

**DISTRICT COUNCIL FOR PRINCE GEORGE'S COUNTY, MARYLAND
OFFICE OF ZONING HEARING EXAMINER**

**SPECIAL EXCEPTION
4658**

DECISION

Application:	Three Chair Barber Shop
Applicants:	Danta L. & Felicia B. Wright/Fort Foot Barber Shop
Opposition:	None
Hearing Date:	January 6, 2010
Hearing Examiner:	Maurene Epps Webb
Disposition:	Approval with Conditions

NATURE OF REQUEST

(1) Special Exception 4658 is a request for permission to operate a three-chair Barber Shop on approximately 0.42 acre of land in the R-R (Rural Residential) Zone, located on the southwest corner of the intersection of Notley Road and Oxon Hill Road, and identified as 8701 Oxon Hill Road, Fort Washington, Maryland. Applicants have operated a one-chair Barber Shop on the site since 2005 and are seeking to expand the number of chairs. The existing use is a permitted accessory use in the zone; the expansion requires approval by Special Exception.

(2) The Technical Staff recommended that the Application be approved, subject to certain conditions. (Exhibit 14) The Planning Board recommended approval with several conditions. (Exhibit 31(a))

(3) No one appeared in opposition to the request.

(4) At the close of the hearing the record was left open to allow the Applicants to submit the Planning Board resolution, a floor plan, and a sign detail. (T.15) The last of these items was received on April 7, 2010, and the record was closed at that time. (Exhibits 32(a)-(b))¹

Subject Property

(5) The subject property is a rectangular shaped parcel improved with a single-family dwelling and an attached structure located to the rear of the site in which the barber shop is operated. The subject property is 18,372 square feet in size. It is located on a corner lot that fronts on Oxon Hill Road and Notley Road. Oxon Hill Road has a right-of-way of 85 feet.

¹ Applicant did not submit a sign detail, however.

(6) The Application does not include any construction, enlargement or extension of a building; accordingly, the site is exempt from the requirements of the Landscape Manual. The property is also exempt from the requirements of the Woodland Conservation and Tree Preservation Ordinance since there will be no construction and, therefore, no removal of trees.

Master Plan/Zoning

(7) The property is located in an area governed by the 2006 Henson Creek-South Potomac Master Plan. The Master Plan recommends low-density residential use of the site. The 2006 Henson Creek-South Potomac Sectional Map Amendment retained the property in the R-R Zone.

(8) The property is located within the Developing Tier discussed in the 2002 General Plan. The vision for the Developing Tier is to maintain a pattern of low-to moderate-density suburban residential communities, distinct commercial centers, and employment areas that are increasingly transit serviceable.

Neighborhood and Surrounding Uses

(9) The neighborhood consists of single-family residential development and scattered commercial uses. It is defined by the following boundaries:

North – The southern boundary of the National Harbor development
South – Fort Foote Road
East – Oxon Hill Road
West - The Potomac River

(10) The adjoining properties to the north, south and west lie within the R-R Zone. The adjoining properties to the north and south are developed with single-family dwellings. Applicants own the lot to the south. The property to the east across Oxon Hill Road is in the R-80 Zone and is developed with a single-family residence. The land to the west is also owned by the Applicants and is undeveloped.

Applicants' Proposal

(11) Applicants purchased the subject property in 1999 and reside therein. They have operated an accessory barber shop, attached via an enclosed brick and vinyl breezeway, since 2005. The area in which the barber shop is housed is two-storied and approximately 892 square feet in size. The Applicants wish to expand the barber shop to a three-chair operation; however, no additional construction is proposed. The chairs will be located on both levels. (T. 10-11)

(12) The dwelling is located on a corner lot that fronts on Oxon Hill Road and Notley Road. The dwelling is approximately 140 feet from the dwelling on the lot to the south of the subject property.

