

IN THE MATTER OF	:	BEFORE THE
THE COMMUNITY ECOLOGY	:	HOWARD COUNTY
INSTITUTE, Ltd.	:	BOARD OF APPEALS
Petitioner	:	Case No. BA 19-029C
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DECISION AND ORDER

The Howard County Board of Appeals (the “Board”) met on November 14, 2019 to hear and deliberate the petition of The Community Ecology Institute, Ltd. (Petitioner), for a conditional use for Charitable and Philanthropic Institutions: Offices and Educational Programs in an R-20 (Residential: Single Family) zoning district. The petition is filed pursuant to Section 131.0.N.12 of the Howard County Zoning Regulations (the “Zoning Regulations”).

Board members Neveen Kurtom, John Lederer and William Santos participated in the hearing. Board member Kurtom presided over the hearing and deliberation of the case. Barry M. Sanders, Assistant County Solicitor, served as legal advisor to the Board.

The Petitioner certified to compliance with the notice, posting and advertising requirements of the Howard County Code. The Board members indicated that they had viewed the property as required by the Zoning Regulations.

The hearing was conducted in accordance with Section 2.209 of the Board’s Rules of Procedure. The Howard County Charter, the Howard County Code, the Howard County Zoning Regulations, the various technical staff reports and agency comments, the Department of Planning and Zoning’s Technical Staff Report recommendation of conditional use approval dated October 31, 2019, the General Plan for Howard County, the General Plan of Highways, and the conditional use petition and plan were incorporated into the record by reference.

The Petitioner was represented by counsel, William E. Erskine.

Chiara D'Amore, Jason VanKirk, Joan Lancos, Skye Anderson and Jeremy Bellows testified in favor of the petition. No persons appeared or testified in opposition to the petition.

The Petitioner offered, and the Board accepted, the following documents into evidence:

Petitioner's Exhibits

1. Conditional Use PowerPoint Presentation;
2. Hoop House example;
3. Composting toilet example;
4. Log Cabin Bath House example; and
5. Statement by Joan Lancos on behalf of Hickory Ridge Village Center.

FINDINGS OF FACT

Based upon the testimony and evidence presented at the hearing, the Board makes the following Findings of Fact:

1. The subject property is located approximately 0.3 miles west of the intersection of Harriet Tubman Lane and Freetown Road. The 4th Election District subject property is identified as Tax Map 35, Grid 24, Parcels 126 and 127, and known as 8000 Harriet Tubman Way, Simpsonville, Maryland (the "Property").

2. The Property is 6.39-acres in size and zoned R-20 (Residential – Single).

3. The Property consists of two adjacent parcels (126 & 127), is situated to the south of Harriet Tubman Lane and is bounded to the south by MD Route 32, by single family detached dwellings to the west, and by single-family detached dwellings, townhome dwellings, and a bus service/storage property to the east.

4. The Property has an existing special exception for a greenhouse and lawn and garden store approved through BA-81-56E in 1982. The Petitioner purchased the Property on June 28, 2019 and has been diligently working on cleaning up the property and restoring the farm structures. In

addition to the allowed farming uses, the Petitioner is applying to add the Conditional Use of Charitable or Philanthropic Institutions: Offices and Educational Programs to fulfill the organization's mission of providing nature-based experiential educational programming to the community.

5. The site has an elevation of 406-feet at the northeast corner and descends to 374-feet at the southwest corner. A heavily wooded area, nontidal wetlands, and a stream are located on the southern portion of the Property.

5. Harriet Tubman Lane has 28-feet of paving within a 50-foot right-of-way. The speed limit is 30 miles per hour.

6. The Property is within the Metropolitan District and Planned Service Area for water and sewer.

7. PlanHoward 2030 General Plan depicts the Property as Established Community on the Designated Place Types Map. Harriet Tubman Lane is depicted as a Major Collector on PlanHoward 2030 Functional Road Classification Map.

