

IN THE MATTER OF	:	BEFORE THE
	:	
CHARLES SIPERKO	:	HOWARD COUNTY
	:	
Petitioner	:	BOARD OF APPEALS
	:	
	:	BA Case No. 24-022C
	:	

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DECISION AND ORDER

The Howard County Board of Appeals (the “Board”) convened on May 1, 2025, June 5, 2025, June 26, 2025, July 10, 2025, and July 31, 2025 to hear and deliberate the Conditional Use Petition of Charles Siperko (“Petitioner”). Petitioner seeks conditional use approval for an Outdoor Athletic Facility pursuant to Sections 130.0.B and 131.0.N.6 of the Howard County Zoning Regulations (“HCZR”). This Petition is filed pursuant to HCZR §131.0.

Board members Gene Ryan (Chair), Lynn Foehrkolb (Vice Chair), Felita Phillips, and Robbyn Harris were present for the hearings and deliberations on this matter.¹ Chairperson Ryan presided over the hearings. Tsega Girma Kyere, Senior Assistant County Solicitor,² served as legal advisor to the Board.

The Appellant certified that notice of the hearings complied with the requirements of the Howard County Code. The Board members indicated that they viewed the subject property as required by the Howard County Zoning Regulations (“HCZR”).

This case is a *de novo* appeal and is being conducted in accordance with Section 2.209 of the Board’s Rules of Procedure. “The burden of proof is one of a preponderance of the evidence

¹ Former Board member, Jean Xu, was present at the May 1, 2025 hearing when the matter was postponed but did not participate in any further hearings or deliberations concerning the matter.

² Barry Sanders, former Senior Assistant County Solicitor, was also present at the May 1, 2025 and June 5, 2025 hearings before his retirement from the Howard County Office of Law.

and is on the petitioner to show, by competent, material and substantial evidence, that he or she is entitled to the relief requested and that the request meets all prescribed standards and requirements.” Howard County Code § 2.209. The Howard County Code, the Howard County Charter, HCZR, the Department of Planning and Zoning Technical Staff Report (“TSR”) dated February 12, 2025, the General Plan for Howard County, the General Plan of Highways, and the Conditional Use petition and plan and materials submitted with it were incorporated into the record by reference.

The Petitioner was represented by counsel, Sang W. Oh, Esquire. The following people testified on behalf of the Petitioner: Robert Vogel, P.E. and Jeffrey Straw. The following persons testified in Opposition (hereinafter referred to as “Citizen Protestants” or “Protestants”): Joe Quill, Dr. Tara Goldberg, Theodore Giovanis, Michael Mulcare, Natalie Barrett, Anne Cristaldi, Kelly Rudden, Judy Radas, Angela Bruce, Mike Cutler, and Dan O’Leary on behalf of the Greater Highland Crossroads Homeowner’s Association. The Protestants were represented by G. Macy Nelson, Esq. and Alex Votaw, Esq.

All witnesses provided sworn testimony.

The Petitioner introduced, and the Board accepted, the following documents into evidence:

Exhibit 1 (*Revised at 6/26/2025 hearing*) – Revised Conditional Use Plan (March 2025)

(A) – Black and White

(B) – Colored

Exhibit 2 – Documents

(A) – BA 482D Hearing Examiner Decision and Order (June 30, 2003)

(B) – BA 482D Board of Appeals Decision and Order (December 9, 2004)

Exhibit 3 – Howard County Code of Ordinances Section 21.313 – Restrictions on use of Certain Vehicles

Exhibit 4 – Dictionary Definition of “athletic field”

Exhibit 5 – Howard County Zoning Code Section 100.0 – General Provisions

Exhibit 6 – Code of Maryland Regulations (COMAR) Section 09.12.64

Exhibit 7 – Code of Maryland Regulations (COMAR) Section 26.02.03.02

Exhibit 8 – Photos

- (A) Photo of Mr. Siperko's son
- (B) Photo of Mr. Siperko's son in car on racetrack
- (C) Photo of Mr. Siperko's son
- (D) Photo of Mr. Siperko's son in car on racetrack
- (E) Photo of Mr. Siperko's son standing on racetrack

Exhibit 9 – Sarah Troxel document on Karting

Exhibit 10 – Jeffrey Straw Curriculum Vitae

Exhibit 11 – GeoSonics Report (June 3, 2025)

Exhibit 12 – Blue Shock Race Report

Exhibit 13 – Sound Attenuation Calculator Document

Exhibit 14 – Aerial Photograph of Racetrack and the Vicinity

The Protestants introduced, and the Board accepted, the following documents into evidence:

Exhibit 1 – Notice of Violation 1/12/2024

Exhibit 2 – 2022 Aerial Photograph of Property and the Vicinity

Exhibit 3 – Screenshot of HoCo Interactive Map with Subject Property

Exhibit 4 – Screenshot of HoCo Interactive Map with Sullivan Property/Hopkins House

Exhibit 5 – HO-435 Gerald Hopkins House Architectural Survey File

Exhibit 6 – Screenshot of HoCo Interactive Map with Orlando Track (zoomed in)

Exhibit 7 – Aerial View of Joe Quill's Pasture and Water Trough

Exhibit 8 (***Revised at 7/10/2025 hearing***) – Declaration of Covenants and Easement and Maintenance Agreement

- (A) – Full Document (*marked for identification but not admitted*)
- (B) – Redacted Document (**revised via email 7/24/2025**)

Exhibit 9 – Aerial View of Track Area

Exhibit 10 – Aerial View of Track Area (zoomed in)

Exhibit 11 – Image from HoCo Interactive Map of 3 Properties and Stream Buffer

Exhibit 12 – Screenshot from HoCo Interactive Topographic Map of Property Vicinity

Exhibit 13 – Screenshot from HoCo Interactive Topographic Map of Valley on Stream (in color)

Exhibit 14 – DPZ Formal Violations Notice (January 10, 2024), Emails and Photos (*marked for identification but not admitted*)

Exhibit 15 – Test Pit Photos and MD Department of Environment Inspection Document (Pages MDE10, MDE14 and MDE15 of Exhibit 14)

Exhibit 16 – Video – Noise of Go Kart on Track

Exhibit 17 – Video – Visual of Go Kart on Track

Exhibit 18 – Photograph from Michael Mulcare House of Section of Racetrack (January 2024)

Exhibit 19 – Photograph from Michael Mulcare House of Pavement on Racetrack (January 2024)

Exhibit 20 – Photograph from Michael Mulcare House of Panoramic Racetrack (January 2024)

Exhibit 21 – Drone Aerial Photograph of Racetrack (Spring 2024)