(13) Such a use would require six (6) parking spaces for the barber use and two (2) for the existing dwelling. There is an existing parking lot that abuts the western lot line and an undeveloped parcel that Applicants also own. This parking lot must be reconfigured since Section 27-348(a)(4) requires that the parking be located at least ten feet from any lot line of the subject property. Applicants have agreed to revise the Site Plan accordingly.

(14) Applicants' witness, accepted as an expert in land use planning, opined that the Application met all applicable laws, and should be approved, for the following reasons:

- The proposed land use will result in a de minimis increase to traffic generally over that currently existing;
- The subject barber shop would promote the economic and social stability of the County by contributing to the tax base, and by providing needed services to the visitors to our community and the surrounding area; and
- Its location on a collector roadway ensures that the Application would not represent a greater adverse impact on the public, health, safety and welfare than any other barber shop on another site in the R-R-Zone.

(Exhibit 29)

(15) Applicants would like to operate between the hours of 9:00 a.m. and 9:00 p.m. on Mondays through Friday, 7:00 a.m. through 6:00 p.m. on Saturday, and 10:00 a.m. through 3:00 p.m. on Sunday. (Exhibit 4)

(16) Applicants expressed a willingness to satisfy the conditions proposed by the Technical Staff. (T. 9)

Agency Comment

(17) The Technical Staff recommended that the Application be approved with minimal revisions to the Site Plan. (Exhibit 14) The Community Planning Section noted that the use would have to be consistent with Policy 1 of the 2006 Henson Creek –South Potomac Master Plan which requires special exception uses to reflect the scale and character of the surrounding neighborhood. The Transportation Planning Section noted that this use would only generate one (1) A.M. and two (2) P.M. peak hour vehicle trips, therefore, any impact upon the closest intersection (Oxon Hill and Notley Roads) would be de minimis.

(18) The Planning Board recommended that the Application be approved. In doing so, it reasoned as follows:

With the recommended conditions, the proposed use and site plan are in harmony with the purposes of the Zoning Ordinance. The purposes of the Zoning Ordinance (Section 27-102(a)) seek generally to protect and promote the health, safety, morals, comfort, convenience, and

welfare of the present and future inhabitants of the county. The subject barber shop has existed on this site for several years and such uses have long been permitted as a home occupation as an accessory use in the county. Sufficient parking is provided, and buffering and screening in accordance with the County Code is shown....

The proposed use will not substantially impair the integrity of the 2006 approved Henson Creek-South Potomac master plan which recommends a residential low-density land use (up to 3.5 dwelling units per acre) for the property. Home occupations, such as the requested barber/beauty shop, permitted by the Zoning Ordinance as an accessory use, are consistent with master plan recommendations for residential areas. This enlargement of the home occupation use is permitted in the zone by special exception and deemed to be compatible.

(Exhibit 31(a), pp. 5-6)

APPLICABLE LAW

(1) A Barber Shop with three (3) chairs may be permitted in the R-R Zone upon approval of a Special Exception. Such approval is premised upon satisfaction of the criteria set forth in Sections 27-317(a) and 27-348.03 of the Zoning Ordinance.

(2) Section 27-317 (a) provides as follows:

- (1) The proposed use and site plan are in harmony with the purpose of this Subtitle;
- (2) The proposed use is in conformance with all the applicable requirements and regulations of this Subtitle;
- (3) The proposed use will not substantially impair the integrity of any validly approved Master Plan or Functional Master Plan, or, in the absence of a Master Plan or Functional Master Plan, the General Plan;
- (4) The proposed use will not adversely affect the health, safety, or welfare of residents or workers in the area;
- (5) The proposed use will not be detrimental to the use or development of adjacent properties or the general neighborhood; and
- (6) The proposed site plan is in conformance with an approved Tree Conservation Plan.

