

IN THE MATTER OF : BEFORE THE
REBECCA BURGET : HOWARD COUNTY
Petitioner : BOARD OF APPEALS
: HEARING EXAMINER
: BA Case No. 11-018C

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DECISION AND ORDER

On August 1, 2011, 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 Rebecca Burget for a Beauty Parlor/Barber Shop Conditional Use in an RC-DEO (Resource Conservation-Density Exchange Option) Zoning District, filed pursuant to Section 131.N.7 of the Howard County Zoning Regulations (the "Zoning Regulations").

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

The Petitioner was not represented by counsel. Rebecca Burget and Frank Mamalansan testified in support of the petition. No one appeared in opposition to the petition.

The Petitioner introduced into evidence Petitioner Exhibit 1, a revised conditional use area plan.

FINDINGS OF FACT

Based upon the TSR, the petition, and site visits, the Hearing Examiner finds as follows:

1. Property Identification. The subject property is situated on the north side of Old Frederick Road about 400 feet west of MD 32 (the "Property"). The Property is located in the 3rd Election District and is identified as Tax Map 9, Grid 16, Parcel 251, Lot 1.

2. Property Description. The 3.33-acre Property is improved with a two-story single-family dwelling with an attached garage located in the central portion of the site and about 195 feet from the front property line. There is a septic field in the southeast portion of the front line and a well about 60 feet from the rear of the dwelling. There is a shed on the north side of the driveway and a second shed in the northeast portion of the rear yard.

Access to the Property is provided via a paved driveway alongside the western property line. The driveway also provides access to Parcel 352, an adjoining parcel, but the technical staff report notes there is no record of a recorded use-in-common driveway easement. The driveway leads to a parking area for two vehicles in front of the garage and a paved turnaround area that would also accommodate two parking areas for vehicles. Petitioner's Exhibit 1 denotes a slightly revised parking area with two parking spaces.

3. Vicinal Properties. All vicinal properties are zoned RC-DEO. To the Property's north, east, and west is Parcel 352, a 42-acre property improved with a residence, swimming pool and various outbuildings. The developed portion is to the Property's north and a farm adjoins the east side. The closest structure to the proposed conditional use lies about 240 feet from the residence. Parcel 344 on the west side of Parcel 352 is improved with a single-family

detached dwelling sited about 365 feet from the residence on the Property. Parcel 99, a 139-acre parcel with an agricultural preservation easement adjoins the west side of Parcels 344 and 352. Across Old Frederick Road to the south is Preservation Parcel A of the Archers Glen subdivision.

4. Roads. Old Frederick Road has two travel lanes and a variable paving width within a variable width right-of-way. The posted speed limit is 30 MPH. According to Department of Public Works traffic data, the traffic volume on Old Frederick Road west of MD 32 was 2,408 average daily trips as of October 2008.

5. Water and Sewer Service. The Property is served by well and septic. The Department of Health, Bureau of Environmental Health, has no objection to the proposed conditional use provided the applicant demonstrates there is an adequate on-site sewage disposal system and future repair area.

6. General Plan. Policies Map 2000-2020 of the 2000 General Plan designates the Property as "Rural Conservation." The General Plan Transportation Map depicts Old Frederick Road in this location as a Major Collector.

7. The Proposal. The Petitioner is proposing to operate a Beauty Parlor (salon) within the existing residence on the Property. According to the revised conditional use plan (Petitioner's Exhibit 1), the proposed conditional use area is 400 square feet. Two new parking spaces are shown on the revised conditional use plan.

The Petitioner would be the sole operator of the proposed beauty parlor and 20-30 clients per week are anticipated. The proposed hours of operation are Tuesday and Wednesday 2:00 p.m. to 7:00 p.m., Friday 10:00 a.m. to 4:00 p.m., and Saturday 9:00 a.m. to 3:00 p.m. The Salon would have a separate entrance with a wall light at the door. The operation would use shampoo sinks and chairs, a hood dryer and storage cabinets. No outdoor storage is proposed.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, I conclude as follows:

I. General Criteria for Conditional Uses (Section 131.B)

A. Harmony with the General Plan. Section 131.B.1 requires me to evaluate whether the proposed conditional use plan will be in harmony with the land uses and policies indicated in the Howard County General Plan for the district based on in which it is located. In making this evaluation, I am required to consider:

a. 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; and

b. If a conditional use is combined with other conditional uses or permitted uses on a site, whether the overall intensity and scale of uses on the site is appropriate given the adequacy of proposed buffers and setbacks.