Exhibit 22 – Article from Environment International on Microplastics

Exhibit 23 – Article from Environment International on Neurotoxicity

Exhibit 24 – Article from Human and Ecological Risk Assessment (2019)

PRELIMINARY MATTERS

The Board considered one preliminary matter at the beginning of the June 5, 2025 hearing. Protestants filed a Motion for Preliminary Determination that Go-Kart Racing is not a Permitted Conditional Use as an outdoor athletic facility under the HCZR. The Board dismissed the Motion based on Protestants' failure to comply with the Board's Rules of Procedure which require any party filing a preliminary Motion to certify that a copy of the Motion was provided to those

identified in the Rule. Howard County Code §2.207(e). However, the Board elected to consider, *sua sponte*, a related, if not identical, jurisdictional issue of whether a go-kart race track is a permitted conditional use under the HCZR. During the hearing, Petitioner presented four witnesses on this issue—Joseph Rutter, Zachary Claman De Melo, Raphael Matos, and Charles Siperko. The Protestants did not call any witnesses. Upon consideration of the testimony of the witnesses, evidence received, and argument from counsel for Petitioner and Protestants, the Board determined that a go-kart race track is an outdoor athletic facility which is a permitted conditional use in the Residential Rural—Density Exchange Option (RR-DEO) zoning District where the subject property is located.

Protestants also raised a second challenge to jurisdiction based on Howard County Code Sec. 16.302(a) which provides “. . . wherever in this Code or the zoning regulations a matter is authorized to be heard and decided by the Board of Appeals, the matter will first be heard and decided by a Hearing Examiner.” Protestants argued that the Hearing Examiner’s written decision and order to dismiss the case did not qualify as “hearing” or her “deciding” the case. Consequently, Protestants argue that the Hearing Examiner’s decision to dismiss for lack of jurisdiction deprives the Board of Appeals of jurisdiction to review the Hearing Examiner’s decision *de novo*. Notwithstanding the novelty of the Protestants’ argument, the Board does not agree and found that the Hearing Examiner’s decision and order to dismiss this case was, in fact, a decision. The Board determined that the Protestants’ argument is contrary to the plain language of the Hearing Examiner’s order and the legislative history of the Hearing Examiner position which, as explained above, was clearly a position created to alleviate the work of the Board of Appeals, not to replace citizens’ Charter-granted access to a citizens Board of Appeals.

FINDINGS OF FACT

Based upon the entirety of the record, including the DPZ's TSR, the Petition, the Plan and all the evidence including the testimony and exhibits presented at the hearings, the Board makes the following Findings of Fact:

1. Property Identification. The Property, identified as 6717 Mink Hollow Road, comprises 11.01 acres and is located on the east side of Mink Hollow Road (the "Property"). The subject Property is located at Tax Map 34, and Grid 21 and in Council District 5 and the 5th Election District. This property is zoned RR-DEO (Rural Residential—Density Exchange Option).

2. Property Description. The property is irregular in shape and consists of a single-family home, two accessory buildings and a pond. The property is accessed from Mink Hollow Road through a driveway shared with adjacent property located at 6719 Mink Hollow

3. Vicinal Properties. To the north, south, east, and west of the Property are similarly zoned RR-DEO properties improved with single family detached dwellings and farms.

4. Water and Sewer Service. The property is served by private well and septic facilities and is not located within the Metropolitan District of the Planned Service Area for Water and Sewer.

5. Roads. To the east of the property is Mink Hollow Road which is a minor collector road with two travel lanes within a 35-foot right of way. The speed limit is 35 miles per hour and accommodates about 2,500 trips per day.

6. Conditional Use Proposal. On August 18, 2024, Petitioner filed a Petition for Conditional Use for an existing paved go-kart racetrack to be used as a racing training facility

exclusively for his son.³ This Petition does not propose any additional buildings, parking, or lighting on the subject property.

7. DPZ TSR. Pursuant to Section 131.0.F.3 of the HCZR, DPZ issued a TSR finding that Section 131.0.N.6 of the HCZR does not permit a go-kart racetrack as a permitted Conditional Use. As a result, DPZ concluded that it “is unable to evaluate the petition for compliance with General Standards in Section 131.0.B and minimum criteria in Section 131.0.N.6.”

8. Petitioner’s Witnesses for case-in-chief. Robert Vogel, licensed Civil Professional Engineer, testified on behalf of the Petitioner. Mr. Vogel testified that the proposed Conditional Use would not bring additional traffic on or near the property as it is being proposed for household use only and a racetrack instructor who will be at the site occasionally.

Mr. Vogel stated there would not be any noise, dust, fumes, odors, intensity of lighting, or vibration which will be created by the Conditional Use. Mr. Vogel further testified that the impervious track will be about 1.0 acre plus or minus and will thus constitute 9% lot coverage. Per Mr. Vogel, considering there is no impact on traffic, no necessity for additional parking, and minimal lot coverage, the proposed Conditional Use is a low intensity use. Per Mr. Vogel, there will also be no adverse impact on the shared driveway used by the subject and adjacent properties.

Mr. Vogel testified that although there is a portion of the existing track which violates the 100 feet setback requirement per the HCZR, those portions would be relocated to be in compliance with any Building Restriction Line setback requirements. Relatedly, Mr. Vogel testified that the track will also be moved to be outside the offsite stream and stream buffer area to protect the

³ Although this is a Petition for Conditional Use of a go-kart racetrack, the Conditional Use was constructed prior to a hearing for approval of the Conditional Use. The purpose of the hearing before the Board was to determine whether the go-kart racetrack may be approved as a Conditional Use under HCZR.

environmentally sensitive area. Per Mr. Vogel, there will not be any loading or refuse areas or any structures, walls, outdoor lighting or fences planned for the Conditional Use.

With respect to buffering, Mr. Vogel testified that the Conditional Use plan proposes the use of Howard County Type C buffering which entails one evergreen per 20 feet and one shade tree per 40 feet. This buffering is intended to buffer the proposed Conditional Use from abutting residential properties and, per Mr. Vogel's testimony, is adequate for that purpose.

Mr. Vogel also stated that it is his understanding that the proposed Conditional Use would be used three hours per day six days per week and could occur between noon and dusk. Mr. Vogel stated that although Howard County's General Plan, HoCo By Design, does not discuss athletic facilities in the RR zone it is his opinion that the proposed Conditional Use is generally assumed to be compatible in this zone as it is a recognized Conditional Use under the HCZR.

