

IN THE MATTER OF : BEFORE THE  
**FRANKLIN DAVID &** : HOWARD COUNTY  
**ELIZABETH DAVID** : BOARD OF APPEALS  
Petitioners : HEARING EXAMINER  
: BA Case No. 13-032C

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**DECISION AND ORDER**

On January 23, 2014, 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 Franklin David & Elizabeth David for retroactive approval of a Two-family dwelling conditional use in an R-20 (Residential: Single) Zoning District, filed pursuant to Section 131.N.52 of the Howard County Zoning Regulations (the "Zoning Regulations").

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

Petitioners were not represented by counsel. Franklin David testified in support of the petition.

**FINDINGS OF FACT**

Based upon the preponderance of evidence presented at the hearing, the Hearing Examiner finds the following facts:

1. Property Identification. The subject property is located in the 5<sup>th</sup> Election District on the north side of Hunting Lane, about 775 feet west of Long View Road. It is referenced as

1. Property Identification. The subject property is located in the 5<sup>th</sup> Election District on the north side of Hunting Lane, about 775 feet west of Long View Road. It is referenced as Tax Map 41, Grid 6, Parcel 174, Lot 12 and has a street address of 10622 Hunting Lane (the Property). The Property is part of the Holiday Hill subdivision (Plat Book 5, Page 78).

2. Site Description. The 1.02-acre Property is improved with a 2,850-s.f. brick and stone dwelling lying about 72 feet from the front property line. Owing to the sloping topography, the dwelling is one-story in the front and two stories in the rear. A paved driveway located in the eastern portion of the Property ends at an attached garage. A sidewalk accessed from this driveway provides access to two entrance doors, apparently on the front façade. There is a second floor deck on the east, rear side of the dwelling and a walkout basement with French Doors. A swimming pool is located in the rear yard.

3. Vicinal Properties. All adjoining properties are zoned R-20 and are part of the same subdivision. Each lot is improved with a single-family detached dwelling.

4. Roads. Hunting Lane has two travel lanes within a 50-foot right-of-way.

5. Water and Sewer. Although the Property lies within the Metropolitan District and within the Howard County Water and Sewerage Master Plan according to the Howard County Geographic Information System's maps, it is served by private well and septic. For this reason the Health Department's Bureau of Environmental Health technical staff report comments inform Petitioners that the expansion of use from one dwelling to two requires a connection to the available public and water sewer service and an abandonment of the onsite well and

sewage disposal system. The Bureau further instructs Petitioners to submit documentation of proper abandonment to the Health Department.

6. General Plan. PlanHOWARD2030 designates the Property as “Established Community” on the Designated Place Types Map. The Functional Road Classification Map depicts Hunting Lane as a Local Road.

7. Zoning History. A formal notice of violation (CE 13-074) was issued to the Petitioners on July 15, 2013 for the operation of a Two-family dwelling without Conditional Use approval on a single lot zoned R-20. The case is open.

8. The Petition. Petitioners are requesting retroactive approval for a Two-family detached dwelling.

9. Mr. David testified that the subdivision is an older community, which explains the private well and septic system. He would prefer not to hook up to public water and sewer. The Hearing Examiner explained the private well and septic system was designed for use by one family, not two; hence the Health Department’s requirement that the Property connect to public water and sewer.

#### **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)**

Zoning Regulations 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 two-family dwelling comports with the Housing Policies in Chapter 9 of PlanHOWARD 2030, which encourages a mix of housing uses. The residential use is a low intensity use and a predominately-indoor use. The existing dwelling accommodates the use with no need for any additions and the use is located along a local street. The overall scale and intensity of use is appropriate.

**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 use would have adverse effects in an R-20 district. The proper question is whether there are facts and circumstances showing the particular use 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 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 use will not have adverse effects on vicinal properties beyond those ordinarily associated with Two-family dwelling 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 two-family dwelling is a predominately-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.**

The garage and driveway provide adequate parking spaces for the use, in accordance 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.**

There are no known historic sites in the vicinity.

**II. Specific Criteria for Two-Family Dwellings (Section 131.0.N.54)**

Section 131.0.N.54 generally permits two-family dwellings in the R-20 zoning district provided as follows.

**Any new structures or additions will be designed to be compatible in scale and character with the surrounding residential neighborhood. Compatibility of character may be in architectural style, materials or details. Compatibility shall be demonstrated by architectural elevations or renderings submitted with the petition.**

Because no additions or new structures are proposed, this general requirement does not apply.

Section 131.0.54.a imposes additional standards and states as follows.

**Two-family dwellings: in the RC and RR Districts, on properties that are not ALPP purchased or dedicated easement properties, and in the R-ED, R-20 or R-12 Districts, provided that the two-family dwelling is on an individual lot, with only one two-family dwelling permitted on one lot, and the lot is an existing recorded lot at the time of the Conditional Use application. The minimum lot size shall be at least 16,000 square-feet for two-family dwelling structures in the R-ED and R-12 Districts.**

The proposed Two-family dwelling will be sited on an individual lot recorded at the time of application, with only one two family dwelling on the lot. The Property is 1.02 acres in size.

**ORDER**

Based upon the foregoing, it is this 30<sup>th</sup> day of January 2014, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the petition Franklin David and Elizabeth David for retroactive approval of a Two-family dwelling conditional use in an R-20 (Residential: Single Family) Zoning District is **APPROVED**. Provided, however, that:

1. The Conditional use shall be conducted in conformance with and shall apply only to the Conditional Use for an a Two-Family dwelling as described in the petition and as depicted on the Conditional Use Plan submitted on November 13, 2013 and not to any other uses, activities, or structures on the Property.
2. The Petitioners shall obtain all necessary permits and licenses, including, but not limited to, a two-family rental housing license.
3. The Petitioners shall comply with all Health Department comments and requirements.

**HOWARD COUNTY BOARD OF APPEALS  
HEARING EXAMINER**



Michele L. LeFavre

Date Mailed: 1/31/14

**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.