The proposed use of the Property as a single operator beauty parlor is a relatively low intensity use and is reasonably compatible with surrounding residential properties. The 3.3-acre Property can reasonably accommodate the limited indoor use and the low intensity use. The use will be combined with a residential use and will be operated indoors, with the exception of the parking spaces for the use. The existing driveway is adequate to support the use.

B. Adverse Impacts. Unlike Section 131.B.1, which concerns the proposed use's harmony or compatibility with the General Plan, compatibility with the neighborhood is measured under Section 131.B.2's four "adverse effect" criteria": (a) physical conditions; (b) structures and landscaping; (c) parking areas and loading, and; (4) 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 RC 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 use irrespective of its location within the zone. *People's Counsel for Baltimore County v. Loyola College in 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 Petitioner has met its burden of presenting sufficient evidence under Section 131.B.2 of the Zoning Regulations to establish the proposed animal hospital will not have adverse effects on vicinal properties beyond those ordinarily associated with the use in the RC district.

a. Physical Conditions. The impact of adverse effects such as noise, dust, fumes, odors, lighting, vibrations, hazards or other physical conditions will be greater at the subject site than it would generally be elsewhere in the zone or applicable other zones.

The testimony and evidence indicate the proposed use will be conducted predominately indoors. No additional or inordinate noise, dust, fumes, odors are anticipated. No outdoor lighting other than an entrance light will be utilized and this will be lighting typically associated with a residential use. The impacts of adverse impacts will not be greater at the subject site than generally elsewhere in the RC zone.

b. Structures and Landscaping. The location, nature and height of structures, walls and fences, and the nature and extent of the landscaping on the site are such that the use will not hinder or discourage the development and use of adjacent land and structures more at the subject site than it would generally in the zone or applicable other zones.

The Petitioner is proposing to use a 400-square foot section of her residence for the use. Vicinal residences and uses are well separated from the proposed use. No new structures are proposed. The Hearing Examiner concludes the location, nature and height of structures, walls and fences, and the nature and extent of the landscaping on the site are such, as conditioned, that the use will not hinder or discourage the development and use of adjacent land and structures more at the subject site than it would generally in the zone or applicable other zones.

c. Parking and Loading. Parking areas will be of adequate size for the particular use. Parking areas, loading areas, driveways and refuse areas will be properly located and screened from public roads and residential uses to minimize adverse impacts on adjacent properties.

The existing and proposed parking spaces will be adequate for clients and the residential use.

d. Access. 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.

There is no evidence that the existing access driveway does not provide safe access. I conclude the Petitioner has met its burden of demonstrating the existing ingress and egress drives comply with Section 131.B.2.d.

II. Specific Criteria for Beauty Parlor/Barber Shop (Section 131.N.7)

A conditional use may be granted in RC, RR or R-20 District for a beauty parlor or barbershop provided that:

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

The use is proposed to be located within the residence and will be conducted by the owner/resident, in compliance with Section 131.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.

According to the petition, only the resident operator will conduct the use. There will be no other operators or employed on the 3.3-acre Property. The proposed use complies with Section 131.N.7.b.

ORDER

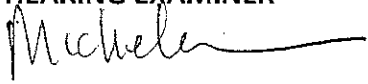
Based upon the foregoing, it is this 8th day of August 2011, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the petition of Rebecca Burget for a Beauty Parlor/Barber Shop Conditional Use in an RC-DEO (Resource Conservation-Density Exchange Option) Zoning District, is **GRANTED**;

Provided, however, that:

1. The Conditional Use shall be conducted in conformance with and shall apply only to the proposed beauty parlor as described in the petition and depicted on the amended conditional use plan dated August 1, 2011.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**



Date Mailed: 8/9/11

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.