(3) Section 27-348.03 provides as follows:

- (a) A barber shop may be permitted, subject to the following:
 - (1) The applicant/barber shop owner must reside on and own the subject property;
 - (2) The barber shop use must be accessory to the primary use of the subject property as a single family residence, and must be located in a structure which is physically attached to the residence. Additional accessory uses, including but not limited to retail sales of hair and skin products, manicure and pedicure services are prohibited.
 - (3) The structure containing the use shall be located at least fifty feet from any dwelling on an adjoining lot;
 - (4) Parking shall be provided on the subject site (no parking shall be allowed within the public right of way) at the rate of two (2) spaces for each barber chair and shall be setback at least ten (10) feet from any public right of way and lot line of the subject property and shall be buffered and screened from any adjoining residences not owned by the applicant;

(5) The applicant/barber shop owner shall pay the appropriate fee to the Department of Public Works and Transportation (DPW&T) for the posting of “No Parking Anytime” signs on all adjoining streets in accordance with DPW&T standards;

(6) Hours of operation shall be limited to the hours of 9:00 a.m. to 9:00 p.m., Monday through Friday; 7:00 a.m. to 6:00 p.m. Saturday and 10:00 a.m. to 3:00 p.m. on Sunday;

(7) The use may be identified by an unilluminated sign, not exceeding eight (8) square feet in size attached to the accessory structure; and

(8) The barber shop use may contain a maximum of three (3) barber chairs and three (3) shampoo bowls.

(b) In addition to the requirements of Section 27-296(c), the site plan shall show:

(1) The location of the primary residence and attached accessory structure on the subject property;

(2) The location and use of all buildings on adjoining lots; and

(3) The location of and buffering and screening of the required parking area.

(4) The requested use must meet the purposes of the R-R Zone, set forth in Section 27-428(a) of the Zoning Ordinance:

(1) The purposes of the R-R Zone are:

(A) To provide for and encourage variation in the size, shape, and width of one-family detached residential subdivision lots, in order to better utilize the natural terrain;

(B) To facilitate the planning of one-family residential developments with moderately large lots and dwellings of various sizes and styles;

(C) To encourage the preservation of trees and open spaces; and

(D) To prevent soil erosion and stream valley flooding.

(5) Finally, a Special Exception may only be denied if any adverse effect of the proposed use at the proposed site is greater than the adverse effect inherent in said use irrespective of its location within the particular zone. Eastern Outdoor Advertising Co. v. Mayor and City Council of Baltimore, 146 Md. App. 283, 807 A.2d 49 (2002); Schultz v. Pritts, 291 Md. 1, 432 A. 2d 1319 (1981)

CONCLUSIONS OF LAW

(1) The Application may be approved because it satisfies all applicable requirements of the Zoning Ordinance. It furthers the following purposes of the Zoning Ordinance set forth in Section 27-317(a)(1):

(1) To protect and promote the health, safety, morals comfort, convenience, and welfare of the present and future inhabitants of the County;

The use promotes the comfort of County residents by providing an accessible grooming establishment in a manner that minimally impacts the surrounding community.

(2) To implement the General Plan, Area Master Plans, and Functional Master Plans;

The Master Plan's recommendation of low suburban land use is satisfied by this Application since no increased density is proposed, and such a small home occupation business is one generally associated with suburban residential use.

(3) To promote the conservation, creation, and expansion of communities that will be developed with adequate public facilities and services;

The proposed use does not include any new development of the property and will not negatively impact any public facilities or services.

(4) To guide the orderly growth and development of the County, while recognizing the needs of agriculture, housing, industry, and business;

The barber business has successfully operated on site for several years, and it is a business that can flourish within the County if allowed to continue.

(5) To provide adequate light, air, and privacy;

The use is conducted on a small portion of the site and is attached to the dwelling in a manner that satisfies all applicable setbacks from surrounding rights-of-way and adjoining properties. Accordingly, this purpose is met.

(6) To promote the most beneficial relationship between the uses of land and buildings and protect landowners from adverse impacts of adjoining development;

The use will not alter existing relationships between uses in the area and will be accessed from Oxon Hill Road, a collector roadway, not through exclusively residential areas. Thus there will be minimal, if any, adverse impact upon adjoining development.

(7) To protect the County from fire, flood, panic, and other dangers;

The use will satisfy all applicable codes and will not create a dangerous situation on site.