Mr. Vogel further testified about designated historic sites—Gerald Hopkins House, Sandstone Farm, and Hickory Ridge—near the subject property. Mr. Vogel testified that Gerald Hopkins House is 2/10ths of a mile from the subject property, Sandstone Farm is 8/10ths of a mile away from the subject property down on Mink Hollow Road, and Hickory Ridge is on Highland Road about 7/10ths of a mile from the subject property. Per Mr. Vogel, the proposed Conditional Use is not visible from any of these historical sites. Therefore, it is his opinion that the proposed Conditional Use does not diminish the character and significance of these historic sites. With respect to the Gerald Hopkins House, Mr. Vogel testified that although he has never been on the second floor of the site, the proposed Conditional Use would not be visible from that historical site.

With respect to environmentally sensitive areas, Mr. Vogel testified that there is a “good chance” that the existing track may have impacted wetlands and when the track is moved, that will

be evaluated, and Petitioner will work with the Maryland Department of the Environment (“MDE”) to restore any wetland area. Mr. Vogel has visited the site with MDE to evaluate impacts to wetland. Although MDE and an environmental co-consultant for Mr. Vogel, Eco-Science Professionals, were present during the site visit and did some preliminary digging to determine the limits of the wetland, final delineation of the wetland area cannot be determined until the existing racetrack is removed.

As it pertains to the topography of the subject property, Mr. Vogel acknowledged that the east side of the subject property driveway is steeper than the west side of the driveway.

9. Jeffrey Straw, vibration and acoustics consultant and Vice President and area Manager for GeoSonics, Inc. also provided testimony on behalf of the Petitioner. Mr. Straw was retained by Mr. Siperko to provide noise evaluation of an electric vehicle (EV) go-cart by measuring the sound created by the use of an electric go-kart vehicle for comparison to the Howard County noise ordinance. To conduct this study, noise was measured in decibels (dB).

Mr. Straw testified that the noise study was conducted by having an EV go-kart complete a full lap around a track at the Orlando Kart Center and capturing the sound from the vehicle at various distances. To conduct this study, Mr. Straw testified that the same EV go-kart that would be used at the site of the proposed Conditional Use was tested. Mr. Straw also testified that the EV go-kart being tested mimicked speeds that would be used for race car driving training and at the proposed Conditional Use site.

Mr. Straw further testified that because the proposed Conditional Use contemplated the use of two or three vehicles simultaneously and the test included only a single EV go-kart, he could and would extrapolate from the noise created by the single EV go-kart to determine the noise that would be created by two or three vehicles operating simultaneously. Mr. Straw testified that in

conducting this study, he reviewed provisions of the Howard County Code which provides that “a person may not cause or permit noise levels emanating from any property, such that the levels received on residential property exceed the levels contained in table 1 OF COMAR 26.02.03.02B.(1).” Howard County Code § 8.900. Mr. Straw stated that the distance between the proposed Conditional Use and the nearest residential property line is about 100 feet. Based on this and the sound measurements captured at the Orlando Kart Center, Mr. Straw concluded that the EV go-kart to be used at the proposed Conditional Use site would not exceed noise levels permitted by the Howard County Code.

10. Protestants: Eleven individuals testified in opposition to the proposed Conditional Use. They generally testified that the proposed Conditional Use is incompatible with the vicinal rural residential area and would be a noise disturbance to farm and other animals located nearby, and the abutting property owners who purchased their property for the tranquil and quiet nature of their property. With respect to noise, most of the witnesses testified that they heard the operation of a go-kart on the racetrack on September 10, 2024, although they were inside their homes with their doors and windows closed and air conditioning operating. This sound was described by many as tires screeching and a whine which was high pitched and loud. Many of these witnesses testified to the unique “fish bowl” topography of the subject property with the proposed Conditional Use and abutting properties. Specifically, these witnesses testified that the proposed Conditional Use would be located on low-lying land with abutting neighbors located higher above. This topography, many witnesses testified, would cause noise to echo upwards to higher abutting property and neighbors. Protestants entered into evidence topographic maps of the subject property and vicinal properties. Dr. Tara Goldberg provided a video of the sounds of the go-kart from that date for the Board. On cross-examination, however, these witnesses testified they had

no empirical evidence or noise studies to prove that the noise from the racetrack would exceed noise ordinance limits in the County.

11. Joe Quill, an abutting property owner located just southeast of the proposed Conditional Use testified that the go-kart racetrack has had adverse impacts on a water trough located on his property which provides fresh water to his family's horses. This water trough, Mr. Quill testified, provided water year-round to his horses through underground piping connected to a spring. The spring and underground pipes are located on the Siperko property. The go-kart racetrack which is the subject of this Conditional Use Petition was constructed on top of the underground piping and water troughs located on the Siperko property.

Mr. Quill testified that after construction of the go-kart racetrack, the water trough on his property became empty and dry although it had generally worked well prior to construction of the racetrack. However, Mr. Quill also testified that he had experienced issues with the water trough beginning in or around 2020, when Mr. Quill learned there was a clogged outfall, and he hired a contractor to excavate and clear the clog. There were also clogs on the Siperko property which Mr. Quill collaborated with Mr. Siperko to resolve. Despite this testimony, during questioning from the Board, Mr. Quill testified that he is not certain whether construction of the racetrack caused his water trough to become empty and dry. Mr. Quill testified that the age of the system caused the system to degrade and that the age and degradation of the system could also cause the water trough on his property to become dry.

12. Dr. Tara Goldberg, a property owner south of the Quill and Siperko property also provided testimony. Dr. Goldberg has a PhD in environmental policy. Dr. Goldberg testified about a stream that runs through her property as well as the Siperko property. This stream contains a 100 foot stream buffer around the stream which is deemed an environmentally sensitive area. Dr.

Goldberg testified that the property north of her where the Conditional Use is proposed has a slope from east to west of the Siperko driveway and east of the stream.

Based on her knowledge, training and experience, she has three concerns concerning approval of the Conditional Use: (1) erosion from runoff from the racetrack; (2) toxins and pollutants runoff from the racetrack into the stream which supports agricultural use; and (3) the impact on wetlands and the function of flood and erosion control wetlands play in the stream system. She further testified that if the Siperko property did not have a slope and was flat, she would have less concerns about erosion and impacts to the stream on her property.

Dr. Goldberg also testified about an MDE report stating that hydric soil indicating the presence of wetlands was identified on the subject property and that further testing was required to delineate the wetland and wetland buffer boundaries along the length of the subject property. Dr. Goldberg noted that wetlands contain important vegetation and are important to preventing flooding, improving water quality, and improving erosion and sediment control. Dr. Goldberg also testified that stormwater management facilities also control quantity and quality from the subject property.

