

IN THE MATTER OF	:	BEFORE THE
ANNETTE B. MELLOR	:	HOWARD COUNTY
Petitioner	:	BOARD OF APPEALS
	:	HEARING EXAMINER
	:	BA Case No. 09-005C&V

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DECISION AND ORDER

On August 17, 2009, 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 Annette B. Mellor for retroactive conditional use approval to park and store two school buses, and a variance to reduce the 20-foot use setback from the rear property line to 16 feet, in an R-20 (Residential: Single Family), Zoning District, filed pursuant to Section 131.N.44 of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioner provided certification that notice of the hearing was advertised and the property posted, as required by the Howard County Code.

I viewed the property as required by the Hearing Examiner Rules of Procedure.

The Petitioner was not represented by counsel. Annette Mellor testified in support of the petition. No one appeared in opposition to the petition.

FINDINGS OF FACT

Based upon the evidence presented at the hearing, I find the following facts:

1. The Petitioner is the owner of the subject property, which is located on the northwest corner of the Stansfield Road intersection with Dumhart Road. The subject

property is located in the 6th Election District and is known as 9030 Dumhart Road (the "Property"). The Property is referenced on Tax Map 47, Grid 19, as Parcel 15, Lot 1.

2. The Site. The 1.21-acre irregularly shaped Property is improved by a one and one-half story, single-family detached dwelling sited in the Property's center, and fronting on Dumhart Road. Several accessory buildings are located in the northern portion of the Property. To the northwest is a one-story detached garage. A long paved driveway extends from Stansfield Road to a vehicle circulation area in front of the garage. To the garage's east is a concrete pad, and behind the garage, a road milling surfaced parking area, which is used to park buses and other vehicles and trailers. The Conditional Use Plan depicts the parking area as lying 16 feet from the rear lot line and 45.6 feet from the east lot line. The Property is predominately lawn, with several large trees.

3. Vicinal properties. Adjacent properties are also zoned R-20. To the north and west, Parcel 148, Lot 2, is improved with a two-story, frame single-family detached dwelling fronting on and with access to Dumhart Road. Across Dumhart Road to the east are several residential lots, each improved with a single-family dwelling facing Dumhart Road. To the south, across Dumhart Road, Parcel 481 is improved with a one-story single-family detached dwelling fronting on and with access to Stansfield Road.

4. Roads. Although the Property address is Dumhart Road, the only access is to Stansfield Road. Stansfield Road has two travel lanes and about 21 feet of paving within a 60-foot right of way. The posted speed limit is 30 miles per hour. The sight distance is

about 300 feet to the southeast, and is likely to be greater, according to the TSR, for a bus driver with a higher vantage point. The sight distance to the northwest is about 500 feet.

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

6. The General Plan. The 2000-2020 General Plan designates the Property as "Residential Areas" on the 2000-2020 Policies Map. The Transportation Map 2000-2020 depicts Stansfield Road as a Minor Collector.

7. The Proposal. The Petitioner is requesting retroactive conditional use approval for a school bus service operation to park and store two school buses on the Property, and a variance to reduce the 20-foot use setback from the rear property line to 16 feet. Ms. Mellor testified that the buses are used for sports activities and backups when buses stored on another site are being repaired. When in use, the buses would leave the Property Monday through Friday between 6:30 a.m. and 9:30 a.m. in the mornings and return between 9:00 a.m. and 10:00 a.m. In the afternoon, the buses would leave and return between 1:45 p.m. and 5:00 p.m. or later when the buses are used for sports activities, with some variation for school schedules. The buses are occasionally used on Saturdays.

8. Ms. Mellor testified that one of the trailers parked on the Property houses an antique vehicle and that her son owns and is the sole user of another. She instructs drivers not to park past a light at the 30-foot setback line.

9. No on-site maintenance 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)

1. 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.

General Plan Policies. The Howard County General Plan designates the area in which the Property is located as "Residential Areas." School bus parking and storage are presumptively compatible with residential area land uses.

The Nature and Intensity of the Use. It is the nature of a school bus service to vary in intensity of use. In the early morning and afternoon hours, the bus operators arrive in their own vehicles, warm up the buses, and depart for off-site trips. The intensity of use is minimal between runs, and during overnight storage and weekends. Because privately owned and operated school bus operations are common uses in residential areas and the Conditional Use requested is for only two buses, which are used for sports

activities or as backups, the proposed use is harmonious with the land use and policies indicated in the General Plan for the Residential Areas land use designation.

The size of the site in relation to the use. The operation on the 1.21-acre site is reasonably separated from adjoining residences, but with limited screening. Subject to the condition that a Type C landscape buffer be installed along the north and east lot lines, and that the Petitioner clearly demark the 30-foot and 50-foot setback lines to ensure the bus operation meets all use setback requirements, I conclude the site is an appropriate size in relation to the use.

The location of the site with respect to streets giving access to the site. The Petitioner testified that the buses are used mostly for sports and field trips and as backups only when other buses are in disuse. Consequently, the use will typically occur in the afternoon and the occasional Saturday. The existing driveway will continue to provide access to the Conditional Use site and it appears the ingress/egress drive will continue to provide safe access.

