

IN THE MATTER OF : BEFORE THE
JEFFREY EDLEY : HOWARD COUNTY
Petitioner : BOARD OF APPEALS
: HEARING EXAMINER
: BA Case No. 13-039C

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DECISION AND ORDER

On March 31, 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 Jeffrey Edley for approval of a two-family dwelling conditional use in an R-12 (Residential: Single) Zoning District, filed pursuant to Section 131.0.N.54 of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioner 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.

Petitioner Jeffrey Edley was not represented by counsel. No one appeared in opposition to the petition. Jeffrey Edley testified in support of 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 in the 6th Election District in the southeast quadrant of the intersection of Jones Road and Rose Lane. It is referenced as Tax

Map 42, Grid 24, Parcel 432, Lot 11 and has a street address of 7909 Jones Road (the Property). It is part of the Nordau subdivision (Record Plat 4092).

2. Site Description. The 20,479-s.f. rectangular, corner lot Property is improved with a 4,100±-s.f. structure. A driveway on the easterly side of the house provides access to an attached garage from Rose Lane and a second driveway off Jones Road provides access to what appears to be a second attached garage on the southwesterly side of the house.

3. Vicinal Properties. Adjoining properties are zoned R-12, each of which is improved with a single-family dwelling, excepting Parcel 136, an unimproved lot to the rear of the Property.

4. Roads. Jones Road has two travel lanes within a 40- right of way.

5. Water and Sewer. The Property is served by public water and sewer. According to Health Department comments submitted with the Technical Staff Report, a well in the front yard must be abandoned properly prior to Health approval of the conversion to a two-family dwelling.

6. General Plan. PlanHOWARD2030 designates the Property as "Established Community" on the Designated Place Types Map. The Functional Road Classification Map depicts Jones Road as a Local Road.

7. The Proposed Conditional Use. Petitioner seeks approval for an owner-occupied two-family dwelling within the existing dwelling. There will be two kitchen areas, one on each side of the dwelling. No additions are proposed.

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-12 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 Petitioner has met his 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-12 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 driveways 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 ingresses/egresses 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-12 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 20,479-s.f in size.

ORDER

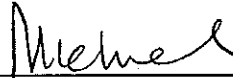
Based upon the foregoing, it is this 10th day of April 2014, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the petition of Jeffrey Edley for a two-family dwelling conditional use in an R-12 (Residential: Single) Zoning District is **GRANTED**.

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 January 14, 2014 and not to any other uses, activities, or structures on the Property.
2. The Petitioner shall depict the location of the second kitchen on all plans submitted to the Department of Inspections, Licensees and Permits.
3. This approval does not include or encompass any other uses, activities, or structures on the Property, including any new additions.
4. Petitioner shall obtain all necessary permits for the use.
5. Petitioner shall comply with all state and local laws and regulations.

**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 calendar 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.