13. Theodore Giovannis, a professional race car driver since 2006, also provided testimony on behalf of the Opposition regarding safety concerns about the proposed Conditional Use. Namely, Mr. Giovannis noted go-karts on racetracks are driven aggressively and, therefore, often have barriers at the edge of the racetrack which guides go-karts back to the racetrack when a go-kart is operating at higher speeds and leaves the racetrack. Mr. Giovannis testified that given the location of the proposed Conditional Use and its proximity to the shared driveway, he is concerned about the safe operation of the go-kart. Landscaping such as a berm would not be used as a barrier for a racetrack. Mr. Giovannis also testified that if the racetrack is not graded perfectly

and there is not a perfect transition between the racetrack and abutting area, the go-kart could flip. Mr. Giovannis further testified regarding previous instances where a go-kart racetrack driver struck a deer and died.

14. Natalie Barrett also provided testimony on behalf of Protestants. Ms. Barrett has a Masters in Engineering and biomedical engineering from Johns Hopkins University. Ms. Barrett testified that based on her training and experience, she has concerns that microplastics produced by the proposed Conditional Use will contaminate the nearby stream and wells that all residents in the immediate vicinity rely on for their drinking water and other household water use.

Ms. Barrett stated that the weight and soft tires used by EV go-karts produce higher levels of microplastics than combustion vehicles. Protestants admitted through her testimony two articles from *Environmental International* which discuss tire wear particles which are deemed to be a major source of microplastic pollution and the neurotoxicity of microplastics which have been documented to pollute streams and well water. Ms. Barrett noted that microplastics can cause cancer as well as impact reproductive, heart, and lung development. Based on Ms. Barrett's testimony, microplastics can cross the blood brain barrier and can also be inhaled and enter the lungs. During cross-examination, Ms. Barrett conceded that microplastics may be ubiquitous and are added to household goods such as pots, cosmetics, carpet, and furniture as well as artificial turf, glitter, and confetti. Ms. Barrett also testified that, if approved, this Conditional Use would require site development plan approval which would entail stormwater management review for management of the quality and quantity of runoff from the site.

15. Anne Cristaldi, a licensed real estate agent, also testified that the proposed Conditional Use would likely cause diminution in property value for adjacent and nearby properties. Ms. Cristaldi testified that the subject property where the proposed Conditional Use is

located touches eleven properties, which is unusual because most properties usually only abut no more than four properties. She testified that her testimony is supported by other properties which she previously sold which sold for less because of the location of the property and use of abutting property. Ms. Cristaldi acknowledged the larger nature of most parcels surrounding the subject property but testified she has concerns the sound from the proposed Conditional Use would travel farther and sound louder because the properties are open and do not have structures or other features to absorb sound. Ms. Cristaldi testified that in her professional opinion, a go-kart racetrack is not compatible with the surrounding rural residential zoned properties.

CONCLUSIONS OF LAW

Maryland Courts have recognized Conditional Uses as a legitimate zoning mechanism. In 1981, the Maryland Supreme Court decided *Schultz v. Pritts*, a case regarded as the seminal case concerning Conditional Uses.⁴ In *Schultz*, the Court recognized that a Conditional Use “is a part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore, valid.” *Schultz v. Pritts*, 291 Md. 1, 11 (1981). Zoning ordinances often “delegate[] to an administrative board a limited authority to allow enumerated uses,” some of which are categorized as Conditional Uses, “which the legislature has determined to be permissible absent any fact or circumstance negating the presumption.” *Id.* In *Schultz*, the Court explained that “[t]he duties given the Board are to judge whether the neighboring properties in the general neighborhood would be adversely affected and whether the use in the particular case is in harmony with the general purpose and intent of the plan.” *Id.* In determining whether to grant or

⁴ The Court used the terms “special exceptions” and “conditional use” interchangeably and noted that “[f]or the purposes of this opinion, the terms ‘special exception use’ and ‘conditional use’ are synonymous.” *Schultz v. Pritts*, 291 Md. 1, 3 n.1 (1981). This document does the same in its discussion of the law.

deny a proposed Conditional Use, “[t]he extent of any harm or disturbance to the neighboring area and uses is, of course, material.” *Id.* When “there is no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the operation of the comprehensive plan, a denial of an application for a special exception use is arbitrary, capricious, and illegal.” *Id.* However, “if a requested special exception use is properly determined to have an adverse effect upon neighboring properties in the general area, it must be denied.” *Id.* at 12.

As it pertains to Conditional Uses, “[i]t is undisputed that ‘both the burden of production and the burden of persuasion on the issue of whether the special exception should be granted[]’ fall on the applicant, whereby the applicant must persuade the Board ‘by a preponderance of the evidence that the special exception will conform to all applicable requirements.’” *Attar v. DMS Tollgate, LLC*, 451 Md. 272, 286 (2017). Under Maryland law, “a presumption does not necessarily shift the burden of persuasion.” *Anderson v. Litzenberg*, 115 Md. App. 549, 564, 694 A.2d 150, 157 (1997) Instead, “it merely satisfies the burden of going forward on a fact presumed and may satisfy the burden of persuasion if no rebuttal evidence is introduced by the other side.” *Id.* “Stated differently, the party favored by the presumption is not relieved of the requirement of presenting evidence to establish a prima facie case as to those issues for which he bears the burden of proof if the adverse party sufficiently rebuts the presumption.” *Id.* “In such instances, the presumption merely enhances the probative value of other evidence adduced.” *Id.*

The HCZR are consistent with the legal precedent established by Maryland Courts. Under the HCZR “Conditional Uses are authorized in specified zoning districts based on the presumption that they are generally appropriate and compatible in the specified districts.” HCZR § 131.0. Nonetheless, the HCZR recognize that “particular uses in particular locations may have characteristics or impacts that are not typical.” *Id.* Under the HCZR,

The Hearing Authority shall have the power to permit Conditional Uses, provided the following general standards are met:

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.
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.
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.
 - 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.
 - 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.
 - 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.
 - e. The proposed use will not have a greater potential for adversely impacting environmentally sensitive areas in the vicinity than elsewhere.
 - f. The proposed use will not have a greater potential for diminishing the character and significance of historic sites in the vicinity than elsewhere.

HCZR § 131.0. Based upon the foregoing Findings of Fact, the entirety of the record, and all the evidence, including the testimony and exhibits received during the hearings, the Board concludes as follows:

A. General Standards Required for Conditional Use Approval (Section 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.**

The Howard County General Plan is called HoCo by Design. The Plan is a broad, county-wide policy framework guiding future land use, infrastructure, conservation, transportation, housing, and environment through 2040. Although HoCo By Design does not discuss athletic facilities in the RR zone, the proposed Conditional Use is generally assumed to be compatible in this zone as it is a recognized Conditional Use under the HCZR. *See Schultz*, 291 Md. at 11 (finding that a Conditional Use “is a part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore, valid.”).

