

IN THE MATTER OF	:	BEFORE THE
JERRY RUSHING	:	HOWARD COUNTY
Petitioner	:	BOARD OF APPEALS
	:	HEARING EXAMINER
	:	BA Case No. 08-019C

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DECISION AND ORDER

On June 2, 2008, 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 Jerry Rushing for a two-family dwelling conditional use in an R-12 (Residential: Single) Zoning district, filed pursuant to Section 131.N.48 of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioner certified that notice of the hearing was advertised and that the subject property was posted as required by the Howard County Code. I viewed the subject property as required by the Hearing Examiner Rules of Procedure.

The Petitioner was not represented by counsel. Jerry Rushing testified in favor of the petition. No one testified in opposition to the petition.

FINDINGS OF FACT

Based upon the preponderance of evidence presented at the hearing, I find the following facts:

1. The subject property is located in the 6th Election District on the south side of Washington Street, about 100 feet east of Baldwin Street, and has a street address of 8815 Washington Street. It is referenced as Tax Map 47, Block 12, Parcel 282 (the "Property").

2. The 21,659 square foot, parallelogram shaped Property is about 104 feet wide and 208 feet deep and is improved with a one and 1/2-story detached dwelling centered on the front section of the site. The Property is level and is mostly open lawn, with some trees in the front yard.

3. Vicinal Properties. To the southeast is the R-A-15-zoned Storch Woods apartment complex. All other adjacent properties are zoned R-12 and are improved with two-story single-family detached dwellings.

4. Washington Street has no designated travel lanes and about 27 feet of paving within a variable width right-of-way. The posed speed limit is 30 miles per hour.

5. The Property is served by public water and sewer. Policies Map 2000-2020 of the 2000 General Plan designates the Property as "Residential Areas and Redevelopment Corridor." The General Plan Transportation Map depicts Washington Street as a Local Road.

6. The Petitioner, the property's owner's son, is proposing to raze the existing single-family detached dwelling and replace it with a two-story, two-family dwelling. Each "mirrored" dwelling would have three bedrooms and attached two-car garages. A common front porch will provide cover for the two entrances. The proposed units would be about 51 feet deep and 64 feet wide. The elevations and plans submitted with the petition indicate that the dwelling would be no higher than area homes. The driveways in front of the garages will be situated between 15 and 20 feet from the side lot lines.

7. Mr. Rushing testified that he wanted to relocate to the Property to help his aging mother age in place.

CONCLUSIONS OF LAW

. Based upon the foregoing Findings of Fact, I conclude as follows:

I. General Criteria for Conditional Uses (Section 131.B)

1. General Plan. The Howard County General Plan designates the area in which the Property is located as a "Residential Areas and Redevelopment Corridor" Area. Washington Street is depicted as a local road on the Transportation Map 2000-2020 of the 2000 General Plan. The less than ½-acre Property lies near the eastern end of Washington Street. A two-family dwelling is therefore an appropriate use for the area. Accordingly, the nature and intensity of the operation, the size of the Property in relation to the use, and the location of the Property with respect to streets giving access to the Property, are such that the use will be in harmony with the land uses and policies indicated in the General Plan for the district, in accordance with Section 131.B.1.

2. Adverse Effect: Section 131.B.2 of the Zoning Regulations requires me to determine whether the proposed use at the Site will have adverse effects on vicinal properties beyond those ordinarily associated with two-family dwellings in an RC-DEO zoning district.

The proposed use will be conducted principally indoors and will exceed all setback requirements. The driveways and garages will exceed Section 133.D's requirement of two parking spaces per each single-family detached dwelling. Sight distance appears to be adequate. As discussed above, the adjoining properties are developed as single or multi-family residential

uses. The proposed two-family dwelling would be the same or of lesser height than existing residences. Any noise, odor, or light generated by the uses will be attenuated by distance, given the setbacks, and will not be greater than that ordinarily associated with a two-family dwelling. The driveways will provide safe access with adequate sight distance, based on actual conditions. I therefore conclude the use will therefore not generate excessive noise, dust, fumes, odors, lighting, vibrations, hazards or other physical conditions beyond those inherently associated with two-family dwellings in the R-12 zoning district.

II. Specific Criteria for Two-Family Dwellings (Section 131.N.48.a)

1. The elevations and floor plans accompanying the petition indicate the proposed two-family dwelling is compatible in scale and character with the surrounding residential neighborhood as required by Section 131.N.48.a. The proposed structure will meet or exceed the 7.5-foot setback from the closest dwellings. The structure's height will meet district requirements.

2. Section 131.N.48.b does not apply.

3. Section 131.N.48.b does not apply.

ORDER

Based upon the foregoing, it is this **23rd day of June 2008**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

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

Provided, however, that:

1. The conditional use shall apply only to the uses and structures as described in the petition and conditional use plan submitted, and not to any other activities, uses, structures, or additions on the Site.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**


Michele L. LeFaivre

Date Mailed: 6/23/08

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.