

IN THE MATTER OF	:	BEFORE THE
WAYNE LAWSON	:	HOWARD COUNTY
Petitioner	:	BOARD OF APPEALS
	:	HEARING EXAMINER
	:	BA Case No. 25-016C

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DECISION AND ORDER

On January 7, 2026, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, held the evidentiary hearing for the Petition of Wayne Lawson (Petitioner) for a Two-Family Dwelling within an Existing Dwelling, in a R-ED (Residential: Environmental Development) Zoning District, filed pursuant to Section 131.0.N.54 of the Howard County Zoning Regulations (HCZR).

The Petitioner certified to compliance with the notice and posting requirements of the Howard County Code. The Hearing Examiner viewed the subject property as required by the Hearing Examiner Rules of Procedure. Wayne Lawson, Petitioner, testified on his own behalf in support of the Petition. No one appeared in opposition.

FINDINGS OF FACT

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

1. Property Identification. The Property is located on the west side of College Avenue, south of Main Street (Frederick Road), east of Rt. 29, south of I-70 and north of MD 100. The 0.69-acre site is an irregular shaped parcel containing an existing two-story dwelling with associated parking. There are no environmentally sensitive areas on the parcel. The site rises from an elevation of 320 feet along the northern property line to 350 feet at the southwestern corner of the Property. The Subject Property is located in Council District 2, at Tax Map 25, Grid 14, Parcel 54 and is identified as 3992 College Avenue, Ellicott City, Maryland.

2. Vicinal Properties.

Direction	Zoning	Land Use
North	R-ED	Single-Family Residential/College Avenue
South	R-ED	Single-Family Residential
East	R-ED	Single-Family Residential/College Avenue
West	R-ED	Single-Family Residential

3. Roads. College Avenue has two travel lanes within a 50-foot right-of-way. The speed limit is 25 miles per hour. No changes to ingress or egress to the Property are proposed. There is no Average Annual Daily Trips data for this section of College Avenue.

4. Water and Sewer Service. The Property is within the Planned Service Area for Water and Sewer and is served by public water and sewer.

5. The General Plan. The Property is designated Single-Family Neighborhood on the Future Land Use Map of HoCo By Design. College Avenue is a Minor Collector Road.

6. Reported Agency Comments. There are no Agency or Department comments in objection to the Petition.

The Department of Inspections, Licenses, and Permits advised that both a building permit and a Rental license would be required.

The Division of Land Management stated "DLD has reviewed the petition to change the use from accessory apartment to two family dwelling and has no objection to approval of the request. The plan and application do not propose exterior modifications to the site which would require review and approval of site plans. The change in use is similar to the existing use and no change in parking provided are required and existing parking is appropriate to serve the proposed use. No impacts to environmentally sensitive areas are anticipated, and no DAP review is required."

7. Zoning History. There is no record of a Board of Appeals, Zoning Board, or any other Zoning cases for the Property.

8. Conditional Use Proposal. The Petitioner proposes to convert the existing single-family detached dwelling into a Two-Family Dwelling. Since accessory apartments must be located within an owner-occupied dwelling, and the Petitioner proposes renting out both units, this necessitates a conversion to a Two-Family Dwelling.

BURDEN OF PROOF

The Court of Appeals of Maryland has frequently expressed the applicable standards for judicial review of the grant or denial of a Conditional Use. The 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. The Conditional Use is a valid zoning mechanism that delegates to an administrative body a limited authority to allow enumerated uses which the legislature has determined to be permissible absent any fact or circumstance negating this presumption. The legislative body has statutorily determined that a Conditional Use is compatible in a particular zoning district absent specific facts adduced to the contrary at a particular location. The duties given the hearing body 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 Zoning Plan.

The Applicant has the burden of adducing testimony which will show that his use meets the prescribed standards and requirements, he does not have the burden of establishing affirmatively that his proposed use would be a benefit to the community. These prescribed standards and requirements are conditions precedent to the approval of a conditional use. If he shows to the satisfaction of the zoning body that the conditions precedent have been met and that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest

to a greater extent than if the proposed use were located elsewhere, he has met his burden.