The appropriateness of the conditional use in combination with a permitted use on the site. The proposed conditional use would be combined with a permitted use, a residential dwelling. The combination of uses is appropriate, given that all uses meet or exceed setback requirements.

2. Adverse Effect. 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; (d) access.

When assessing a proposed conditional use under these criteria, we must first recognize that virtually every human activity has the potential for adverse impact. Zoning recognizes this fact and, when concerned with conditional uses, 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 me is not whether the proposed use would have adverse effects in an RC district. The proper question is whether there are facts and circumstances showing that the particular use 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, I conclude the Petitioner has met her burden of presenting sufficient evidence under Section 131.B.2 of the Zoning Regulations to establish this proposed use will not have adverse effects on vicinal properties beyond those ordinarily associated with a school bus service operation in an RC district.

a. Physical Conditions. Whether 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 Petitioner proposes to use her Property to park and store two school buses and for vehicle circulation in an area that is reasonably separated from vicinal dwellings. According to the TSR, a school bus service generates some noise, but the small size of

the operation and the Property's size will result in minimal noise. The driveway is paved and the bus parking is surfaced with road millings, which do not generate dust. There is no evidence that the use will generate any adverse lighting, vibrations, hazards or other physical conditions. I therefore conclude these inherent operational adverse effects will be not greater at the subject site than elsewhere in the zone or applicable other zones.

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.

Subject to the condition that the Petitioner clearly demarcates the bus parking and storage area to ensure the buses are parked and stored 30 feet from the rear (north) lot line and 50 feet from the east lot line, and installs a Type C landscape buffer along the north and east lot lines, I conclude 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.

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 parking area is adequate to support the use and the bus parking and storage. Subject to the condition that the Petitioner installs a Type C landscape buffer along the north and east lot lines, the use will have minimal adverse impacts on adjacent properties.

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.

Although Stansfield Road is a Minor Collector, it is presumed to have a low volume of traffic owing to its location in a relatively secluded part of the County, so the existing driveway appears to provide safe access, with adequate sight distance.

II. Specific Criteria for School Buses (Parking and Storage) (Section 131.N.44)

a. All such vehicles parked or stored outside of a structure shall be screened from adjoining properties.

As discussed above, the buses will be screened from adjoining properties by a Type C landscape buffer. The use will therefore accord with Section 131.N.44.a.

b. No such vehicles shall be parked or stored within the structure setback requirements of the district in which they are located.

As a condition of approval, the Petitioner shall demarcate the bus storage and parking area with boundary markers and markings on the parking surface area in a manner that is clearly visible to the bus operators. Subject to this condition, the petition complies with Section 131.N.44.b.

c. Any parking spaces occupied by such vehicles shall be provided in addition to all other required parking spaces.

The Property has sufficient room to park the buses and provide for the two parking spaces required for the residential use, in accordance with Section 131.N.44.c.

d. Only minor repairs to such vehicles shall be permitted. In no case shall body work, engine rebuilding, engine reconditioning or collision services be permitted.

The petition does not state whether minor repairs will be made. The Petitioner must comply with Section 131.N.44.d.

e. The storage or parking of the number of vehicles registered as school buses on lots or parcels in the RC, RR, R-20 and R-12 Districts on the effective date of this amendment (Zoning Board Case 715, effective July 25, 1978) shall be deemed valid nonconforming uses in those districts.

This section does not apply.

III. The Variance Request

The Petitioner also submitted a petition to vary what was stated as a reduction in the 20-foot use setback from the rear property line to 16 feet. However, Section 131.N.44 imposes a more restrictive setback, as it prohibits buses from being stored or parked within district setback requirements. Because the R-20 rear setback is 30 feet, the requested variance may not be considered and is dismissed. Additionally, to ensure compliance with the setback, the Conditional Use is approved subject to the condition that the Petitioner demarcates the bus storage and parking area with markers and markings on the parking surface area in a manner that is clearly visible to the bus operators.

ORDER

Based upon the foregoing, it is this 25th day of August 2009, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the petition of Annette B. Mellor for a variance to reduce the 20-foot use setback to 16 feet is **DISMISSED**;

That the petition of Annette B. Mellor a School Bus (Parking and Storage) Conditional Use for two buses in an R-20 Zoning District is **GRANTED**;

Provided, however, that:

1. The Conditional Use shall be conducted in conformance with and shall apply only to the Conditional Use as described in the petition and as depicted on the Conditional Use Plan and not to any other activities, uses, or structures on the Property.
2. The use shall not operate on Sundays.
3. The Petitioner shall demarcate the bus storage and parking 30 and 50-foot setbacks with edge markers and markings on the parking surface area itself in a manner that is clearly visible to the bus operators.
4. The Petitioner shall install a Type C landscape buffer along the north and east lot lines.
5. Only minor repairs to the buses are permitted. Body work, engine rebuilding, engine reconditioning or collision services are not permitted.

HOWARD COUNTY BOARD OF APPEALS

HEARING EXAMINER

MICHELE LEFAIVRE

Michele L. LeFaivre

Date Mailed: 9/1/09

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.