

IN THE MATTER OF : BEFORE THE
ALEXIS YOUNG : HOWARD COUNTY
Petitioner : BOARD OF APPEALS
 : HEARING EXAMINER
 : BA Case No. 17-025C

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DECISION AND ORDER

On March 25, 2019, 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 Alexis Young (Petitioner) for a Child Daycare Center conditional use serving 12 children in an RR-DEO (Rural Residential – Density Exchange Overlay) zoning district, filed pursuant to § 131.0.B.5 of the Howard County Zoning Regulations (HCZR).

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. Alexis Young appeared for the hearing and testified. No one appeared in opposition to the petition.

FINDINGS OF FACT

Based upon the evidence of record, the Hearing Examiner finds the following facts:

1. Property Identification. The subject property is located on the west side of Old Rover Road, about 1,000 feet south of Tall Ships Drive. It is referenced as Tax Map 0015, Grid 13, Parcel 195, Lot PAR A, and known as 13743 Old Rover Road (the Property).
2. Property Description. The 4.03-acre Property is improved with a 2,625sf single-family detached dwelling located in the front central portion of the lot. A driveway on the south side of

the Property provides access to an attached garage and parking area. To the rear of the dwelling and deeper into the Property is a small shed. The Property is heavily wooded except for the area between the shed and dwelling. Petitioner currently operates a state-licensed accessory home day care for up to eight children at the Property, where she also resides.

3. Vicinal Properties. Adjacent properties are zoned RR-DEO and are each improved with a single-family detached dwelling.

4. Roads. Old Rover Road has two travel lanes and about 20 paving feet within a 30-foot right of way. The speed limit is 30MPH. Technical staff reports a 175-foot sight distance to the south and a 400-foot sight distance to the north. There is no traffic count data for Old Rover Road.

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

6. The General Plan. The Property is designated "Low Density" on the PlanHOWARD2030 Designated Place Types Map. Old Rover Road is shown as a Minor Collector on the PlanHOWARD2030 Functional Road Classification Map.

7. Zoning History. There is no prior zoning history for the Property.

8. The Proposed Home Daycare Conditional Use. Petitioner proposes to expand the existing accessory use home day care to serve up to 12 children. The daycare facility will be located in a 1,000sf basement portion of the existing dwelling. A small PVC fenced outdoor play area is shown behind the dwelling. This play area lies 80 feet front the front property line, 153 feet from the northeast property line, 205 feet from the north property line, and 277 feet from the west property line. Three parking spaces are proposed; two are located in the 30-foot

setback west of the garage and one would be located in front of the garage. Two staff members will be employed. The proposed hours of operation are 7:15am to 6:00pm Monday through Friday.

9. Agency comments.

Department of Planning and Zoning. Technical staff recommends that two parking spaces shown in the 30-foot use setback and the third proposed parking space shown in front of the garage be relocated to an area west of the garage entrance and outside the 30-foot use setback. Technical staff also notes that while the driveway cannot accommodate two-way traffic, the limited number of trips and available queuing area should adequately serve the use.

Bureau of Environmental Health, Well and Septic. The Bureau comments that it is unclear whether the structure will be used for both a daycare facility and a residence and advises Petitioner the onsite sewage disposal system and area are likely not adequate to accommodate the two uses. It also comments that the proposed play area overlaps the sewage disposal area and appears to be located on top of the septic tank.

10. Alexis Young testified that all state agencies had inspected the Property as a condition of licensing and found no problems. The 1,000sf indoor daycare facility will be located in the basement and a small fenced outdoor play area is proposed. No variances are needed, subject to the two parking spaces being relocated outside the 30-foot setback.

CONCLUSIONS OF LAW

Based upon the preponderance of evidence, the Hearing Examiner concludes as follows.

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

HCZR §§ 131.0.B.1-3 require the Hearing Authority to evaluate a proposed Conditional Use through the application of three standards, harmony with the General Plan, overall intensity and scale of use and adverse impacts.

A. Harmony and Intensity of Use (§§ 131.0.B.1 & .2)

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.

There are no policies in the General Plan that can be related to the proposed expansion. Child daycare facilities are presumptively harmonious with the General Plan subject to the Petitioner persuading the Hearing Examiner that the petition complies with the general and specific use criteria and other relevant matters.

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 4.03-acre Property is larger than the required 3-acre use minimum. The use is of modest intensity – a 12-child day care facility operating in a 1,000sf area of the basement and a fenced outdoor play area. No variances are needed, subject to the two parking spaces being relocated outside the 30-foot setback. Old Rover Road is a Minor Collector is an appropriate location for any increase in intensity of use, and there is no evidence that the additional motor vehicles entering and existing the existing driveway for the requested use would generate any problems with safe ingress and egress.

B. Adverse Impacts (§ 131.0.B.3)

Unlike § 131.0.B.1, which concerns the proposed use's harmony or compatibility with the General Plan, or § 131.0.B.2, which concerns the on-site effects of the proposed use, compatibility of the proposed use with the neighborhood is measured under § 131.0.B.3's six off-site, "adverse effect" criteria: (a) physical conditions; (b) structures and landscaping; (c) parking

areas and loading; (d) access; (e) environmentally sensitive areas; and (f) historic sites. 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-DEO 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 applicable 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 12-child, Child Daycare Center conditional use will not have adverse effects on vicinal properties beyond those ordinarily associated with a Child Day Care facility in the RR-DEO 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 any atypical adverse effects on vicinal properties from dust, fumes, odors, intensity of lighting or hazards, or other physical conditions. The outdoor play area

will generate some noise but being some distance from all property lines, would not cause atypical effects.