The extent of any harm or disturbance to the neighboring area and uses is, of course, material. If the evidence makes the question of harm or disturbance or the question of the disruption of the harmony of the comprehensive plan of zoning fairly debatable, the matter is one for the zoning body to decide. But if 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 Conditional Use is arbitrary, capricious, and illegal. Turner v. Hammond, 270 Md. 41, 54-55, 310 A.2d 543, 550-51 (1973); Rockville Fuel & Feed Co. v. Board of Appeals of Gaithersburg, 257 Md. 183, 187-88, 262 A.2d 499, 502 (1970); Montgomery County v. Merlands Club, Inc., 202 Md. 279, 287, 96 A.2d 261, 264 (1953); Anderson v. Sawyer, 23 Md. App. 612, 617, 329 A.2d 716, 720 (1974).

These standards dictate that if a requested Conditional Use is properly determined to have an adverse effect upon neighboring properties in the general area, it must be denied. Schultz v. Pritts, 291 Md. 1, 432 A.2d 1319, 1325 (1981). See also Mossberg v. Montgomery County, 107 Md. App. 1, 666 A.2d 1253 (1995).

The appropriate standard to be used in determining whether a requested Conditional 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 and the particular location proposed would have any adverse effects above and beyond those

inherently associated with such a Conditional Use irrespective of its location within the zone. Turner v. Hammond, 270 Md. 41, 54-55, 310 A.2d 543, 550-51 (1973); Deen v. Baltimore Gas & Electric Co., 240 Md. 317, 330-31; 214 A.2d 146, 153 (1965); Anderson v. Sawyer, 23 Md. App. 612, 617-18, 329 A.2d 716, 720, 724 (1974). Schultz v. Pritts, 291 Md. 1, 432 A.2d 1319, 1331 (1981). See also Mossberg v. Montgomery County, 107 Md. App. 1, 666 A2d 1253 (1995).

CONCLUSIONS OF LAW

1. General Criteria for Conditional Uses (Section 131.0.B)

HCZR Sections 131.0.B.1-3 require the Hearing Authority to evaluate whether the proposed Conditional Use will be in harmony with the landscape uses and policies indicated in the Howard County General Plan for district in which it is located through the application of three standards: harmony with the General Plan, overall intensity and scale of use, and atypical adverse impacts.

A. Harmony and Intensity of Use

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 proposed use is in harmony with the following policies:

Policy DN-1: "Increase opportunities for missing middle housing through the creation and use of zoning tools and incentives."

o Implementing Action #1 – “Evaluate conditions where duplex and multiplex homes can be compatible with existing neighborhoods and permitted by-right in a greater number of residential and mixed-use zoning districts.”

Policy DN-12: “Provide a range of affordable, accessible, and adaptable housing options for older adults and persons with disabilities.”

o Implementing Action #1 – “Use zoning tools and incentives that increase the supply of missing middle housing and accessory dwelling units, as identified in Policy Statements DN-1 and DN-2.”

Section 131.0.B.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 0.69-acre property meets all Conditional Use criteria, and the principal structure is compliant with bulk regulations. The Petitioner is not proposing any additions or modifications to the structure. The existing parking area can accommodate six (6) parking spaces, which is an appropriate amount for a two-family dwelling. College Avenue is designated as a Minor Collector road, which is appropriate for the type and number of vehicles associated with the proposed use.

Therefore, the nature and intensity of the use, the size of the Property in relation to the use, and the location of the site, with respect to streets that provide access, are such that the overall intensity and scale of the use are appropriate for the site.

B. Adverse Impacts (Section 131.0.B.3)

Unlike HCZR Section 131.0.B.1, which concerns the proposed use’s harmony or compatibility with the General Plan, or Section 131.0.B.2, which concerns the on-site effects of the proposed use, compatibility of the proposed use with the neighborhood is

measured under Section 131.0.B.3's six off-site, "adverse effect" criteria: (a) physical conditions; (b) structures and landscaping; (c) parking areas and loading; (d) access; (e) environmentally sensitive areas; and (f) impact on the character and significant historic sites.

Inherent in the assessment of a proposed Conditional Use under these criteria is the recognition that virtually every human activity has the potential for adverse impact. The assessment therefore accepts some level of such impact in light of the beneficial purposes the zoning body 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-ED Zoning District. The proper question is whether there are facts and circumstances showing the particular use proposed at the particular location would have any adverse effects above and beyond those inherently associated with such a special exception [conditional] use irrespective of its location within the 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*, 107 Md. App. 1, 666 A.2d 1253 (1995).

For the reasons stated below, Petitioner has met its burden of presenting sufficient evidence under HCZR Section 131.0.B.3 to establish the proposed use will not have adverse effects on vicinal properties beyond those ordinarily associated with a Two-Family Dwelling within an Existing Dwelling, in the R-ED Zoning District.