In addition, the testimony and evidence presented, including the testimony of Dan O’Leary, support the conclusion that the proposed Conditional Use plan will be in harmony with the land uses located nearby and policies in HoCo by Design. Specifically, the subject and abutting properties are located on larger parcels exceeding several acres. This feature minimizes the impact of the proposed Conditional Use on vicinal properties and aids in the Conditional Use being in harmony with land uses located nearby. In making this conclusion, the Board also relies on the testimony provided by Ms. Cristaldi. The evidence demonstrated that Protestants failed to present adequate evidence rebutting the presumption of compatibility recognized under applicable law. Therefore, Petitioner has satisfied this criteria.

- 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 uses(s) are appropriate for the site.**

The proposed go-kart impervious track will be about 1.0 acre plus or minus and will thus constitute 9% lot coverage. The proposed go-kart track is also at least 100 feet from property boundaries. The actual homes of neighbors and their associated curtilage are much further away than 100 feet – with many homes exceeding 700 feet or more. Among the neighbors who adjoin the Property, the majority are larger properties exceeding 3 acres in size. Mink Hollow Road is

also classified as a minor collector road with a design that accommodates approximately 1,000 vehicles per day. The Board finds that the nature and intensity of the use and the location of the site and with respect to streets that provide access to the Property is appropriate. The evidence also demonstrated that there is no impact to traffic and no necessity for additional parking due to the private, household use of the proposed Conditional Use. Based on this and the minimal lot coverage associated with the proposed Conditional Use, the Board finds that the proposed Conditional Use is a low intensity use.

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 explaining the consideration of adverse effects when contemplating a proposed Conditional Use, the Maryland Supreme Court has explained that “the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.” *Schultz*, 291 Md. at 15. In other words, “a special exception use has an adverse effect and must be denied when it is determined from the facts and circumstances that the grant of the requested special exception use would result in an adverse effect upon adjoining and surrounding properties unique and different from the adverse effect that would otherwise result from the development of such a special exception use located anywhere within the zone.” *Id.*

This standard is consistent with legislative determination concerning what uses will be permitted as a matter of right and other ones that will only be permitted by a Conditional Use application. “The inherent effects notwithstanding, the legislative determination necessarily is that

the [conditional] uses conceptually are compatible in the particular zone with otherwise permitted uses and with surrounding zones and uses already in place, provided that, at a given location, adduced evidence does not convince the body to whom the power to grant or deny individual applications is given that actual incompatibility would occur.” *People's Couns. for Baltimore Cnty. v. Loyola Coll. in Maryland*, 406 Md. 54, 106 (2008).

In the instant case, the proposed Conditional Use at the proposed location has no adverse effects on vicinal properties above and beyond those ordinarily associated with an EV go-kart racetrack anywhere else in the zone. For the reasons stated below, the Petitioner has met the burden to present evidence establishing that the proposed Conditional Use will not have adverse effects on vicinal properties above and beyond those ordinarily associated with an EV go-kart racetrack 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.**

The Board cannot conclude that noise, dust, fumes, odors, intensity of lighting, vibrations, hazards or other physical from the proposed use is above and beyond those inherently associated with an outdoor athletic facility in the RR-DEO zoning district.

The proposed conditional use will undoubtedly produce noise and dust. Several Protestant witnesses testified to being able to hear the go-kart operating during a single occasion in September 2024. However, the Board concludes that Protestant witnesses provided no evidence to confirm that the alleged noise from the go-kart track was non-compliant with applicable noise standards or that such noise was above and beyond those ordinarily associated with a go-kart track. The Board notes that Petitioner will be required to comply with Howard County Code Sec. 8.900 which governs noise levels in residentially zoned districts.

The Protestants' urging of the Board to deny this conditional use application based on their fear of unacceptable noise levels requires the Board to disregard other probative evidence presented by Petitioner witnesses. Mr. Straw testified that the proposed use will be compliant with applicable noise levels based on his expert analysis. The Board recognized that Mr. Straw's tests were not conducted at the Property; however, he did express confidence, to a scientific degree of certainty, that the Property would be compliant with applicable law concerning noise in residentially zoned areas. The Board found Mr. Straw's testimony to be convincing, and his testimony was supported by Petitioner's Exhibits 12 and 13, which both confirm Mr. Straw's empirical conclusions. The Protestants' testimony that the topography of the Property and its surrounding environment produce an amphitheater-like setting appeared plausible; however, the lack of probative evidence to support the alleged amplification of sounds did not convince the Board the proposed Conditional Use could not nonetheless be compliant with applicable noise ordinances. The Board notes that ultimate compliance with applicable noise laws will remain the responsibility of the Petitioner.

To the extent the Opposition presented testimony regarding the noise that could emanate from the proposed Conditional Use, such testimony was unsupported by any empirical evidence or otherwise. Therefore, such "unsupported conclusions of witnesses to the effect that a proposed use will or will not result in harm [] amount to nothing more than vague and generalized expressions of opinion which are lacking in probative value." *Anderson v. Sawyer*, 23 Md. App. 612, 618 (1974).

- 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 proposed Conditional Use does not propose the addition of any new structures, walls, or fences other than the go-kart racetrack. Mr. Vogel testified that the Conditional Use plan proposes the use of Howard County Type C buffering in accordance with the Howard County Design Manual which entails one evergreen per 20 feet and one shade tree per 40 feet. This buffering is intended to buffer the proposed Conditional Use from abutting residential properties and, per Mr. Vogel's testimony, is adequate for that purpose. However, as more fully explained below, the Board finds that this Conditional Use must include a buffer similar, but more stringent than, the Type C buffer outlined in the Howard County Landscape Manual as a conditional of approval. This buffering must contain one shaded tree every 40 feet, one evergreen tree every 10 feet, and one shrub per four linear feet. This more stringent buffering will ensure that the proposed Conditional Use will not hinder or discourage the development and/or use of adjacent properties. Based on this, the Board finds that the Petitioner complies with this criterion.

- 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 proposed Conditional Use neither requires nor proposes any additional parking areas, loading areas, driveways, or refuse areas on the subject property. Therefore, there will be no adverse impacts on adjacent properties from such improvements.