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 new walls or structures, are proposed. The PVC- fence will be buffered by distance from adjoining properties. The use will operate primarily within the basement of the principal structure, which does not exceed the RR-DEO 34-foot maximum structure height (HCZR § 105.0.E.2(a)). The proposed use will not hinder or discourage the development and/or use of adjacent land and structures more at the subject site than 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 impacts on adjacent properties.

No new loading or refuse areas are proposed. Pursuant to HCZR § 133.0, the off-street parking requirement for day care centers is three spaces per 1,000sf and two spaces for a single-family detached garage. The two car-garage will service the dwelling. As a condition of approval, the three day care conditional use parking spaces shall be relocated to an area west of the garage entrance and outside the 30-foot use setback. The relocated parking spaces will be buffered and screened from public roads and residential uses by existing landscaping.

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 drive has operated safely for many years.

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

There are no off-site vicinal environmentally sensitive areas.

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

This criterion concerns off-site historic sites. There are none in the vicinity.

II. Specific Criteria for Child Day Care Centers and Nursery Schools, Day Treatment and Care Facilities (§ 131.0.N.13)

A Conditional Use may be granted in the RC and RR Districts, on properties that are not ALPP purchased or dedicated easement properties, and in the R-ED, R-20, R-12, R-SC, R-SA-8, R-H-ED, R-A-15, R-APT, R-VH, HO, or HC Districts for day treatment and care facilities, child day care centers and nursery schools provided that:

a. On-site circulation and parking areas shall be designed to minimize vehicular/pedestrian conflicts and to provide safe areas for dropping off and picking up passengers.

Subject to the three day care use parking spaces being relocated to an area west of the garage entrance and outside the use setback, these relocated space can also function as the required on-site circulation area, where vehicles can queue while waiting to exit the site.

b. The minimum lot size in the RC and RR Districts shall be three acres and the minimum lot size in the R-ED, R-20, R-12, R-SC, R-SA-8, R-A-15, R-APT, R-VH, HO or HC Districts shall be one acre, except that uses approved prior to October 6, 2013 shall not be subject to this criteria.

The RR-zoned property is 4.03 acres.

c. Outdoor play areas or activity areas shall be fenced, located to the side or rear of the principal structure, and buffered from adjoining residential properties by landscaping or adequate distance or both.

The proposed play area will be located to the rear of the property and fences. This area would be screened by woods which will buffer the outdoor use from adjoining residences.

d. Parking areas shall be located and landscaped to minimize their visibility from roads and adjacent residential properties.

The relocated parking spaces will be screened by existing landscaping - a dense forest area. This minimizes their visibility from roads and adjacent residential properties.

e. The design and massing of proposed structures or additions to existing structures shall be generally compatible in scale and character with residential properties in the vicinity of the site, as demonstrated by architectural elevations or renderings submitted with the petition. Additional setbacks from property lines and landscape buffering shall be required if necessary to make the appearance of the site compatible with surrounding residential properties.

The proposed PVC fence is generally compatible in scale and character with vicinal residential properties and will be screened by dense existing landscaping.

f. For facilities with a capacity of more than 30 children or adult clients at one time, the following standards apply:

(1) The site has frontage on and direct access to a collector or arterial road designated in the General Plan, except that expansions of a Conditional Use that was approved prior to July 12, 2001 are permitted.

(2) Buildings, parking areas and outdoor activity areas will be at least 50 feet from adjoining residentially-zoned properties other than public road rights-of-way.

(3) At least 20% of the area within the building envelope shall be green space, not used for buildings, parking area or driveways. The building envelope is formed by the required structure setbacks from property lines and public street rights-of-way.

This standard does not apply because the facility is for 12 children.

A Final Note

Petitioner is on notice that pursuant to HCZR § 131.0.I, Establishment of Conditional Use, a site development plan and building permits may be required. If required, Petitioner shall not

commence the use until the Department of Planning and Zoning approves the site development plan and obtains all required building permits.

HCZR § 131.0.I. Establishment of Conditional Use

1. Site Development Plan Requirement

If required by the Department of Planning and Zoning, a Site Development Plan must be approved subsequent to the approval of a Conditional Use. The Site Development Plan must conform substantially to the Conditional Use plan.

2. Conformance with Conditional Use Plan

An approved Conditional Use shall not commence until:

- a. The Site Development Plan is approved, if required;
- b. All required building permits are issued; and
- c. The development significantly conforms with the Conditional Use plan, including but not limited to structures, landscaping, parking areas, points of access, and lighting, unless an alternative schedule for completion of improvements is approved by the Hearing Authority. The Department of Planning and Zoning may approve minor modifications to the configuration of buildings or other improvements as long as they do not move closer to abutting residential properties or other uses that might be adversely impacted, unless the Hearing Authority revokes this administrative authorization in the Decision and Order.

ORDER

Based upon the foregoing, it is this 2nd day of April 2019, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the Petition of Alexis Young for a Child Daycare Center conditional use serving 12 children in an RR-DEO (Rural Residential – Density Exchange Overlay) zoning district, is hereby **GRANTED;**

Provided, however, that:

1. The uses and structures shall be conducted in conformance with the Conditional Use Petition and Plan, except that Petitioner shall relocate the three conditional use parking spaces to the west of the garage.
2. Petitioner shall comply with all applicable federal, state, and county laws and regulations.
3. Petitioner shall obtain all necessary building permits.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**



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.