8. This Petitioner, a 501(c)(3) non-profit organization whose mission is to enhance community health and well-being by fostering diverse connections between people and the natural world, proposes to offer educational programs related to organic food production/sustainable agriculture. The use will include an approximately 4,000 square-foot building consisting of offices, meeting areas and education space. There will also be outdoor education areas, a greenhouse, an outdoor classroom deck and 22 parking spaces. The classes will not exceed 45 students at one time and there will be a six-person staff. The ingress and egress location will remain the same as that approved in BA-81-56E.

9. The Petitioner proposes to continue operating a greenhouse and farm stand approved in

BA-81-56E. Additionally, the Property will be used for agricultural uses permitted by right under the farming land use category. Such uses include: a pollinator meadow; community gardens; accessory sheds; and a greenhouse.

§ 131.0.B – General Standards Required for Approval; and
§ 131.0.O.12 – Specific Conditional Use Criteria for Charitable or Philanthropic
Institutions: Offices and Educational Programs.

Maryland’s Common Law - *Schultz v. Pritts* and its Progeny

Maryland law requires the Board to apply the *Schultz* test when evaluating the Petition – a two-part test (or standard) that “lurks” within each individual factor the Board must consider under the Regulations. *People’s Counsel for Baltimore Cty. v. Loyola Coll. in Md.*, 406 Md. 54, 68-69 (2008) (citations omitted) (explaining *Schultz v. Pritts*, 291 Md. 1 (1981)). First, a conditional use is presumed to be “in the interest of the general welfare, and therefore, valid.” *Loyola Coll.*, 406 Md. at 84 (citations and internal quotation marks omitted). Second, the favorable presumption incorporates the inherent adverse effects of the use. *Id.* at 79 (citations omitted).¹ *Schultz* “essentially adds language to statutory factors to be considered in evaluating proposed [conditional uses.]” *Id.* at 69 (citations omitted).

Once a conditional use complies with the applicable zoning regulations, notwithstanding even “severe” inherent adverse effects, it cannot be denied without evidence of adverse effects that are “above and beyond those inherently associated with [the use]” *Mossberg v. Montgomery Co.*, 107 Md. App. 1, 9 (1995); *see also Schultz*, 291 Md. at 22-23; *Loyola Coll.*, 406 Md. at 90, 99. The *Schultz* presumption can only be overcome with “strong and substantial” evidence of “detrimental effects above and beyond the inherent ones ordinarily associated with such uses.”

¹ The *Schultz* test is consistent with the Regulations, which presume a conditional use is “generally appropriate and compatible in the specified zoning districts” and require a finding that a conditional use does not have any “adverse effects above and beyond those ordinarily associated with such uses.” Regulations, §§ 131.0.A, 131.0.B.3.

Loyola Coll., 406 Md. at 85 (emphasis added) (citing *Anderson v. Sawyer*, 23 Md. App. 612, 625 (1974)).

CONCLUSIONS OF LAW

Based upon the evidence presented to the Board in this case, and upon the Board's review of the evidence, the Board makes the following Conclusions of Law:

A. General Criteria for Conditional Uses (Section 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. Section 131.0.B.1**

There are not any Howard County General Plan policies directly related to Charitable or Philanthropic Office and Educational Program Conditional Uses, however, the Board concludes that properly sited facilities are compatible with residential land uses and that the proposed educational programs are in harmony with the following Howard County General Plan policies that promote environmental stewardship and sustainability practices:

Policy 3.5 – “Promote individual environmental stewardship;” and

Policy 3.9 – “Increase collaboration between residents, businesses, nonprofit groups, and the County on implementing state-of-the-art sustainability practices and techniques.”