- 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.**

Ingress and egress for the proposed go-kart track will remain the existing shared driveway for the Property. Mr. Vogel presented credible testimony that there will be no adverse impact to the shared driveway used by the subject and adjacent property. Protestants presented no evidence

disputing this testimony. The evidence also demonstrated that the shared driveway splits as it approaches Petitioner's property and the proposed Conditional Use is located entirely on the driveway portion located on Petitioner's property. There will also not be additional traffic generated by the proposed Conditional Use as the property owner is the primary user along with occasional trips for an instructor. Therefore, The Board finds that there will not be an adverse impact on the convenience or safety of the shared use of the driveway. Accordingly, Petitioner complies with this criterion.

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

The Board also finds that the proposed Conditional Use will not have greater potential for adversely impacting environmentally sensitive areas in the vicinity than elsewhere. Mr. Vogel provided adequate and convincing testimony that the Conditional Use plan includes moving the existing racetrack to be outside the offsite stream and stream buffer area to protect environmentally sensitive area on the subject property. To the extent that the existing racetrack has any impact on existing wetland area located on the property, Mr. Vogel provided convincing testimony that any such impact will be evaluated by the MDE and Eco-Science Professionals to determine the limits of the wetland area and restore any wetland area accordingly. Mr. Vogel also provided convincing testimony that the Conditional Use plan complies with all applicable regulations regarding protection of both streams and wetlands located on the property. Therefore, the Board finds that Petitioner has complied with this criterion.

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

With respect to the impact of the proposed Conditional Use on historic sites, there was insufficient evidence to conclude that the proposed Conditional Use would "have a greater

potential for diminishing the character and significance” of designated historic sites near the subject property. In this regard, Mr. Vogel presented credible testimony that two historical sites which Protestants discussed—Sandstone Farm and Hickory Ridge—are nearly a mile from the subject property. The evidence presented demonstrated that the proposed Conditional Use is not visible from any of these historical sites. Another historic site—Gerald Hopkins House—is about a quarter of a mile from the subject property. However, the fact that an individual may be able to view the proposed Conditional Use from the second story of this historic designated site is not persuasive to conclude that it would diminish the character or significance of the historic site. Therefore, the Board finds that the proposed Conditional Use does not diminish the character and significance of any historic sites and Petitioners have satisfied this criteria.

Nonetheless, the Board has determined that the proposed Conditional Use plan warrants imposing certain conditions to ensure its continued compatibility and harmony with the surrounding land use. Under the HCZR, “the Hearing Authority may attach conditions to the proposed use or plan as it deems necessary to ensure continuous conformance with all applicable standards and requirements.” HCZR § 131.0. “The Conditional Use plan, subject to such conditions, shall be made part of the decision and order of the Hearing Authority.” *Id.* Consistent with the regulations, the Board imposes the following conditions on the proposed Conditional Use approval:

1. Temporary traffic devices such as road cones shall be installed where their go-kart racetrack crosses Petitioners’ driveway to completely restrict vehicular egress or ingress while the racetrack is in use;
2. Use of the racetrack must be limited to 2 hours per day and five days per week;
3. Only two go-karts are permitted at one time on the racetrack;
4. There must be supervision on-site by an adult whenever a minor is operating a go-kart;

5. Consistent with HCZR 131.0(N)(6)(c), Conditional Use must be “at least 100 feet from adjoining residentially-zoned properties other than public road right-of-way.”
6. Use of low-emission tires on the go-kart is required at all times to reduce microplastic contamination;
7. Monthly sweeping or vacuuming of the track during months when it is in use to remove accumulated tire debris and prevent mobilization to stormwater is required;
8. Conditional Use must include a hybrid buffer and screen similar to the Type C buffer as outlined in the Howard County Landscape Manual. The buffer and screen shall contain one shaded tree every 40 feet, one evergreen tree every 10 feet, and one shrub per four linear feet. Additionally, the Conditional Use must have native vegetative buffer which includes grasses and shrubs to capture windblown particles and filter runoff before it leaves the site;
9. Racetrack may not be used during heavy rainfall or within 12 hours of a forecasted major storm event;
10. Stormwater management plan must include a runoff interception swale to capture surface flow from the track area. The swale shall be designed to slow flow and prevent settlement of fine particles. The Stormwater Management Plan shall also contain a Biofiltration zone (rain garden) designed to capture fine particulates and aid in microbial breakdown of chemical residues.

The above conditions related to the use of low-emission tires on the go-kart, monthly vacuuming or sweeping of the go-kart, use of buffering more stringent than that required under the Howard County Landscape Manual, and stormwater management measures also minimize potential adverse impacts of the proposed use.

The above conditions also address the additional requirements enumerated in HCZR §131.0(N)(6) for outdoor athletic facilities. These conditions will ensure there is “[a]dequate landscaping or other acceptable forms of buffering will be provided to screen outdoor uses from residential properties” and impose “[r]easonable standards for hours of operation.” HCZR § 131.0(N)(6). Other criteria specific to outdoor athletic facilities such as the permissibility of sound

amplification and the requirement of traffic study, a septic study, and/or noise study are not applicable here due to the nature of the proposed Conditional Use.

Based on the above conclusions of fact and law, the Board hereby grants the Petitioner's Petition for Conditional Use subject to the conditions articulated herein.

ORDER

Based upon the foregoing, it is this 19th day of November, 2025, by the Howard County Board of Appeals, **ORDERED:**

That the Petition for Conditional Use of go-kart racetrack in BA Case No. 24-022C is hereby **GRANTED**.

ATTEST:

Kel Berg
Kel Berg, Secretary

HOWARD COUNTY BOARD OF APPEALS

Gene Ryan
Gene Ryan, Chairperson

Lynn Foehrkolb
Lynn Foehrkolb (Nov 18, 2025 10:22:04 EST)
Lynn Foehrkolb, Vice-Chairperson

PREPARED BY:

HOWARD COUNTY OFFICE OF LAW

Felita Phillips
Felita Phillips (Nov 18, 2025 08:51:22 EST)
Felita Phillips

Gary W. Kuc
County Solicitor

Tsega Girma Kyere
Tsega Girma Kyere
Senior Assistant County Solicitor

IN THE MATTER OF	:	BEFORE THE
	:	
CHARLES SIPERKO	:	HOWARD COUNTY
	:	
Petitioner	:	BOARD OF APPEALS
	:	
	:	BA Case No. 24-022C
	:	

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MINORITY OPINION

Harris, Robbyn

I respectfully disagree with my colleagues’ Decision and Order approving the proposed Conditional Use in this matter.¹ I find that the proposed Conditional Use did not satisfy several criteria as outlined in the Howard County Zoning Regulations (HCZR) in Section 131.0. As such, the proposed Conditional Use is not consistent with the spirit and intent of the Howard County General Plan, HoCo by Design, and the HCZR with respect to conditional uses in the Rural Residential (RR) zoning district.