Section 131.0.B.3.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 proposed use is a residential two-family dwelling. The Petitioner is not proposing any additions or modifications to the structure or parking area. The proposed use will not generate any additional noise, dust, fumes, odors, intensity of lighting, vibrations, hazards, or other similar physical conditions. Therefore, the impact of adverse effects will not be greater at the proposed site than it would generally be elsewhere in the R-ED zoning district.

Section 131.0.B.3.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 existing dwelling meets all bulk regulations of the R-ED zoning district and no exterior expansions to the structure are proposed. The proposed use is surrounded by other single-family detached dwellings of similar size and scale. No landscaping, fencing or other screening is being proposed. Therefore, the use will not likely hinder or discourage the development and/or use of adjacent land and structures more at the subject Property than generally elsewhere in the R-ED zoning district.

Section 131.0.B.3.c. The number of parking spaces will be appropriate to serve the particular use. Parking areas, loading areas, driveways and refuse areas will be approximately located and buffered or screened from public roads and residential uses to minimize adverse impacts on adjacent properties.

The Regulations do not contain an off-street parking requirement for a two-family dwelling. However, single-family detached and attached dwellings require 2 spaces per dwelling unit plus an additional 0.5 spaces for visitor parking. Five (5) spaces are appropriate for this use and 6 spaces are provided. The location of the driveway will not change.

Section 131.0.B.3.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 entrance to College Avenue was approved during the original construction of the dwelling and no changes are being proposed to this area. The Property shares a driveway with other residential properties. The Two-Family Dwelling is unlikely to impact the convenience and safety of the shared driveway, since it is a residential use with limited vehicular traffic.

Section 131.0.B.3.e The proposed use will not have a greater potential for adversely impacting environmentally sensitive areas in the vicinity than elsewhere.

The Property is not encumbered by any environmentally sensitive areas. The closest environmental area is a 75-foot stream bank buffer located over 500 feet away from the existing structure. Therefore, the proposed use will not have a greater potential for adversely impacting environmentally sensitive areas in the vicinity than elsewhere in the R-ED zoning district.

Section 131.0.B.3.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 closest historic site, The William R. and Rebecca D. Dorsey House (HO-342), is located over 800 feet to the northwest of the Property and is screened by existing structures, distance/topography, and vegetation. Therefore, the proposed use will not have a greater potential for diminishing the character and significance of historic sites in the vicinity than elsewhere in the R-ED zoning district.

2. Specific Criteria for Two-family Dwellings and Accessory Apartments
(Section 131.0.N.54)

A Conditional Use may be granted for two-family dwellings or accessory apartments in the following districts, provided that any new structures or additions will be designed to be compatible in scale and character with the surrounding residential neighborhood. Compatibility of character may be in architectural style, materials or details. Compatibility shall be demonstrated by architectural elevations or renderings submitted with the petition.

No new structures or additions are proposed for the two-family dwelling.

- a. **Two-family dwellings: in the RC and RR Districts, on properties that are not ALPP purchased or dedicated easement properties, and in the R-ED, R-20 or R-12 Districts, provided that the two-family dwelling is on an individual lot, with only one two-family dwelling permitted on one lot, and the lot is an existing recorded lot at the time of the Conditional Use application. The minimum lot size shall be at least 16,000 square-feet for two-family dwelling structures in the R-ED and R-12 Districts.**

The Property is within the R-ED zoning district and is an existing individual recorded lot of 0.69-acre (30,056 square feet). The Petitioner is proposing only one two-family dwelling unit on the lot.

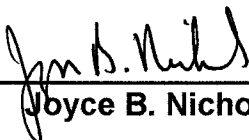
- b. **Accessory apartments: on lots of less than 12,000 square feet in the R-ED, R-20, R-12 and R-SC Districts. (On lots of 12,000 square feet or less in the R-ED and R-12 Districts.**

The Petitioner is not proposing an accessory apartment; therefore, this criterion does not apply.

ORDER

Based upon the foregoing, it is this 9th day of January, 2026, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the Petition of Wayne Lawson for a Two-Family Dwelling within an existing Dwelling, in a R-ED (Residential: Environmental Development) Zoning District, Tax Map 25, Grid 14, Parcel 54, Council District 2, identified as 3992 College Avenue, Ellicott City, Maryland, be and is hereby **GRANTED**.

HOWARD COUNTY BOARD OF APPEALS**HEARING EXAMINER**

Joyce B. Nichols

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.