

IN THE MATTER OF	:	BEFORE THE
<b>BURGERS OF BALTIMORE II, LLC</b>	:	HOWARD COUNTY
Petitioner	:	BOARD OF APPEALS
	:	HEARING EXAMINER
	:	BA Case No. 18-026C

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**DECISION AND ORDER**

On December 14, 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 Burgers of Baltimore II, LLC (Petitioner) for a Fast Food Restaurant conditional use, in a B-1 (Business: Local) zoning district, pursuant to §§ 130.0.B.5 and 131.0.N.20 of the Howard County Zoning Regulations (HCZR).

The Petitioner certified to compliance with the 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. Thomas Meachum, Esq., represented the Petitioner. Randall Hughes testified in support of the petition. No one appeared in opposition to the petition.

At the outset of the hearing, Petitioner introduced into evidence as Exhibit 1 a revised conditional use plan (RCUP) showing the required number of drive-thru stacking spaces (10).

**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 on the north side of Centre Park Drive about 750 feet southwest of Route 100. It is located in the 2<sup>nd</sup> Election District, identified

as Tax Map 0030, Grid 0018, Parcel 104, Lot A-4, and known as 8835 Centre Park Drive (the Property).

2. Property Description. The 1.4-acre trapezoidal Property is improved with a 6,901sf retail building, including a 2,200sf space previously occupied by a bank. There is a 20-foot wide vehicular ingress/egress from Centre Park Drive in the southwest corner of the Property, parking in front of the building, and a drive-through teller lane along the east side of the building.

3. Vicinal Properties. The northern POR-zoned property is improved with an office building. The M-1 zoned property to the south is improved with a school. The POR-zoned property to the east is improved with a bank. The western B-1 zoned property is improved with a retail use.

4. Roads. Centre Park Drive has three lanes and a 50-foot pavement width within a 100-foot right-of way. The speed limit is 30mph. The 2016 Centre Park Drive traffic count was 21,874.

5. Water and Sewer. The proposed use will be served by public water and sewer.

6. The General Plan. PlanHOWARD 2030 designates the Property as “Established Community” on the Designated Pace Types Map. Centre Park Drive is a Major Collector.

7. Zoning History. Technical Staff reports no record of any Hearing Authority, Zoning Board or DPZ case.

8. The Fast Food Restaurant Conditional Use (HCZR § 131.0.N.20). The conditional use site is 0.83 acres. Petitioner is proposing a 2,440sf Fast Food Restaurant comprising 2,200sf in the existing building, a 240sf addition for a walk-in refrigerator at the rear of the site, a drive-thru, and 35 parking spaces. There will be about 25 employees and seating for 30-40 patrons. Proposed hours of operation are 7:00am-11:00pm on Sundays, 6:00am-11:00am Monday-Friday and

6:00am to 12:00am on Saturday.

### CONCLUSIONS OF LAW

#### I. General Criteria for Conditional Uses (§ 131.0.B)

Based upon the foregoing Findings of Fact, the Hearing Examiner concludes as follows:

**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.**

The Howard County General Plan designates the area in which the Property is located as "Established Community." The conditional use/variance plan is harmonious with General Plan Policy 6.4 to "[e]nsure that the County continues to capture future job and business growth opportunities."

**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.**

HCZR § 131.0.B.2 is an on-site evaluation of the proposed Conditional Use. The use complies with all setback regulations and the only proposed physical change in the use is the modest 240sf addition. The access off a Major Collector is appropriate for a Fast Food Restaurant, which will generate constant traffic. Even so, there is no evidence of the existing access not providing safe ingress/egress for the use. The nature and intensity of the use, the size of the Property in relation to the use, and the location of the site, with respect to streets that provide access, are such that the overall intensity and scale of the use are therefore appropriate.

**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:**

Unlike §§ 131.0.B.1 and 2, which concern the proposed use's harmony or compatibility with the General Plan and the on-site characteristics of the proposed use, compatibility with the neighborhood is measured under § 131.0.B.3's six "adverse effect" criteria: (a) physical conditions; (b) structures and landscaping; (c) parking areas and loading; (4) access; (5) impact on environmentally sensitive area, and; (6) impact on the character and significance of historic sites. These six adverse impact tests gauge the off-site effects of the proposed conditional use.

