

IN THE MATTER OF : BEFORE THE
KIMBERLY KEPNES : HOWARD COUNTY
Petitioner : BOARD OF APPEALS
: HEARING EXAMINER
: BA Case No. 17-039C

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DECISION AND ORDER

On March 23, 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 Kimberly Kepnes (Petitioner) for a Country Inn Conditional Use and accessory Outdoor Private Events incident to the Country Inn, in an R-VH (Residential: Village Housing) zoning district, filed pursuant to Sections 131.0.B & 131.0.N.17 of the Howard County Zoning Regulations (HCZR).

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. Petitioner was not represented by counsel. Kimberly Kepnes and Heather Gaetano testified in favor of the petition. No one appeared in opposition to the petition.

The following exhibits were admitted into evidence.

- 1. Revised Conditional Use Plan
- 2. March 16, 2016 letter of support from The Ellicott restaurant
- 3. March 22, 2018 letter of support from the Ellicott City Partnership

Preliminary Matters

**A Tale of Two Petitions/Plans, Wherein the Hearing Examiner
Procures a Revised Petition/Plan That Might be Approved**

As submitted, the BA 17-039C Country Inn conditional use petition with associated outdoor private Events for up to 50 people (the Outdoor Private Events Use), proposed seven proposed parking spaces, two in a detached garage and seven parking spaces in the driveway adjacent to Church Road, with overflow parking for Outdoor Private Events Use to be provided in public parking areas within walking distance. The March 9, 2018 technical staff report (TSR) evaluation of the petition for compliance with HCZR § 131.0.B.3.c, which tests for adequate parking, reasoned there was inadequate parking for the proposed Private Event Use (TSR, pg. 5).

The parking requirement for a Country Inn is one per guest room. Therefore, four parking spaces are required for the four proposed guest rooms. However, the Petitioner also proposes private assembly events, which fall under a banquet hall classification and require one space per three fixed seats, or 10.0 spaces per 1,000 sf of assembly area if there are no seats. Therefore, 17 spaces are required for an event with 50 attendees. The plan depicts a two-car garage and five additional parking spaces on a brick driveway for a total of seven parking spaces. The assembly/banquet hall use is deficient approximately 10 parking spaces, depending on the number of event attendees staying in the house overnight.

The Petitioner suggests that guests use public parking located within walking distance of the proposed Country Inn. However, pursuant to Sec. 133.0.B.4, parking on a separate lot must be within 400 feet of the building, as measured along a pedestrian path. There are no parking lots within 400 feet of the building and on-street parking may not be used to meet the off-street parking requirement.

To meet the parking requirements, DPZ recommends that private events be limited to individuals staying overnight in the house and up to 10 additional attendees.

On reading the TSR, the Hearing Examiner found it contained multiple errors. First, DPZ's parking needs assessment misapplied the HCZR § 133.0.B.4, 400-foot off-site parking lot maximum distance restriction to the Outdoor Private Events Use. Second, DPZ misapplied the HCZR § 133.0.D.6.i "banquet hall" minimum parking space requirement to the proposed Outdoor Private Events Use (1.0 space per three fixed seats.) Neither parking standard applies to the proposed Private Event Use because the R-VH zoning district, per HCZR § 114.1.E, expressly excludes the application of HCZR § 133.0 to R-VH zoned property.

The minimum off-street parking requirements for specific uses contained in Section 133.0.D of these Regulations shall not be applicable in the Residential-Village Housing District, but reasonable and appropriate off-street parking requirements shall be determined by the Department of Planning and Zoning, which shall consider comments from other County agencies regarding the parking needs of the proposed use and the availability of parking in the area of the use. Off-street parking spaces serving any structures or land uses in existence at the time of adoption of these Regulations shall not in the future be reduced.

Additionally, DPZ erroneously concluded the Petitioner was not requesting any use accessory to the Country Inn. This standard is specific to the Country Inn conditional use category; it requires the conditional use plan (the CUP) to identify principal and accessory uses, and to confirm any accessory use would be no greater than 25% of the total floor area of all buildings. The proposed Outdoor Private Events Use being an accessory use to the principal Country Inn use, DPZ was also obliged to obtain from Petitioner information about its location, size, and proposed scope (days and hours of operations, location, any proposed amplified music, etc.) before accepting and forwarding the petition to the Hearing Examiner for scheduling.