- 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. Section 131.0.B.2**

The nature and intensity of the proposed conditional use is appropriate in relation to the size of the site in relation to the use. The Property has been used for agricultural purposes for over 30 years and has an approved special exception for a garden store and greenhouse. The Petitioner is proposing to expand the agricultural use and add programs to educate the public about

environmentally sustainable practices. The maximum number of students at one time will not exceed 45. The 6.39-acre property exceeds the one-acre minimum lot size requirements and meets all conditional use requirements and bulk regulations. Harriet Tubman Lane is a Major Collector which is an appropriate classification for the types and the number of vehicles associated with the proposed use.

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. Section 131.0.B.3.

- 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.**

The proposed conditional use is intended to accommodate the existing farm use with the addition of educational programming to engage the community in environmental learning. The indoor educational component of the conditional use should not generate any adverse physical conditions. While farming uses have the potential to generate noise, dust and odors, the intensity of the proposed farming activities and outdoor educational activities are unlikely to generate adverse impacts greater at this site than elsewhere in the zoning district. The Property is 6.39 acres which exceeds the one-acre lot size requirement and is much larger than most R-20 zoned lots. The structures and uses areas associated with the conditional use exceed the required setbacks and a Type “C” landscape buffer is proposed along both side property lines where a landscape buffer does not already exist to screen the site from adjacent residential uses. The proposed use will not create any adverse impacts greater at the Property than elsewhere in the zone.

- 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.

The maximum height allowed in the R-20 zoning district is 34 feet for principal structures and 15 feet for accessory structures. The office/education center building is 21 feet tall and all accessory structures are between 10 and 14 feet in height. All uses, and structures associated with the conditional use comply with the 50-foot setback requirement. The Petitioner indicates that the structures and uses encroaching into the 50-foot setback are associated with farming and are permitted by right. These structures comply with the R-20 setback and the gardens shown along the east property line are exempt from setbacks according to §103.0 and 128.0.A.1.l. A Type "C" landscape buffer is proposed along the property lines to screen the site from adjacent residential uses. Therefore, 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 elsewhere in the same zoning district.

- 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 impact on adjacent properties.**

The Petitioner is providing 22 parking spaces which will be appropriate to serve the use. The parking areas are over 100 feet from the front property line and 70 feet from the closest side lot line. The Type "C" landscape buffer will screen the parking areas from adjacent residential uses. The existing and proposed vegetation will screen the parking areas from the right-of-way. No loading or refuse areas are proposed.

- 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.**

The existing ingress and egress driveway will continue to provide safe access with adequate sight distance. The proposed driveway access does not have driveway access that is shared with other residential properties.

- e. The proposed use will not have a greater potential for adversely impacting environmentally sensitive areas in the vicinity than elsewhere.**

A stream and wetland area are located on the southern portion of the Property. The proposed use does not encroach into any of these environmentally sensitive areas or the required buffers. Therefore, the proposed use will not have a greater potential for adversely impacting environmentally sensitive areas in the vicinity than elsewhere.

- f. The proposed use will not have a greater potential for diminishing the character and significance of historic sites in the vicinity than elsewhere.**

The TSR indicates that there are no historic sites within one-half mile of the property. Therefore, the proposed use will not have a greater potential for diminishing the character and significance of historic sites in the vicinity than elsewhere.

B. Conditional Use Criteria for Charitable or Philanthropic Institutions: Offices and Educational Programs (Section 131.0.N.12.)

- a. The minimum lot size in the R-ED, R-20 and R-12 Districts shall be one acre. The minimum lot size in the RC and RR Districts shall be three acres.**

The subject property is zoned R-20 and is over six acres.

- b. The facility shall be limited to office functions and areas for meetings and educational programs related to the organization's primary purpose. The Hearing Authority must specify the allowed capacity and frequency of educational programs.**

The Petitioner is a 501(c)(3) non-profit organization whose mission is to enhance community health and well-being by fostering diverse connections between people and the natural world. The proposed facility will provide offices and

educational programs related to organic food production/sustainable agriculture.

The Petitioner proposes offices, meeting space and education events/classes for no more than 45 students at one time.

