing access to a paved driveway forming a "U" shaped drive around a landscaped area, as was depicted on the Original Case Conditional Use Plan.

7. Petitioners shall comply with the Conditional Use Plan in the Original Case depicting two stations (two salon chairs) adjacent to a living room.

HOWARD COUNTY BOARD OF APPEALS  
HEARING EXAMINER

MICHELE L. STAWKE

Date Mailed: \_\_\_\_\_

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.