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 a B-1 district. The proper question is whether there are facts and circumstances showing the particular uses 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 Petitioner has met its burden of presenting sufficient evidence under HCZR § 131.0.B.3 to establish the proposed use will not have adverse effects on vicinal properties beyond those ordinarily associated with a Fast Food Restaurant in the B-1 zoning district.

**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.**

There is no evidence of record regarding atypical adverse effects on vicinal properties from dust, fumes, and odors, noise, intensity of lighting, or hazards.

**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 new 240sf refrigeration unit addition is proposed at the rear of the site. The existing mature trees along the western property line and Centre Park Drive will remain. Substantial landscaping is proposed along Centre Park Drive, and which will screen parking areas from adjacent properties. The proposed 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.

**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.**

Petitioner revised the CUP to show 10 additional stacking lanes as required by the Design Manual Vol. III. HCZR § 133.0 requires 14 parking spaces per 1,000sf of floor area and retail requires 5 spaces per 1,000sf. The site has a 4,791sf retail building, which requires 24 spaces and the 2,400sf Fast Food Restaurant requires 35 spaces. Fifty-nine spaces are proposed, including four accessible spaces. The existing dumpster will remain and will be screened by existing and proposed landscaping. The RCUP shows landscaped islands in the parking area and along the

Centre Park frontage. One new shade tree, 13 small deciduous trees, 7 evergreens, and 187 shrubs are proposed. This landscaping will buffer/screen the use from adjacent public roads.

**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/egress for the former bank was approved through a red-line revision to SDP-87-180 (December 29, 2004). Although the proposed Fast Food Restaurant will likely generate increased traffic, there is no evidence that the existing ingress/egress will not provide safe access with adequate sight distance, where the sight distance to the east is 350 feet and to the west, 550 feet. There is no shared driveway access.

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

There are no environmentally sensitive areas in the vicinity.

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

Some 0.4 miles away is Mt. Pisgah AME/Bellow's Spring Methodist Church (HO-440) There is no evidence of the use having a greater potential for diminishing the character and significance of a vicinal historic site in the vicinity than elsewhere.

## **II. Specific Standards for Fast Food Restaurants (§ 131.0.N.20)**

A Conditional Use may be granted for a fast food restaurant in the B-1, M-1 or M-2 Districts, provided that:

**a. At least 20% of the site area will be landscaped. The petitioner shall submit a specific landscaping plan, which if approved becomes binding on the development of the facility. The landscaping plan must include plantings which enhance the appearance of the site from public roads and provide buffering for adjacent uses.**

Technical staff reports that the conditional use area is 0.83 acres, which requires a 7,231sf landscaped area, and which is shown on the plan. The RCUP shows landscaped islands in the parking area and along the Centre Park frontage. One new shade tree, 13 small deciduous trees, 7 evergreens, and 187 shrubs are proposed. This landscaping plan will enhance the appearance of the site from Centre Park Drive and provide buffering for adjacent uses.

**b. The petitioner shall demonstrate that the noise generated by speakers for drive-through service lanes will not be audible from residentially-zoned land and residential uses.**

There are no vicinal residentially zoned lands or uses. This criteria does not apply.

**c. If the site borders a residential district:**

**(1) A detailed lighting plan must be approved by the Hearing Authority.**

**(2) Solid walls such as masonry or wood and masonry may be required by the Hearing Authority. When solid walls are required, landscape planting is required between the wall and the property line.**

There are no bordering residential districts. This criteria does not apply

**ORDER**

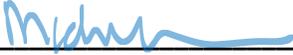
Based upon the foregoing, it is this **9<sup>th</sup> day of January 2019**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the petition of Burgers of Baltimore II, LLC for a Fast Food Restaurant conditional use, in a B-1 (Business: Local) 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 use described in the petition and depicted on the revised conditional use plan and not to any new structures or uses on the Site or any additions thereto and as subject to all findings of fact.
2. Petitioner shall obtain all required permits.
3. Petitioner shall comply with all federal, state, and local laws and regulations.

**HOWARD COUNTY BOARD OF APPEALS  
HEARING EXAMINER**

  
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Michele L. LeFaivre

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. In accordance with C.B. 51-2016, § 1 (HCC Sec. 22.902 - Computation of time), if the deadline to appeal is a Saturday, Sunday, or holiday, or if the County offices are not open, the deadline shall be extended to the end of the next open County office business day.