(9) To encourage economic development activities that provide desirable employment and a broad, protected tax base;

Approval of the Application will support a local business that will contribute to the County's tax base.

(10) *To prevent the overcrowding of land;*

Total lot coverage for the use is approximately 48.2% pursuant to variances approved by the Board of Appeals several years ago. Applicants are not proposing any additions or enlargement; accordingly, this purpose is met.

(11) *To lessen the danger and congestion of traffic on the streets, and to insure the continued usefulness of all elements of the transportation system for their planned functions;*

The use will not negatively impact the transportation system in the area since little to no additional traffic is anticipated.

(12) *To insure the social and economic stability of all parts of the County;*

Economic and social stability is promoted if the use is permitted since the use will ensure continued employment.

(13) *To protect against undue noise, and air and water pollution, and to encourage the preservation of stream valleys, steep slopes, lands of natural beauty, dense forests, scenic vistas, and other similar features;*

The requested use is not one that generates undue noise or pollution since it occurs within the existing dwelling, and no new development is proposed.

(14) *To provide open space to protect scenic beauty and natural features of the County, as well as to provide recreational space;*

Natural features of the site are protected by the proposal since no new development is proposed and additional landscaping is provided.

(Section 27-317(a)(1))

(2) Once the conditions are addressed the Application will not require the grant of a variance. Accordingly, it is in conformance with all applicable requirements of the Zoning Ordinance. (Section 27-317(a)(2))

(3) The proposed use does not substantially impair the intent of the Master Plan since it is a use that supports low suburban residential land uses, and a home occupation use is generally found to be concordant with residential uses. (Section 27-317(a)(3)) For these same reasons, the proposed use does not conflict with the purposes of the R-R Zone. (Section 27-428(a))

(4) The use has existed on site for a few years and has not negatively impacted the health, safety or welfare of residents/workers in the area nor been a detriment to the use or development of adjacent properties. Its continued presence on site should also have negligible impact given the minimal expansion to three (3) chairs, and the reasonable hours of operation. (Sections 27-317(a)(4) and (5))

(5) The site is exempt from the requirements of Woodland Conservation and Tree Preservation Ordinance. (Section 27-317 (a)(6))

(6) The Applicants will continue to reside in the residence. (Section 27-348.03(a)(1)). The barber shop is accessory to the residence, and is physically attached thereto. (Section 27-348.03 (a)(2)) The use is approximately 140 feet from any dwelling on an adjoining lot. (Section 27-348.03 (a)(3)). The six (6) parking spaces will be set back at least 10 feet from any lot line and will be buffered and screened. (Section 27-348.03 (a)(4)) Hours of operation and signage are addressed in the conditions and will be as set forth in Sections 27-348.03 (a) (5)-(7). There will be a maximum of three barber chairs and three shampoo bowls. (Section 27-348.03(a)(8) The Site Plan shows the location of the residence and the attached use, but must be revised to adequately address the location/use of all buildings on adjoining lots, and the location/buffering/screening of the required parking area. (Section 27-348.03 (b))

DISPOSITION

Special Exception 4658 is hereby Approved, subject to the following conditions:

1. The site plan shall be revised as follows:
 - a. The shed in the southwest corner of the site shall either be moved to meet the two-foot setback or the lot line adjusted.
 - b. The parking area for the barber shop shall be redesigned to meet the prescribed ten-foot setback, and requisite buffering/screening.
 - c. The driveway entrance from Notley Road shall be widened to 22 feet.
 - d. The dimension shall be shown from the barber shop structure to the residence to the south.
 - e. The parking schedule shall be revised to show the minimum two (2) spaces required for the single-family residence and those spaces shall be shown on the plan.
 - f. The sign detail for the attached un-illuminated sign shall be shown.

2. Prior to the issuance of permits, the revised Special Exception Site Plan shall be submitted to the Office of the Zoning Hearing Examiner for review, approval and inclusion in the record.

[Note: The Special Exception Site and Landscape Plan is Exhibit 4.]