

IN THE MATTER OF	:	BEFORE THE
TSZ PROPERTIES, LLC	:	HOWARD COUNTY
Petitioner	:	BOARD OF APPEALS
	:	HEARING EXAMINER
	:	BA Case No. 15-025N

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DECISION AND ORDER

On September 10, 2015, 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 TSZ Properties, LLC (Petitioner) for enlargement of a confirmed religious facility nonconforming use to add a detached garage, associated driveway and parking in an R-20 (Residential: Single) Zoning District, filed pursuant to Section 129.0.E of the Howard County Zoning Regulations (HCZR).

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.

Sang Oh, Esquire, represented the Petitioner. No one appeared in opposition to the petition.

FINDINGS OF FACT

1. Property Identification. The 2.36-acre parcel is located about 380 feet north of US 40 (Baltimore National Pike), to the east of a private driveway running perpendicular to and

providing ultimate access US 40. It lies in the 2nd Election, is referenced as Tax Map 24, Grid 1, Parcel 758 and is known as 10380 Baltimore National Pike (the Property).

2. Zoning History.

BA 14-039C, decided May 12, 2015. The Hearing Examiner granted Petitioner's application for a conditional use for Structures Used Primarily for Religious Activities for an existing nonconforming religious facility, specifically a proposed new garage/storage building and site revisions. As the property was described, the site revisions included a reconfiguration of the religious facility property, which comprises two rectangular sections forming a "T." The larger rectangular area is improved with an existing religious facility (the Church) sited about 79 feet from the south lot line. To the east and north of the Church is an existing gravel and paved drive and multiple parking areas. The smaller rectangular area is located between two existing properties and this portion of the Property is in the process of being subdivided to be removed. Immediate access to the Property is provided through a 50' wide private easement driveway on the south side of the Property. This driveway is shared with at least one other property, Parcel 2, which abuts the subject property. A private driveway runs along the western Parcel 2 lot line and provides access from the 50' wide easement driveway to US 40. The petition was granted subject to four conditions.

1. The Use shall be conducted in conformance with and shall apply only to the Church and proposed improvements as described in the petition and as depicted on the Conditional Use Plan, as modified by the following conditions of approval and not to any other activities, uses or structures on the Property.
2. The proposed garage/storage accessory structure is approved subject to the condition that it be one-story with a maximum height of 15 feet. There shall be no residential or commercial/contractor use of the structure, or conversion of the structure for residential or

commercial/contractor use. To this end, there shall be no full bath, full kitchen, residential habitation made of the structure, no 220-volt electrical outlets (or higher) or any electrical service increase ("heavying up") than would be ordinarily and customarily permitted in an accessory structure used as a garage and for storage.

3. Petitioner shall submit a plan to DPZ showing the location of all parking spaces, which shall be striped, prior to applying for any building permit.
4. The ingress/egress providing access to Parcel 2 from the 50' easement access to be used by the religious facility shall be eliminated or reconfigured to connect to/be accessed by the private driveway on the west side of Parcel 2.
5. Petitioner shall comply with all applicable federal, state, and county laws and regulations.
6. Petitioner shall obtain all required permits.

NCU 00-02, August 31, 2000. DPZ confirmed Petitioner Mid-Atlantic District Church of the Brethren's request for confirmation of a nonconforming use for an existing religious facility.

3. The Requested Enlargement of a Confirmed Nonconforming Use. On July 1, 2015, Petitioner submitted the instant nonconforming use petition for the enlargement of a confirmed religious facility nonconforming use to add a garage, associated parking and driveway. The requested improvements are the same as approved in BA 14-039C.

4. The Technical Staff Report (TSR). The TSR recommends the petition be dismissed because upon approval of the BA 14-039C conditional use, the formerly nonconforming use became a permitted use. As the TSR explains, HCZR § 129.0.A defines a nonconforming use as "any lawful existing use, whether of a structure or a tract of land, which does not conform to the use regulations of the zoning district in which it is located, either on the effective date of these regulations or as a result of any subsequent amendment thereto." Hence, with the approval of BA 14-039C, the religious facility use became a lawfully permitted use conforming "to the use regulations of the zoning district in which it operated."

CONCLUSIONS OF LAW

At the outset of the hearing, the Hearing Examiner noted her agreement with the TSR and hence, her obligation to dismiss the petition as a matter of law. Petitioner argued through counsel that the conditions attached to the use, specifically the elimination of the adjoining property private driveway access to the conditional use easement access, made the conditional use unusable.

As a first matter, there is no factual evidence that the offending private driveway access could not be reconfigured. Secondly, the private driveway access that *may* be rendered unusable is the access associated with the residential, western Parcel 2, not the approved conditional use access. (This adjoining property has a second means of access.)

Secondly, the imposition of conditions of approval in a conditional use decision and order does not suspend the legal status of the approved use pending future compliance with such approval conditions. Rather, as the Court of Special Appeals held in *Purich v. Draper*, 395 Md.App. 694, 912 A.2d 598, 611 (2006), "[a] special exception [conditional use] brings a property into conformance with applicable zoning laws. The use becomes permitted, albeit there may be conditions." A conditional use does not become unusable if approval conditions are not met. It becomes a permitted use in violation of the HCZR and subject to code enforcement action.

ORDER

Based upon the foregoing, it is this **17th day of September 2015**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the Petition of TSZ Properties, LLC for enlargement of a confirmed religious facility nonconforming use to add a detached garage, associated driveway and parking in an R-20 (Residential: Single) Zoning District, is hereby **DISMISSED**.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**


Michele L. LeFaivre

Date Mailed: _____

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 calendar 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.