- c. **Outdoor uses are limited to necessary parking and access, with the exception of nonprofit organizations whose primary purpose is environmental conservation, in which case the use may include outdoor areas used to demonstrate principals and methods of environmental conservation.**

The proposed conditional use plan depicts the location of the outdoor areas to be used to demonstrate principals and methods of environmental conservation including community gardens, rain gardens, children's garden, pollinator meadow, education garden, gardens to generate produce for community supported agriculture program, outdoor education space, an existing farm stand and two greenhouses. The outdoor space also contains 22 parking spaces with travel lanes for access. All garden uses and structures within conditional use setbacks will be used solely for agricultural purposes permitted in the R-20 district.

- d. **All parking areas and outdoor activity areas shall be screened from surrounding properties and roads by landscaping or other appropriate means and located and designed to shield residential property from noise or nuisance.**

All parking areas, travel lane areas, and outdoor activity areas will be screened from neighboring properties by a new landscape buffer. Per the Howard County Landscape Manual, the Petitioner will install a level "C" landscape buffer along the east and west property lines to screen the uses from surrounding residential properties. The parking areas are over 100-feet from the front property line and 70-feet from any side lot line. Harriet Tubman Lane will be buffered by community gardens, a pollinator meadow and stormwater management.

- e. **The design of new structures or additions to existing structures shall be compatible in scale and character with residential development in the vicinity, as demonstrated by architectural elevations or renderings submitted with the petition.**

There is one new greenhouse sized 12-feet by 16-feet proposed for the site and a new proposed raised deck with cover sized 12-feet by 16-feet for outdoor classes. There is also one toilet structure and bath house structure both sized 8-feet by 9-feet. The Petitioner has provided elevations/pictures of the proposed structures which demonstrate that they are compatible with the scale and character of the development in the vicinity. The small size of these buildings, their setback from the property lines, and their architecture will ensure that they are compatible with the residential scale and character in the vicinity.

- f. **Buildings, parking areas and outdoor activity areas shall be at least 50 feet from adjoining residentially zoned properties other than public road right-of-ways.**

All buildings, parking areas and outdoor education areas are located over 50 feet from residentially zoned property. Two pre-existing sheds, one 275-square foot along the east property line and one 505-square foot shed along the west property line encroach into the 50-foot setback requirement. the Petitioner indicates that these buildings are associated with farming which is permitted by right and not subject to the 50-foot conditional use setback. Pursuant to §103.0 and §128.0.A.1.1., of the zoning regulations the gardens along the east property line are exempt from setbacks.

- g. **At least 20% of the area within the building envelope shall not be used for buildings, parking areas or driveways. The building envelope is formed by the required structure and use setbacks of the Zoning Regulations for the zoning district and the Subdivision and Land Development Regulations.**

More than 20% of the area within the building envelope is not being used for buildings, parking areas, or driveways. Specifically, 81% of the area within the building envelope is not being used for buildings, parking areas or driveways.

C. CONCLUSION

Weighing all the testimony and evidence of record under a “preponderance of the evidence” standard, the Board concludes that the instant petition complies with Sections 131.0.B (General Standards), and 131.0.N.12 (Specific Criteria) of the Zoning Regulations.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, it is this 31ST day of December, 2019, by the Howard County Board of Appeals, ORDERED:

That the Petition of The Community Ecology Institute, Ltd. for a Conditional Use for Charitable and Philanthropic Institutions: Offices and Educational Programs in an R-20 (Residential: Single) Zoning District is **GRANTED**, subject to the following condition:


1. The maximum number of students at one time will not exceed 45.
2. The Petitioner shall comply with all applicable Federal, State and County laws and regulations.

ATTEST:

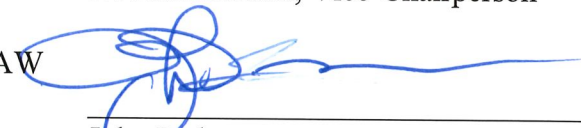
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