

IN THE MATTER OF	:	HOWARD COUNTY
HOWARD COUNTY CONSERVANCY	:	BOARD OF APPEALS
	:	HEARING EXAMINER
Petitioner	:	BA Case No. 16-023C

.....

DECISION AND ORDER

On October 17, 2016, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Howard County Conservancy (Petitioner) for the enlargement and alteration of an existing Charitable or Philanthropic Institution in RC-DEO (Rural Conservation: Density Exchange Option) and RR-DEO (Rural Residential: Density Exchange Option) zoning districts, filed pursuant to § 131.0.N.12 of the Howard County Zoning Regulations (HCZR).

Petitioner certified to compliance with the notice, posting, and advertising requirements of the Howard County Code. The Hearing Examiner viewed the property as required by the Hearing Examiner Rules of Procedure. Andrew Robinson, Esquire, represented the Petitioner. No one appeared in opposition to the petition.

At the outset of the hearing, Mr. Robinson stated Petitioner agreed with the technical staff report and rested his case.

FINDINGS OF FACT

Based upon the evidence of record, the Hearing Examiner finds as follows:

1. Property Identification. The 83.67-acre subject property lies on the north side of Old Frederick Road about 470 feet west of the eastern intersection of Dorchester Way and Old

Frederick Road. It is located in the 3rd Election District, identified as Tax Map 0010, Grid 0024, Parcels 315 and 331, Lots 1 and 2, and known as 10520-10524 Old Frederick Road (the Property).

2. Property Description. The Property is improved with an education building and several accessory structures located about 1,015 feet from Old Frederick Road and on Lot 1. An approximately 900-foot, 20-foot wide driveway provides access to the education building and related structures. There are several paved walkways on Lot 1. Lot 2 is improved with an L-shaped historic dwelling in residential and office use known as Mt. Pleasant (HO-406). There are several accessory buildings to the north of the dwelling. Parcel 315 is mostly open farmland dotted by several small accessory structures and a garden located about 300 feet to the southwest of the education building.

3. Vicinal Properties. The RC-DEO Parcel A-1 is the Myrtue Property Preservation lot improved with a large dwelling and several farm buildings. The RC-DEO zoned Parcel 43 to the north and east is a large, unimproved property which the Maryland Department of Natural Resources owns and leases to Petitioner. To the south, across Old Frederick Road, are the R-SC (Residential: Single Cluster) and R-20 (Residential: Single) zoned Waverly Woods residential and open space lots. Parcel 316 to the Property's west is owned by Howard County, who leases it to Petitioner. The Property and Parcels 43 and 316 are encumbered with Maryland Environmental Trust easements.

4. Roads. Frederick Road in this area has two travel lanes and about 30 paving feet within a variable right-of-way (ROW). The Property entrance has deceleration and acceleration lanes.

The posted speed limit is 50MPH. The estimated sight distance from the existing driveway entrance is about 600 feet to the west and over 700 feet to the east. There is no traffic volume information for this section of Old Frederick Road.

5. Water and Sewer Service. Lots 1 and 2 are served by public water and sewer. Parcel 315 is served by private well and septic.

6. General Plan. PlanHOWARD 2030 depicts Parcel 315 as Rural Resource on the Designated Place Types Map. Lots 1 and 2 are designated Established Communities. Old Frederick Road is depicted as a Minor Arterial on the PlanHOWARD 2030 Functional Road Classification Map.

7. Zoning History. In Board of Appeals Case No. 02-10C (August 29, 2002), the Hearing Authority granted Petitioner a conditional use for a Charitable or Philanthropic Institution. In WP-03-146 (July 3, 2003), DPZ granted Petitioner a waiver of Subdivision and Land Development Regulations § 16.155.a.1 for a memorial garden and pathway.

8. The Requested Conditional Use. Petitioner is requesting approval to enlarge and alter the existing 9,061sf education building with a 1,596sf addition and roof top deck, to add an approximately 1,000sf pervious paver patio, and to install an accessible walk connecting to the lower entrance. The addition would expand the current nature center and administrative support spaces, add a lobby with educational displays, and a community meeting room.

The proposed hours of operation are Monday-Saturday, 9:00am to 5:00pm, with occasional evening and Sunday educational programs. The education building is used for programs, meetings, special events, and office functions. The outdoor grounds are used for

educational programs, hiking, gardening, and special events. Existing parking includes gravel-surface parking on Parcel 325 to the southwest and west of the education building, nearby overflow parking for large events and a small accessible parking area to the west of the building.

9. Agency Comments.

Department of Fire and Rescue (DFR) Comments. On August 19, 2016 DFR made these advisory comments. The proposed addition shall be protected by an automatic sprinkler system and automatic fire alarm system to the standard of an educational facility. The addition shall also meet exit requirements for an educational facility.