A. The Proposed Conditional Use is not in Harmony with the Land Uses and Policies of the Howard County General Plan, HoCo by Design, and there is Inadequate Evidence to Conclude the Proposed Use will not Have a Greater Potential for Adversely Impacting Environmentally Sensitive Areas in the Vicinity.

Under the HCZR, this Board “shall have the power to permit Conditional Uses” provided that 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” and the “proposed use will not have a greater potential for adversely impacting environmentally sensitive areas in the

¹ Although I voted with my colleagues and found that a go-kart racetrack is an outdoor athletic facility which is a permitted conditional use in the Residential Rural—Density Exchange Option (RR-DEO) zoning district in accordance with HCZR § 130.0.N.6, I disagree that Petitioner has met his burden to prove that the proposed Conditional Use satisfied all criterion outlined in HCZR § 131.0.B pertaining to approval of conditional uses.

vicinity than elsewhere.” HCZR § 131.0 (emphasis added). The proposed Conditional Use is not in harmony with the land uses and policies of the Howard County General Plan and there is not sufficient evidence in the record that it will not adversely impact environmentally sensitive areas in the vicinity.

Howard County’s General Plan, HoCo by Design, which was adopted by the Howard County Council and County Executive, provides “the County’s growth plan” and “guides policy decisions for the next two decades” and is intended to “help to inform subsequent decisions on land use, transportation, open space, agriculture, community facilities, community character, historic preservation, housing, economic development, and quality of life.” *HoCo by Design*, Introduction, I-2. To that end, HoCo by Design provides detailed guidance on RR zoned properties within the County. Per HoCo by Design, RR zoned properties “are largely committed to low-density residential development but also *prioritize the preservation of farmland.*” *HoCo by Design*, Technical Appendix B, TAB-9 (emphasis added). Per HoCo by Design, “[f]armland includes land actively used for commercial agriculture or forestry activities, including cultivated farmland, small-scale farms, timber harvest, horse farms, other livestock, or woodlands. Farms may include a primary residence, additional housing to support agricultural operations, and/or outbuildings associated with activities on the farm.” *Id.* HoCo by Design also acknowledges conditional, accessory, or ancillary uses which may be permitted in RR zoning district. Per HoCo By Design, such uses “may occur on the property” to “**support the economic viability of the farm.**” *Id.* (emphasis added).

HoCo by Design also emphasizes the protection of natural resources in the RR zoning district. Specifically, “[d]evelopment should minimize disturbance of existing topography and natural resources.” HoCo by Design, Technical Appendix B, TAB-10. To that end, HoCo by

Design requires that “[n]ew development *must protect steep slopes, floodplains, streams, and wetlands*, and meet forest conservation requirements.” *Id.* (emphasis added).

HoCo by Design’s guidance on RR zoned properties is also consistent with HCZR provisions. “The Rural Residential District is established to allow low density residential development *within a rural environment*.” HCZR § 105.0 (emphasis added). In the RR zoning district, “[c]luster development is permitted in order to *protect environmental and landscape resources and to preserve agricultural land*.” *Id.* (emphasis added).

The Maryland Supreme Court has expressly held that “a legislature validly may require that an applicant for a special exception² show that a proposed use is in conformance, is consistent, or is in harmony with a land planning document, such as a general plan, master plan, or functional master plan.” *People's Couns. for Baltimore Cnty. v. Loyola Coll. in Maryland*, 406 Md. 54, 77 n. 23 (2008). To that end, the Board is required to determine “whether the use in the particular case is in harmony with the general purpose and intent of the plan.” *Schultz v. Pritts*, 291 Md. 1, 11 (1981). In this case, the evidence in the record, the rural nature of the subject and surrounding vicinal properties, the mandates of the Howard County General Plan, and vicinal environmentally sensitive features lead me to find that the proposed Conditional Use is not in harmony or compatible with the land uses and policies of the Howard County General Plan, HoCo by Design, or the zoning regulations. Based on the guidance provided by HoCo by Design and the HCZR provisions, a go-kart racetrack is not compatible with a RR zoned property which is intended to preserve the farmland and rural nature of the vicinal properties. I find that the evidence in the record relating to the sound created by the proposed Conditional Use and impact of the Conditional

² “Cases from this state and elsewhere have indicated that ‘conditional use’ and ‘special exception’ are synonymous terms.” *Zellinger v. CRC Dev. Corp.*, 281 Md. 614, 619 n.4 (1977).

Use on environmentally sensitive features located on and near the subject property support my position. Specifically, the testimony of Petitioner's expert witness Robert Vogel, licensed Civil Professional Engineer, testified that final delineation of the wetland area on the subject property could not be determined. Dr. Tara Goldberg, an adjacent property owner who has a PhD in environmental policy and testified on behalf of the Protestants, provided similar testimony with respect to wetland delineation on the subject property. Dr. Goldberg noted that wetlands contain important vegetation and are important to preventing flooding, improving water quality, and improving erosion and sediment control. Without further testing to conclusively delineate the wetland and wetland buffer boundaries on the subject property, it is not possible to accurately determine the impact of the proposed Conditional Use on environmentally sensitive features such as the wetland and the important function wetlands provide in this area.

My colleagues implemented several conditions for approval of the proposed Conditional Use to minimize any potential adverse impacts and promote its compatibility with the vicinal properties and area. However, I did not find sufficient evidence in the record to suggest that the imposed conditions achieve such results. For example, the Board approval requires that Petitioner use low-emission tires on the go-kart to reduce microplastic contamination. There is no evidence in the record, however, that use of low-emission tires achieves such a result. In addition, the Conditional Use approval also requires that the Petitioner must conduct monthly sweeping or vacuuming to remove accumulated tire debris and must install a stormwater management plan which includes a runoff interception swale to capture surface flow from the track. Per this condition, this runoff interception swale must be designed to slow runoff flow and promote settlement of fine particle. Presumably, these conditions are aimed at reducing erosion and

promoting water quality. Again, however, there is no evidence in the record that such conditions would achieve such goals.

The Maryland Supreme Court has declared that “[w]hile it is perfectly true that a zoning authority, in the absence of evidence to support its action, cannot apply its expertise in granting or refusing a zoning change or exception, it is equally true that where statutory standards are set up, there must be supporting evidence upon which a rational judgment can be based.” *Bd. of Cnty. Comm’rs for Prince George’s Cnty. v. Luria*, 249 Md. 1, 6 (1968) (internal citation omitted).

B. The Presumed Compatibility of Conditional Uses Permitted Under HCZR does not Overcome the Petitioner’s Burden of Proof.

