

IN THE MATTER OF	:	BEFORE THE
<b>OLENKA STASYHYN, T/A OLENKA SCHOOL OF MUSIC</b>	:	HOWARD COUNTY
	:	BOARD OF APPEALS
Petitioner	:	HEARING EXAMINER
	:	BA Case No. 17-041C

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**DECISION AND ORDER**

On June 22, 2018, 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 Olenka Stasyhyn, t/a Olenka School of Music (Petitioner), for retroactive approval of an Instructional School Conditional Use in an R-20 (Residential: Single Family) zoning district, filed pursuant to §§ 131.0.B & 131.0.O.3 of the Howard County Zoning Regulations (HCZR).

Petitioner 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. Thomas Coale, Esquire, represented Petitioner. No one appeared in opposition to the petition.

**FINDINGS OF FACT**

Based upon the preponderance of evidence presented at the hearing, the Hearing Examiner finds as follows:

1. Property Identification. The subject property is located on the south side of a residential service drive accessed from eastbound Baltimore National Pike (US 40). The 2<sup>nd</sup> Election District subject property is identified as Tax Map 0024, Grid 0001, Parcel 544, Lot 107 and known as

10207 Baltimore National Pike (the Property). The Property is the last lot on the service road. Frederick Road terminates immediately east of the Property.

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 and south of the residence is a detached garage. To the rear of this garage is a shed and in-ground pool.

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 approved for a Home Occupation conditional use in BA-16-024C&V. To the east is a 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. Zoning History.

**BA 13-025C.** Granted December 16, 2013 to Hasan Ozcan and Huseyin Ozcan, approving a modification to Condition No. 2 of BA 12-023C to permit additional space in an existing beauty parlor, subject to seven conditions.

1. The modification shall be conducted in conformance with and shall apply only to the 200sf 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.

**BA 12-023C.** Granted February 14, 2013 to Hasan Ozcan and Huseyin Ozcan, for a Beauty Parlor/Barber Shop Conditional Use in an R-20 (Residential: Single Family), subject to 7 conditions.

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 conditional use plan submitted on November 21, 2012.
2. The Conditional Use area shall be no larger than 525 square feet.
3. The approved hours of use are 9:00 a.m. to 7:00 p.m., Monday-Friday, and 9:00 a.m. to 6:00 p.m. on Saturday.
4. Petitioners shall obtain a Department of Inspections, Licensing and Permits change of use permit for the conditional use and shall comply with Title III of the 2010 American Disability Act and the Maryland Accessibility Code.
5. Petitioners shall obtain all required permits. The conditional use shall not commence until Petitioners have obtained all required permits.
6. No signage is permitted in the median between US 40 and the service road.

**BA 14-015C.** Petitioner: Hasan Ozcan and Huseyin Ozcan Request: Conditional Use to modify Condition Nos. 5, 6 and 7 of Board of Appeals Case No. 13-025C for a Hair Salon Conditional Use for an existing handicap parking space, to retain the overall asphalt paving area and to change the location of two salon chairs. Action: Requests to modify the conditions for an existing handicap parking space and change the location of two salon chairs. Approved December 16, 2013. Request to retain the overall asphalt paving area. Denied.

8. The Requested Conditional Use (HCZR § 130.0.O.3). Petitioner is seeking retroactive approval for an instructional school to teach music within the existing 3,889sf foot single-family detached dwelling. The petition states the school will comprise 3,615sf of the building and the remaining 274sf will be used as a residence. All school activities will occur inside the building,

except for two annual outdoor events that will occur during regular business hours. The school would operate in two shifts every day from 9:00 a.m. to 12:15 p.m. and 2:00 p.m. to 9:00 p.m. Each shift will involve three, one-hour music instruction classes for up to 12 students in each class. There will be two full-time employees, including the Petitioner, and additional instructors operating on a contract basis for specialized instruction for certain musical instruments. However, no more than three employees and/or instructors will be on site at any one time.

9. Agency Comments.

DPZ. The Department of Planning and Zoning (DPZ) technical staff report (TSR) evaluated the petition under HCZR § 103.0.O.3.6, which requires that at least one person involved with the instructional school operation reside in the structure. DPZ staff reports that the proposed use does not comport with this standard for two reasons. First, the proposed residential living area is in contravention of the HCZR § 103.0 definition of a "Dwelling Unit": A single unit providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking limited to one kitchen, and sanitation. Second, the building code requires a minimum 120sf for living space (including a kitchen area) and 70 square feet for a bedroom. While the proposed 274sf residential area exceeds the minimum of 190 square feet for living and sleeping space, the Petition does not provide details confirming that the residential portion of the structure meets the definition of a dwelling. DPZ recommends the Petitioner provide a floor plan or other information to the Hearing Examiner verifying compliance with this definition.

Department of Inspections, Licenses, and Permits (DILP). The petitioner shall be advised that a building permit is required for the proposed 'change-in-use'. It is recommended that the petitioner and their design consultant arrange a preliminary meeting with DILP's Plan Review Division to discuss any major code requirements that may pertain to the proposed use. Such meeting should occur prior to permit application so that delays during the permit process can be avoided. Please contact the Plan Review Division at (410) 313-2436 for information. The future site development plan (SDP) will need additional information to show compliance with the Maryland Accessibility Code.

10. At the outset of the proceeding, the Hearing Examiner asked counsel if Petitioner was submitting a revised plan showing a floor plan of the residential area. Counsel represented that Petitioner was not going to introduce a revised plan because of problems with the engineer. The Hearing Examiner took notice that she has observed a great deal of construction on the site

and that the use had begun operating without approval, which may in part explain DILP's comments. After colloquy, the Hearing Examiner agreed to hold the record open to allow Petitioner to provide photographs of the residential component. On July 11 and 19, 2018, Petitioner submitted several photographs of a small room with a bed, a BGE utility bill in Petitioner's name, and a copy of Petitioner's driver license.

### **CONCLUSIONS OF LAW**

Based upon the foregoing Findings of Fact, the Hearing Examiner is compelled to deny the petition. HCZR § 103.0.O.3.6 mandates that at least one person involved in the operation of the instructional school reside in the structure. There is no evidence demonstrating compliance with this standard, considering HCZR definition of a "dwelling unit," a single unit providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking limited to one kitchen, and sanitation. The photographic evidence is wholly unconvincing, as evinced in this photographic exhibit, which at best depicts a sitting room.



*The Residence*

**ORDER**

Based upon the foregoing, it is this **14<sup>th</sup> Day of August 2018**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the petition of Olenka Stasyhyn, t/a Olenka School of Music, for retroactive approval of an Instructional School Conditional Use in an R-20 (Residential: Single Family) zoning district, is **DENIED**.

HOWARD COUNTY BOARD OF APPEALS  
HEARING EXAMINER  


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.