In the interest of quasi-judicial efficiency, the Hearing Examiner by letter of March 13, 2018 informed Petitioner of the petition/CUP infirmities and TSR errors and placed the petition on the Unscheduled Docket pending resolution of these issues through a meeting with DPZ (to facilitate the parking needs consultation with other agencies), preparation of a revised CUP, Historic Preservation Commission (HPC) review, and an updated TSR. The Hearing Examiner revised these instructions subsequent to follow-up electronic correspondence from Ms. Kepnes about the economic impact of a delayed hearing.¹ By electronic correspondence of March 13, 2018, the Hearing Examiner informed Petitioner and DPZ the March 23 hearing could go forward if Petitioner met with DPZ to set the appropriate number of parking spaces and provided DPZ with a revised CUP plan indicating the proposed parking and the area/scope of any Private Event Use, and DPZ posted an updated TSR before the March 23 scheduled hearing. DPZ and the Petitioner agreed to this "alternative compliance" when the Hearing Examiner explained several hearings over many weeks would be needed to produce the necessary revisions. All deadlines were met; DPZ having also decided no further HPC review was warranted for the Revised CUP (per the Hearing Examiner's decision to let DPZ make this call.)

The undated revised TSR (the "March 16, 2018 Updated TSR," based on the date it was delivered to the Office of the Hearing Examiner for posting) included DPZ's evaluation of the necessary parking for the Outdoor Private Events Use based on a 10-guest maximum. It also

¹ Hearing Examiner Rule 7.2 requires all correspondence to be in writing, which prohibits electronic (email) correspondence, except for exigent circumstances. Copies of all electronic correspondence between Petitioner, DPZ, and the Office of the Hearing Examiner were placed in the case file.

assessed the Private Events Use as an accessory use. At the March 23, 2018 hearing, Petitioner introduced a revised CUP (Exhibit 1) detailed in Finding of Fact #8.

The Hearing Examiner takes notice Ms. Kepnes had little time to refine the scope of the proposed Outdoor Private Events Use and necessary parking other than to accept DPZ's recommendation in the initial TSR that events be limited to lodgers and 10 guests. For this reason, Petitioner is advised she may later petition the Hearing Examiner to modify the 10-guest limit through the modification process set forth in HCZR § 131.0.H.4.² Petitioner is advised to meet with DPZ to discuss the parking needs analysis before submitting a petition to modify conditions of approval.

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 2nd Election District on the

² HCZR § 131.0.H.4. The property owner or Conditional Use holder may petition the Hearing Authority for modification of conditions imposed in a Decision and Order approving a Conditional Use, in accordance with the following procedures:

- a. A petition for modification of conditions shall be submitted in the same format and include the same information as a Conditional Use petition, clearly indicating the approved Conditional Use, the requested modifications, and the reasons for the request.
- b. A petitioner shall certify that a copy of a request for modification of a condition to a Conditional Use Decision and Order has been sent by certified mail to adjoining property owners identified in the records of the Maryland Department of Assessments and Taxation and the parties of record, whose addresses shall be maintained by the secretary to the Hearing Authority.
- c. The Hearing Authority shall hold a public hearing in accordance with the procedures for a Conditional Use petition. The public hearing shall be limited to consideration of the modification requested by the petitioner.
- d. The Hearing Authority shall issue a written decision either upholding or modifying a condition imposed in the original Decision and Order.
- e. After a decision is made, a new petition requesting modification of any of the conditions of approval shall not be accepted for at least 24 months after the date of the decision modifying or upholding the conditions of the original Decision and Order.

east side of Church Road about 540 feet southeast of Sarah's Lane. It is identified as Tax Map 0025A, Grid 0000, Parcel 18, and is known as 3749 Church Road (the Property).

2. Property Description. The 1.06-acre irregularly shaped, extensively landscaped Property is improved with a four-bedroom historic house, patio, detached two-car garage, and parking area next to Church Road. From the 220-foot high elevation at the front lot line, the Property drops in elevation to about 160 feet at the rear lot line. The eastern portion of the site has steep slopes dropping down to old railroad tracks. Farther east, beyond the railroad tracks, is a parking lot. The Property has direct frontage/access to Church Road via a brick driveway.

