



1. Property Identification. The subject property is located in the 1<sup>st</sup> Election District on the east side of Old Jessup Road about 440 feet southwest of Dorsey Run Road. It is referenced as Tax Map 43, Grid 23, Parcel 114, and is also known as 7935 Old Jessup Road (the Property).

2. Property Description. The 1.25-acre Property is one of several residential parcels along Old Jessup Road converted to non-residential uses over many years. The Property is improved with a one and one-half-story frame former dwelling apparently in current uses as an irrigation contractor business. A gravel area in the building's front adjoins the road paving with curb or gutter.

A metal security fence extends from the building to enclose the side and rear yard areas. Behind the building, to the northeast, are a long wood shed and a one-story garage. Behind the shed is an open gravel/paved area used for outdoor storage. A stream runs along the rear lot line and there is a stormwater management area in the northeast corner. The remainder of the Property is open and relatively level.

3. Vicinal Properties. All vicinal properties are zoned M-2. To the northeast, Parcel 109 is the site of an asphalt plant. To the southeast is what appears to be a right-of-way, and beyond this is Parcel 540, which is improved with a two-story brick building in use as a contractor operation, apparently. Parcel 253, across Old Jessup Road and to the southwest, is being developed as a concrete plant. To the northwest, Parcel 113 is a motor-vehicle related business and Parcel 112 is a towing company.

4. Roads. Old Jessup Road south of the intersection with Dorsey Run Road has no marked travel lanes and a variable width right-of-way. There is no posted speed limit. Old

Jessup Road is a no-outlet road to the southeast so sight distance is not an issue. There is no traffic volume data for Old Jessup Road.

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

6. General Plan. PlanHOWARD 2030 designates the Property as a "Growth and Revitalization Area" on the Designated Place Types Map. Old Jessup Road is depicted as a Local Road on the PlanHOWARD 2030 Functional Road Classification Map.

7. The Proposed Conditional Use. The Petitioner proposes to construct and operate a facility for the storage and distribution of compressed gas on a portion of the Property. The facility would consist of a fueling dispenser, gas utility meter, gas dryer unit, electrical panel, natural gas compressor and a gas transportation module gas storage unit (the CNG Facility). This equipment will be located on a concrete pad behind the existing garage and in the rear portion of the Property. It will be accessed from the south side of the Property. The CNG Facility will store 10,000 gallons of natural gas on the Site. Employees would visit the site to fill their trucks, which would travel off-site to deliver natural gas to customers. Customers would not visit the site. Approximately two employees and three trucks would be on-site at any time.

The proposed hours of operation are 7:00 p.m. to 6:00 a.m. Monday-Friday. On rare occasion, the facility may operate during the day and on weekends. No permanent outdoor lighting is proposed because truck lighting will be adequate. If necessary, portable lights would be used and oriented so as not to adversely affect adjacent properties.

8. Mr. Newton testified to the absence of vicinal residential uses.

### **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.

PlanHOWARD 2030 designates the Property as a "Growth and Revitalization Area." The proposed CNG Facility is a low to moderate intensity use for the M-2 District. It is primarily a storage use. Trucks enter the site to fuel and then exit. The M-2 district has no side, rear, or use setbacks from other M-2 properties. A portion of the paved and gravel area will be removed, which will increase the buffer between uses. The 1.25-acre Property can accommodate the existing and proposed use.

**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 the potential for adverse impact from virtually every land use activity. 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 M-2 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 M-2 District. *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, the Hearing Examiner concludes the Petitioner has met its 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 bulk fuel storage in an M-2 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.**

There is no evidence of inordinate noise, dust, fumes, odors, lighting, vibrations, hazards or other physical conditions. Any noise would be significantly less than that generated that generated by vicinal uses.

**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 equipment will be located on an concrete pad. The Hearing Examiner concludes the location, nature and height of structures 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 Conditional Use Plan depicts two truck parking spaces and two employee parking spaces. An open paved/gravel surface can accommodate any additional parking should it be required. The conditional use portion of the Property will be set back from Old Jessup Road and buffered by distance from public roads. There are no vicinal residential uses.

**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.

Because Old Jessup Road is a no-outlet road, and therefore very low traffic volume, the ingress and egress driveway will likely provide safe access, with adequate sight distance.

**II. Specific Criteria for the Bulk Storage of Gasoline, Fuel Oil and Liquefied Petroleum**

**(Section 131.N.24)**

**a. Maximum storage above ground shall not exceed 10,000 gallons or its equivalent in pounds or cubic feet, for each 20,000 square feet of lot area. Except that total storage of liquefied petroleum in the B-2 district shall not exceed 2,000 gallons and no single container may contain more than 1,000 gallons of liquefied petroleum, total storage shall not exceed 20,000 gallons in the B-2 and M-1 districts.**

The proposed use would be located in an M-2 zoning district. According the Technical Staff Report, the CNG Facility Site is about 36,677 square feet and the proposed amount of natural gas storage is 10,000 gallon. The petition complies with Section 131.N.24.a.

**b. If a storage area is closed or not operated for a continuous period of twelve months, the storage facilities shall be dismantled and removed from the site.**

The petition states the use will comply with Section 131.N.24.b.

**c. Solid walls such as masonry or wood and masonry may be required by the Hearing Authority when the site borders a residential district. When solid walls are required, landscape planting is required between the outside of the wall and the property line.**

This section is inapplicable, as the Property does not adjoin a residential area.

**ORDER**

Based upon the foregoing, it is this 3<sup>rd</sup> day of December 2012, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

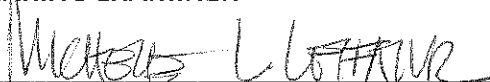
That the conditional use petition of heard the conditional use petition of Ultimate CNG, LLC, for the storage and distribution of compressed natural gas in an M-2 (Manufacturing: Heavy) Zoning District, is hereby **GRANTED**;

**Provided, however, that:**

1. The conditional use shall be conducted in conformance with and shall apply only to the proposed CNG Facility described in the petition and as depicted on the Conditional Use Plan for the Ultimate CNG-Jessup Road submitted on October 10, 2012 and not to any other activities, uses or structures on the Property.

2. If the storage area is closed or not operated for a continuous period of twelve months, the storage facility shall be dismantled and removed from the site.

**HOWARD COUNTY BOARD OF APPEALS  
HEARING EXAMINER**

  
\_\_\_\_\_  
Michele L. LeFaivre

**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.