

IN THE MATTER OF : BEFORE THE  
**BRIAN SCHWENK** : HOWARD COUNTY  
Petitioner : BOARD OF APPEALS  
: HEARING EXAMINER  
: BA Case No. 13-035C

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**DECISION AND ORDER**

On February 10, 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 Brian Schwenk (Petitioner) for a Temporary Accessory Family Dwelling Conditional Use, in an RR (Rural Residential) Zoning District, filed pursuant to Section 131.0.N.18 of the Howard County Zoning Regulations (the "Zoning Regulations").

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

Dylan Springmann, Esquire, represented Petitioner. Brian Schwenk testified in favor of the petition. No one testified in opposition to the petition.

Petitioner introduced into evidence the exhibits as follows.

1. BOA Case No. 13-003N decision and order
2. PlanHOWARD 2030 General Plan, pgs. 66-67,129-131
3. Aerial photograph showing Property and garage

### 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 2<sup>nd</sup> Election District on the south side of Church Road about 570 feet southeast of Deanwood Avenue. It is identified as Tax Map 25, Grid 8, Parcel 283 and is also known as 3552 Church Road (the Property).

2. Property Description. The 2.76-acre Property is located in the Ellicott City Historic District and is principally improved with an approximately 3,767-s.f., two-story, frame, single-family detached dwelling originally constructed in the 1890s and located in the front portion of the lot. Some 92 feet to the dwelling's southwest is a large detached non-historic, 30'x52', accessory building (the Accessory Building). The Property is accessed from a curved driveway running past the dwelling to the Accessory Building. To the dwelling's northwest, the Property drops in elevation from the level area. The rear portion of the Property is wooded.

3. Vicinal Properties. All but one adjoining property is zoned RR. The southwest Parcel 161 is zoned R-ED (Residential: Environmental Design). These properties are each improved with a single-family detached dwelling.

4. Roads. Church Road has about 16 feet of paving within an existing 33-foot right-of-way. According to the Technical Staff Report (TSR), sight distance is not a problem, the access to/from Church Road access being long-standing.

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

6. General Plan. PlanHOWARD2030 designates the Property as "Established Communities"

on the Designated Place Types and Land Use Maps. The Transportation Map depicts Church Road as a Local Road.

7. Zoning History. In BOA Case No. 13-003N (April 25, 2013), the Hearing Examiner confirmed and expanded a nonconforming use for a full bathroom and residential use of a detached accessory garage. The Floor Plan submitted and approved in this case depicted a 1,980-s.f. existing nonconforming use area. There was also testimonial evidence that this area was being used for a bedroom, a workshop, hobbies and exercise space, cabinets, and an eating area, which included a refrigerator and provision for eating. The Hearing Examiner also approved an enlargement of this area by 210 s.f. for a 13.5'x15.5' addition (2,190-sq.ft. total area) identified as a Hobby Room on the southeastern side of the addition and a 10'x13.5' deck. Approval was also conditioned on a prohibition against the installation of any 220-volt outlet, and no permanent provision for eating or cooking.

8. The Requested Conditional Use. Petitioner is seeking approval to use the Accessory Building as a temporary family dwelling for his 87-year old mother. Petitioner is also requesting approval to use the 2,190-s.f. area approved in BA 13-003N as the maximum square footage of the Temporary Accessory Family Dwelling area (See Part II, criterion c.)

9. Brian Schwenk testified the conditional use is intended as a dwelling for his mother, the 87-year old Barbara Schwenk. No caretaker will reside with her.

#### 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)**

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.

**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.**

PlanHOWARD2030 designates the Property as "Established Community" on the Designated Place Type Maps. Petitioner's Exhibit 2, excerpts from PlanHOWARD 2030 General Plan, demonstrates the harmoniousness of the proposed use with the Plan. These excerpts explain the need to provide a variety of housing types for the County's aging population.

**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.**

Petitioner is seeking to use the Accessory Building as a temporary dwelling for his 87-year old mother. No caregiver is to reside with her. Petitioner is also requesting approval to use the 2,190-square feet use area approved in BA 13-003N for the use. This area, as approved, included 1,980-s.f. used as a bedroom, a workshop, hobbies and exercise space, cabinets, and an eating area (which included a refrigerator, but no permanent provision for eating) as well as a 210-sq.ft Hobby Room addition on the southeastern side of the addition and a 10'x13.5' deck. The Hearing Examiner's approval was conditioned in pertinent part on a prohibition on the installation of any 220-volt outlet, and no permanent provision for eating or cooking.

The Conditional Use Plan for the proposed 2,190-s.f. Temporary Accessory Family Dwelling appears to be the same plan as that submitted in BA 13-003N, excepting a note explaining the rear expansion was approved in that Decision and Order. Because the petition in the instant case states the Accessory Building will not be used as a dwelling unit by any other person, including a caregiver, the Hearing Examiner concludes Petitioner intends to use a portion of the Accessory Building for a kitchen, and not for any additional bathrooms or bedrooms. Subject to the condition that the requested additional square footage shall be used only for permanent eating facilities and not for any additional bedroom, bathroom or garage space, the overall intensity and scale of use, which is a predominately indoor use, is 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:**

**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.**

Unlike §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; (4) 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 RR 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).

In this case, there is no evidence of adverse physical effects on vicinal properties beyond those ordinarily associated with a Temporary Accessory Family Dwelling guest house in the RR district.

**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 Accessory Building is well separated by distance from adjacent properties, excepting the adjoining property to the northwest. The Accessory Building sits about 75 feet from this property and the uses are separated by existing vegetation. The use will not be readily noticeable.

**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 Accessory Building has garage parking and a wide paved area in front, as well as a long driveway. Because only one resident will dwell in the structure, the number of spaces is appropriate.