Throughout the Board’s deliberation of this matter, it was apparent that the “presumed compatibility” of Conditional Uses identified in the HCZR and applicable law overcame the incompatibility of the proposed Conditional Use with the subject and vicinal properties. I disagree with this reliance on the notion of “presumed compatibility.”

Although there is a legislative presumption that a conditional use is valid, the applicant still bears “both the burden of production and the burden of persuasion” on the issue of whether the Conditional Use should be granted. *Clarksville Residents Against Mortuary Def. Fund, Inc. v. Donaldson Props.*, 453 Md. 516, 542 (2017). With respect to such a presumption, the Maryland Supreme Court has declared that “[m]erely concluding that the abstract presumption of compatibility accompanying the inclusion in a zoning ordinance of special exception uses—or the grant of a particular application for a special exception—derives from the general presumption that all parts of a comprehensive zoning scheme advance the general welfare, however, does not end our inquiry.” *Montgomery Cnty. v. Butler*, 417 Md. 271, 299 (2010). Instead, the Petitioner must also meet “the burden of persuasion on the issue of whether the [conditional use] should be granted and must persuade the Board by a preponderance of the evidence that the special exception

will conform to all applicable requirements.” *Donaldson Props.*, 453 Md. at 542 (internal quotation omitted). This case law is consistent with the express provisions of the HCZR with respect to the burden of proof in these matters. Per the HCZR, “[t]he applicant for a Conditional Use shall have the burden of proof, which shall be by a preponderance of the evidence and which shall include the burden of going forward with the evidence and the burden of persuasion on all questions of fact which are to be determined by the Hearing Authority or are required to meet any provisions of these Regulations.” HCZR § 131.0. This law is consistent with the Board’s Rules of Procedure which proscribes that “[t]he burden of proof is one of a preponderance of the evidence and is on the petitioner to show, by competent, material and substantial evidence, that he or she is entitled to the relief requested and that the request meets all prescribed standards and requirements.” Howard County Code § 2.209.

As outlined above, I find that there is inadequate evidence in the record to conclude the proposed Conditional Use is in harmony or compatible “with the land uses and policies in the Howard County General Plan” or that it will not have a greater potential for adversely impacting environmentally sensitive areas in the vicinity than elsewhere as required under the HCZR. HCZR § 131.0. In addition, I find that the Petitioner has failed to meet its burden with respect to proving by preponderance of the evidence that the proposed Conditional Use at the proposed location will not have adverse effects on vicinal properties above and beyond those ordinarily associated with such uses” as it pertains to noise.

During the hearing, Petitioner produced the testimony of Jeffrey Straw, a vibration and acoustics expert, to provide noise evaluation of an electric vehicle (EV) go-cart by measuring the sound created by the use of an electric go-kart vehicle for comparison to the Howard County noise ordinance. Mr. Straw testified that the noise study was conducted by having an EV go-kart

complete a full lap around a track at the Orlando Kart Center and capturing the sound from the vehicle at various distances. To conduct this study, Mr. Straw testified that the same EV go-kart that would be used at the site of the proposed Conditional Use was tested.

This noise study, however, fails to carry the Petitioner's burden to prove that the noise created by the proposed Conditional Use will not have an adverse effect above and beyond those ordinarily associated with an EV go-kart racetrack at the subject property. Specifically, the noise study conducted by Mr. Straw at the Orlando Kart Center fails to mimic the sound that could or would be created at the subject property based on the unique topography of the subject and vicinal properties. During the hearing, Protestants provided testimony, which was not rebutted by the Petitioner, that the subject property has a unique "fish bowl" topography. Specifically, these witnesses testified that the proposed Conditional Use would be located on low-lying land with abutting neighbors located higher above. This topography, many witnesses testified, would cause noise to echo upwards to higher abutting property and neighbors. Protestants entered into evidence topographic maps of the subject property and vicinal properties to support such testimony. The Orlando Kart Center, however, did not have similar topography, significantly limiting the value and weight of sound measurements captured at that location. Protestants also presented testimony suggesting that the sound from the proposed Conditional Use would travel farther and sound louder because the subject and vicinal properties are open and do not have structures or other features to absorb sound, unlike the Orlando Kart Center, which included several barrier walls including one at the location where sound measurements were captured.

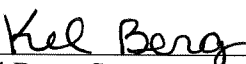
To rebut such evidence, Petitioner asked Protestants whether they had any empirical proof that the sounds emanating from proposed Conditional Use would exceed noise levels permitted under the Howard County Code. This point, however, does not meet Petitioner's burden with

respect to proof that the sound emanating from the proposed Conditional Use will not have an adverse effect above and beyond those ordinarily associated with an EV go-kart racetrack. Instead, such questioning merely shifts the burden of proof to Protestant citizens—contrary to applicable law. As noted in the Board’s Decision and Order, the legal presumption of compatibility afforded to Conditional Uses does not “shift the burden of persuasion” to those opposing the proposed Conditional Use. *Anderson v. Litzenberg*, 115 Md. App. 549, 564 (1997). “Rather, it merely satisfies the burden of going forward on a fact presumed and may satisfy the burden of persuasion *if no rebuttal evidence is introduced by the other side.*” *Id.* (emphasis added). In this case, Protestants produced sufficient rebuttal evidence concerning the noise studies presented by the Petitioner that was not sufficiently refuted by the Petitioner. Therefore, there is inadequate evidence in the record to conclude that Petitioner has met its burden with respect to proving by preponderance of the evidence that the proposed Conditional Use “*at the proposed location* will not have adverse effects on vicinal properties above and beyond those ordinarily associated with such uses” as it pertains to noise. HCZR § 131.0. (emphasis added). In addition, the proposed Conditional Use is not ordinary and without additional evidence, potential adverse effects are uncertain.

For the foregoing reasons, I respectfully disagree with my colleagues’ Decision and Order approving the proposed Conditional Use in this matter.

ATTEST:

**HOWARD COUNTY BOARD OF
APPEALS**



Kel Berg, Secretary

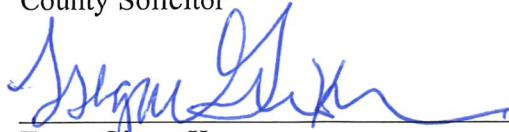
Robbyn Harris

Robbyn Harris

PREPARED BY:

HOWARD COUNTY OFFICE OF LAW

Gary W. Kuc
County Solicitor



Tsega Girma Kyere
Senior Assistant County Solicitor

Signature: Robbyn Harris
Robbyn Harris (Nov 17, 2025 17:36:37 EST)

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