DPZ, Development Engineering Division (DED) Comments. On August 11, 2016, DED commented that the request appears to have no adverse engineering impact on adjacent properties and that all improvements must comply with county design criteria, including APFO and stormwater management.

Department of Inspections, Licenses & Permits (DILP) comments. On August 20, 2016, DILP commented that the addition is subject to a site development plan red-line.

DPZ's Technical Staff Report comments. DPZ recommends the petition be approved subject to compliance with off-street parking requirements. The TSR evaluation of the petition for adequate parking notes that in 2002, the existing facility was approved for 36 parking spaces and two accessible parking spaces based on a parking needs analysis submitted with the Site Development Plan and an overflow parking area for approximately 200 parking spaces. The proposed 1,596sf expansion requires 16 additional parking spaces. DPZ reasons there is adequate space available along the driveways to provide the number of required parking spaces. Compliance with the off-street parking requirement, which may include a revised parking needs analysis, will be reviewed during the Site Development Plan revision process.

The TSR also notes the presence of a trash receptacle area located to the south of the bank barn building that is not shown on the conditional use plan.

CONCLUSIONS OF LAW

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

Sections 131.0.B.1-3 requires the Hearing Authority to evaluate whether the proposed Conditional Use will be in harmony with the land uses and policies indicated in the Howard

County General Plan for the district in which it is located through the application of three standards: harmony with the General Plan, intensity of use, and atypical adverse impacts.

A. Harmony and Intensity of Use

§ 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 TSR concludes the proposed CUP accords with multiple PlanHOWARD 2030 policies, including policies for: promoting individual environmental stewardship (3.5) through its environmental education programs; increasing collaboration on sustainability practices (3.9) through its public programs and its partnership with the Howard County Public School System; protecting, restoring and enhancing forests (4.7), and; enhancing historic preservation (4.10).

The petition complies with § 131.0.B.1.

§ 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 proposed use will increase the intensity of use, but the proposed addition and alterations on some 10,000sf within the 83.67-acre Property is easily accommodated and the access off this section of Old Frederick Road is appropriate. The petition complies with § 131.0.B.2.

B. Adverse Impacts

Unlike HCZR §§ 131.0.B.1 and B.2, which concern the proposed use's harmony or compatibility with the General Plan and the on-site characteristics of the proposed use, compatibility with the neighborhood is measured under § 131.0.B.3's six, off-site "adverse

effect" criteria: (a) physical conditions; (b) structures and landscaping; (c) parking areas and loading, (d) access, (e) impact on environmentally sensitive area; and (f) impact on the character and significance of historic sites. These six adverse impact tests gauge the off-site effects of the proposed conditional use.

Inherent in the assessment of a proposed conditional use under these criteria is the recognition that virtually every human activity has the potential for adverse impact. The assessment therefore accepts some level of such impact in light of the beneficial purposes the zoning body has determined to be inherent in the use. Thus, the question in the matter before the Hearing Examiner is not whether the proposed use would have adverse effects in the RC-DEO and RR-DEO zoning districts. 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 County*, 107 Md. App. 1, 666 A.2d 1253 (1995). For the reasons stated below, and as conditioned, Petitioners have met their burden of presenting sufficient evidence under HCZR § 131.0.B.3 to establish the proposed use will not have adverse effects on vicinal properties beyond those ordinarily associated with a Charitable or Philanthropic Institutions: Offices and Educational Programs conditional use in these districts.

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 addition and alterations will generate some of these conditions as part of its daily operations, but these are inherent to the nature of the use. There is no evidence of any atypical dust, fumes, odors, vibrations, and hazards. Any new outdoor lighting would be minimal. There will be some limited noise associated with arrivals of vehicles and persons walking on the Property. This minor noise is inherent to the nature of the use. No atypical adverse physical conditions are found that would be greater at the proposed site than it would generally be elsewhere in the same zoning district or other similar zoning districts. The petition complies with § 131.0.B.3.a.

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 one-story addition with a roof top deck would be 16 feet high, which is lower than the existing building and it would be located a considerable distance from adjacent land and structures. No walls or fences are proposed. The Property is naturally landscaped. No atypical adverse impacts related to the proposed structure and alterations are found. The petition complies with § 131.0.B.3.b.

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 TSR concludes existing driveways can accommodate the 16 additional parking spaces required for the addition. The existing refuse area is buffered by distance from public roads and residential uses. As a condition of approval, the Hearing Examiner is requiring DPZ to review the off-street parking requirement during the Site Development Plan revision process. Existing landscaping and distance will buffer or screen the proposed addition and alterations will minimize adverse impacts on adjacent properties. Subject to the approval condition, the petition complies with § 131.0.B.3.c.