3. Vicinal Properties. The northern and western R-VH zoned properties are each improved with a single-family detached dwelling. The southern and eastern HC (Historic: Commercial) zoned properties are improved with commercial, office, and parking uses.

4. Roads. Church Road has two travel lanes and a variable pavement width/right-of-way (ROW) with a 25MPH speed limit. The estimated sight distance north from the existing driveway is about 250 feet due to the curve of the road and the sight distance to the south is approximately 160 feet. However, precise sight distance measurements can only be determined by a detailed sight distance analysis. No recent State Highway Administration traffic volume data is available for Church Road.

5. Water and Sewer Service. The Property is served by public water and 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 Minor Collector.

7. Zoning History. There is no Board of Appeals, Zoning Board, or DPZ zoning case for the Property.

8. The Revised Requested Conditional Use. Petitioner is seeking approval for a Country Inn conditional use. The proposed Country Inn would operate within an existing four bedroom, historic residence known as Castle Angela (HO-58). Castle Angela is a two-story, 25-foot high, 3,209sf structure with a basement constructed in 1831. The Country Inn will not have any staff and will operate 24 hours, seven days a week. Petitioner is also seeking approval for an accessory Outdoor Private Events Use in a 300sf area near an existing patio adjacent to the house. The Revised Conditional Use Plan depicts the accessory use area and notes outdoor events may occur from 11:00am to dusk. No outdoor music or lighting. All Outdoor Private Events will be limited to individuals staying overnight in the house and up to 10 additional attendees. A detached two-car garage and five additional parking spaces are provided in the driveway adjacent to Church Road.

9. Agency Comments. The Department of Health's Bureau of Health commented on March 2, 2018 "[a]ny commercial kitchen proposed in the facility must be reviewed and licensed by the Health Department prior to facility operation."

10. Ms. Kepnes testified to the changes shown on the Revised Conditional Use Plan.

11. Heather Gaetano read into the record letters of support from The Ellicott restaurant and the Ellicott City Partnership.

CONCLUSIONS OF LAW

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

I. General Criteria for Conditional Uses (§ 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.

The TSR finds the proposed use is in harmony with PlanHoward 2030 Policy 4.10, which encourages actions that enhance public access/awareness of historic buildings, and their restoration and adaptive reuse.

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 Country Inn is primarily a low intensity lodging use within the historic house, with small private outdoor events in a 300sf area near the existing patio. The Property exceeds the one-acre minimum for Country Inns in the R-VH District and complies with all setbacks. No new buildings or additions/alterations to the existing buildings are proposed. Church Road is a Minor Collector and the number and type of vehicles associated with the use is appropriate for the accessory residential use. The overall intensity and scale of use is 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:

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 HCZR §§ 131.0.B.1 and B.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, off-site "adverse effect" criteria: (a) physical conditions; (b) structures and landscaping; (c) parking areas and loading, (d) access, (e) impact on environmentally sensitive areas; and (f) 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 an R-VH 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 Country Inn and accessory Private Event Use in the R-VH district. Both uses will operate more than 100 feet from adjoining residential properties, as shown on the Revised CUP.

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 structures, walls, or fences are proposed. All uses will operate a considerable distance from adjoining residential properties and be buffered by existing landscaping and the difference in elevation between the Inn and these properties. The proposed Country Inn and Private Event 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.

Seven parking spaces are appropriately proposed, two in the existing and detached garage and five along the driveway. No loading area or refuse area is proposed. The parking will be buffered from public roads and residential uses by distance and existing fencing, and screened by existing landscaping to minimize impacts on adjacent properties.

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. The access is approximately 250 feet from a bend in the road located to the north and has an estimated sight distance of 160 feet to the southwest.

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

The TSR does not identify any vicinal environmentally sensitive areas that could be adversely impacted by the proposed Country Inn.

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 Property is located in the Ellicott City Historic District. The conversion of the historic residence will enhance the character and significance of the district.

II. Specific Criteria for Country Inns (§ 131.0.N.17)

HCZR § 103.0.C defines a "Country Inn" so.