**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 driveway will provide safe access with adequate sight distance.

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

The environmentally sensitive areas in the vicinity are the steep slopes to the Accessory Building's south and southwest. Because the proposed use is well separated from these areas, it will not have a greater potential for adversely impacting them.

**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 Historic District Commission granted approval for the use of the Accessory Building in December 2012. Based on this approval, the proposed use will not have a greater potential for diminishing the character and significance of historic sites in the vicinity.

## **II. Evaluation of the Proposed Temporary Accessory Family Dwelling (Section 131.0.N.18)**

A Conditional Use may be granted in the RC, RR, R-ED, R-20 or R-12 Districts for a temporary accessory family dwelling provided that:

**a. The minimum lot size shall be 2 acres.**

The Property is 2.76 acres, in compliance with Section 131.0.N.18.a.

**b. The temporary accessory family dwelling shall be accessory to a single-family detached dwelling on the same lot.**

The proposed 2,190 s.f. use is accessory to the approximately 3,767-s.f. main single-family dwelling, in compliance with Section 131.0.N.18.b.

**c. If the temporary accessory family dwelling is a removable modular building, the maximum gross floor area of the use shall be less than 1,000 square feet. If the temporary accessory family dwelling is proposed as an alteration to an existing accessory building, the Hearing Authority may increase the maximum gross floor area of the use to 1,000 square feet or greater, provided that the use clearly remains subordinate to the principal dwelling on the lot. A temporary accessory family dwelling is not subject to the standard lot coverage regulations for accessory structures in Section 128.0.A.**

The proposed maximum floor area of 2,190-s.f. remains subordinate to the 3,767-s.f. principal dwelling, in compliance with Section 131.0.N.18.c and as conditioned.

**d. For newly constructed or installed temporary accessory family dwellings, the petition shall include a plan for appropriate screening as necessary to provide an attractive buffering for neighboring residential properties.**

This criterion is inapplicable, the Accessory Building being an existing structure.

**e. A resident of the temporary accessory family dwelling shall be a relative of at least one resident of the principle dwelling and shall either be:**

**(1) 62 years of age or older; or**

**(2) 18 years of age or older and determined by a qualified medical authority to have physical, mental, or developmental impairments that:**

**(a) Are expected to be of a long, continued and indefinite duration;**

**(b) Substantially impede the ability to live independently or are of such a nature that the ability to live independently is facilitated by more suitable living conditions.**



Petitioner's 87-year old mother shall be the sole resident, in compliance with Section 131.0.N.18.e.

**f. If determined necessary by a qualified medical authority, a long-term caregiver shall also be permitted to reside in the temporary accessory family dwelling.**

No long-term caregiver will reside in the Accessory Building. This criterion is inapplicable.

**g. No more than one temporary accessory family dwelling or accessory apartment shall be permitted per lot.**

The Accessory Building is the sole temporary accessory family dwelling, in compliance with Section 131.0.N.18.g.

**h. The name of the elderly or disabled family member who will reside in the temporary accessory family dwelling shall be documented with the Conditional Use approval. The temporary accessory family dwelling shall only be used as a dwelling unit for the housing of this elderly or disabled family member of the resident of the principal dwelling unit and a long-term caregiver as provided above, and shall not be used as a dwelling unit by any other person(s).**

The elderly resident shall be Barbara Schwenk, Petitioner's 87-year old mother, in compliance with Section 131.0.N.18.h.

**i. A Conditional Use for a temporary accessory family dwelling shall become void unless an owner of the property provides an affidavit to the Hearing Authority once a year from the date of approval attesting under penalties of perjury that the accessory family dwelling continues to comply with the specific requirements of this section.**

The petition states Petitioner shall comply with this criterion, in compliance with Section 131.0.N.18.i.

**j. If the temporary accessory family dwelling is a removable modular building, it shall be removed from the property within 60 days after the documented elderly or disabled family member no longer resides in this dwelling. If the temporary accessory family**

**dwelling is established as an alteration to an existing accessory building, 60 days after the documented elderly or disabled family member no longer resides in this building, the alterations authorized by the Conditional Use shall be removed and the accessory building shall no longer be used as a dwelling.**

The petition states Petitioner shall comply with this criterion, in compliance with Section 131.0.N.18.j.

**ORDER**

Based upon the foregoing, it is this **20<sup>th</sup> Day of February 2014**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the petition of Brian Schwenk for a Temporary Accessory Family Dwelling Conditional Use in an RR (Rural Residential) Zoning District, is **GRANTED**;

**Provided, however, that:**

1. The Conditional Use shall be conducted in conformance with and shall apply only to the proposed Temporary Accessory Family Dwelling as described in the petition and as depicted on the Conditional Use Plan and not to any other activities, uses, or structures on the Property.
2. The 2,190-s.f. Temporary Accessory Family Dwelling shall not include a second bedroom or bathroom.
3. The 87-year old Barbara Schwenk shall be the sole resident of the Accessory Building.
4. Petitioner shall submit an affidavit to the Hearing Authority once a year from the date of approval attesting under penalties of perjury that the accessory family dwelling continues to comply with the specific requirements of this section.
5. Sixty days after Petitioner's mother, Barbara Schwenk, no longer resides in the Accessory Building, the alterations authorized by the Conditional Use shall be removed and the Accessory Building shall no longer be used as a dwelling. All permanent provision for eating, including, but not limited to, electrical work, construction and appliances shall be removed. The Department of Planning And Zoning shall verify this removal.
6. Petitioner shall obtain all required permits.

HOWARD COUNTY BOARD OF APPEALS  
HEARING EXAMINER



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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.