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 TSR concludes there appears to be adequate sight distance for the required stopping sight distance of 425 feet for a car going 50 MPH in both directions and there are existing deceleration and acceleration lanes. No shared driveway access is proposed. The petition complies with § 131.0.B.3.d.

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

There is no evidence of any atypical, adverse impact on off-site environmentally sensitive areas, none of which are shown on the plan. Petitioner intends to manage stormwater runoff with pervious pavers. The petition complies with § 131.0.B.3.e.

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

There is no evidence of atypical adverse impact on off-site vicinal historic sites. The petition complies with § 131.0.B.3.e.

II. Charitable or Philanthropic Institutions: Offices and Educational Programs (§ 131.0.N.12)

A Conditional Use may be granted in the RC and RR Districts, on properties that are not ALPP purchased or dedicated easement properties, and in the R-ED, R-20 and R-12 Districts for a charitable or philanthropic institution, provided that:

- a. The minimum lot size in the R-ED, R-20 and R-12 Districts shall be one acre. The minimum lot size in the RC and RR Districts shall be three acres.

The Property is 83.67 acres in area, in compliance with § 131.0.N.12.a.

- b. The facility shall be limited to office functions and areas for meetings and educational programs related to the organization's primary purpose. The Hearing Authority must specify the allowed capacity and frequency of educational programs.

The facility will continue to be limited to Petitioner's office functions and its educational meeting and programs. According to the petition, the addition and alterations would accommodate daily educational programs with the occasional evening and Sunday educational programs. In the Hearing Examiner's view, the allowed indoor capacity will be limited by the occupancy permit. Given the size of the Property, the Hearing Examiner is not imposing an upper limit on the attendance capacity of Petitioner's educational programs. The petition complies with § 131.0.N.12.b.

- c. Outdoor uses are limited to necessary parking and access, with the exception of nonprofit organizations whose primary purpose is environmental conservation, in which case the use may include outdoor areas used to demonstrate principals and methods of environmental conservation.

Outdoor areas include the parking area, driveway, the educational and conservation areas, the proposed roof deck, and the patio. All but the parking and driveway will be used to demonstrate principals and methods of environmental conservation. The petition complies with § 131.0.N.12.c.

- d. All parking areas and outdoor activity areas shall be screened from surrounding properties and roads by landscaping or other appropriate means and located and designed to shield residential property from noise or nuisance.**

The gravel parking area sits about 1,000 feet from Old Frederick Road and is screened by a row of evergreens along the road. The parking area is not visible. Outdoor activity areas are set back from surrounding properties and are not visible. The petition complies with § 131.0.N.12.d.

- e. The design of new structures or additions to existing structures shall be compatible in scale and character with residential development in the vicinity, as demonstrated by architectural elevations or renderings submitted with the petition.**

The proposed one-story addition will be compatible with the existing structure, the barn-like assembly building. The petition complies with § 131.0.N.12.e.

- f. Buildings, parking areas and outdoor activity areas shall be at least 50 feet from adjoining residentially zoned properties other than public road right-of-ways.**

All these areas are located more than 50 feet away from residentially zoned properties other than public road rights-of way. The petition complies with § 131.0.N.12.f.

- g. At least 20% of the area within the building envelope shall not be used for buildings, parking areas or driveways. The building envelope is formed by the required structure and use setbacks of the Zoning Regulations for the zoning district and the Subdivision and Land Development Regulations.**

According to the petition supplement, the building envelope is about 65 acres. The building footprint for all buildings, parking areas and driveways is less than 2 percent of the Property. The petition complies with § 131.0.N.12.g.

ORDER

Based upon the foregoing, it is this **27th Day of October 2016**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

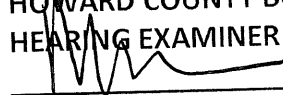
That the Petition of Howard County Conservancy for the enlargement and alteration of an existing Charitable or Philanthropic Institution in RC-DEO (Rural Conservation: Density Exchange Option) and RR-DEO (Rural Residential: Density Exchange Option) zoning districts, is

GRANTED;

Provided, however, that:

1. The Conditional Use shall be conducted in conformance with and shall apply only to the Conditional Use as described in the petition and depicted on Conditional Use Plan and not to any other activities, uses or structures on the Property.
2. Petitioner shall submit a parking needs analysis to DPZ for review during the Site Development Plan review process. The parking needs analysis shall consider the Department of Inspections, Licensing and Permit's occupancy counts for the addition.
3. Petitioner shall comply with all agency comments.
4. Petitioner shall obtain all required permits.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**



Date Mailed: _____

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.