An historic building in which one or more of the following services is offered: lodging for transient guests on a daily, weekly or similar short term basis; a standard restaurant as defined in these Zoning Regulations; a banquet facility or catering service; or meeting rooms. A country inn may include related accessory uses such as:

- a. Antique shop, gift shop, Christmas shop, book, candle, card and similar specialty shops;
- b. Bakery, provided such use is limited to the retail sale from the premises of goods baked on the premises only;
- c. Arts and crafts exhibits and sale of products;
- d. Sale of packaged or canned food products special to the establishment;
- e. Museums and cultural exhibits;
- f. Recreational uses for the sole use of overnight guests or guests attending meetings or catered events at the inn;
- g. Any other uses similar to the foregoing and any use normally and customarily incidental to a country inn.

For the purpose of this definition, no boarding house, fast food restaurant, dormitory, fraternity or sorority house shall be considered a country inn.

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, and R-VH Districts for the conversion of an historic structure to a country inn, provided that:

a. The building is a historic structure as defined in these regulations.

The Property is listed on the Historic Sites Inventory as HO-58 and meets the HCZR § 103.0 definition of historic structure, in compliance with § 131.0.N.17.a.

b. Principal and accessory uses shall be identified on the site plan submitted with the application. Accessory uses, not including outdoor recreational areas for use by guests of the inn, shall be limited to an area no greater than 25% of the total floor area of all buildings.

The Petitioner is proposing a 300sf outdoor accessory event space comprising 9% of the 3,209sf historic building. Including the square footage of the 440sf detached garage – a building – the Outdoor Private Events Use is 8%, in compliance with § 131.0.N.17.b.

c. The minimum lot size shall be 5 acres in the RC and RR districts, 3 acres in the R-ED, R-20, R-12, and R-SC Districts, and at least 1 acre in the R-VH district. The Hearing Authority may reduce the 1 acre minimum lot size requirement for structures in the R-VH to ¼ of an acre if the Hearing Authority finds that the use will still be compatible in scale and character with the residential uses in the vicinity with the reduced lot size. If a public restaurant is part of the country inn, the minimum lot size shall be 10 acres in the RC and RR Districts, and 5 acres in the R-ED, R-20, R-12 and R-SC Districts. Regardless of the lot size, a Country Inn in the R-VH district shall not include a public restaurant.

The R-VH zoned Property is 1.06 acres, in compliance with § 131.0.N.17.c.

d. Extension or enlargement of the principal historical structure and all accessory structures may not exceed 50% of the gross floor area of each individual building above that which Existed on February 8, 1982, when the category for country inns was added to these regulations.

No extension or enlargement of any structure is proposed.

e. Exterior alterations to the historic structure shall be architecturally compatible with the historic structure as determined by the Historic District Commission, prior to the approval of the Conditional Use.

No exterior alterations to the historic structure are proposed.

f. Outdoor uses, including loading and refuse storage areas and outdoor reception or restaurant areas, will be located and designed to shield residential property from noise or nuisance and screened from adjacent residential properties.

The proposed Outdoor Private Events Use will be located in the patio area between the garage and historic structure and more than 100 feet from residential property. Existing landscaping and fencing will screen the use. No loading or refuse areas are proposed. The petition complies with § 131.0.N.17.f.

g. For properties not served by public water and/or sewer, the petitioner shall demonstrate that the well and/or septic facilities will be sufficient to serve the facility.

The Property is served by public water and sewer.

h. Proposals for a use with a public restaurant shall include a traffic study.

No public restaurant is proposed.

i. An existing Country Inn use approved prior to October 6, 2013, shall be considered conforming under the conditions of the original approval. Enlargements and/or extensions to this previously approved Country Inn shall not be subject to Section C above.

This standard does not apply.

ORDER

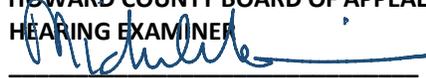
Based upon the foregoing, it is this **3rd Day of May 2018**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the petition of Kimberly Kepnes for a Country Inn Conditional Use and Outdoor Private Events Use accessory use in an R-VH (Residential: Village Housing) zoning district, is **GRANTED**;

Provided, however, that:

1. The Conditional Use shall be conducted in conformance with, and shall apply only to the proposed Country Inn and Outdoor Private Events accessory use as described in the petition and the above Findings of Fact, and as depicted on the revised Conditional Use Plan and not to any other activities, uses, or structures on the Property.
2. Petitioner shall obtain all required permits and comply with all federal, state, and local regulations.

HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER



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.