

IN THE MATTER OF	:	BEFORE THE
<b>CHESAPEAKE CONFERENCE</b>	:	HOWARD COUNTY
<b>ASSOCIATION OF SEVENTH DAY</b>	:	BOARD OF APPEALS
<b>ADVENTISTS</b>	:	
Petitioner	:	HEARING EXAMINER
	:	BA Case No. 13-008C

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**DECISION AND ORDER**

On June 17, 2013, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the conditional use petition of the Chesapeake Conference Association of Seventh Day Adventists (Petitioner) to enlarge an existing private school with a building addition in an R-12 (Residential: Single) Zoning District, filed pursuant to Section 131.N.48 of the Howard County Zoning Regulations (the "Zoning Regulations").

Petitioner certified to compliance with the advertizing and posting requirements of the Howard County Code. The Hearing Examiner viewed the subject property as required by the Hearing Examiner Rules of Procedure.

Petitioner was not represented by counsel. J. Victor Elliott and Marilyn Peeke testified in support of the petition. No one appeared in opposition to the petition.

**FINDINGS OF FACT**

Based upon the preponderance of evidence presented at the hearing, I find the following facts:

1. Property Identification. The 6.47 acre, irregularly shaped property is located in the 5<sup>th</sup> Election District, southeast of Martin Road, opposite Quarterstaff Road, and between Martin

Road and the southbound lanes of US 29. It has a street address of 6520 Martin Road and is referenced on Tax Map 36, Block 19, as Parcel 148 (the "Property").

2. Property Description. The Property is the site of a religious facility and private school. The brick religious facility and school building are located about 100 feet from the north lot line. To their north and northeast is a large paved parking lot and passenger drop-off/pickup area. To the school's northwest and west is a playing field and playground. A modular classroom building and shed are located in the parking lot's northeast corner.

The Property is accessed via a paved, two-lane curving driveway off Martin Road. Near the church's south side, the driveway "tees" off to the south and north. The remainder of the Property is primarily open lawn, with existing vegetation near the buildings and along the west and northern perimeters.

3. Vicinal Properties. To the Property's north, the R-20 zoned lots are improved with single-family dwellings fronting on Tanager Lane and Cell Road. An apparently nonconforming medical office occupies northern lots 12 and 13 and its parking lot borders the Property, with a short driveway connected to the religious facility's northern parking lot. Southern Parcel 335 is improved with an office building associated with the religious facility. Beyond Parcel 335 to the south is a wooded open space area, a stream and the exit ramp from US 29 to Seneca Drive. Across Martin Road to the southwest, the R-12 zoned lots are each improved with single-family detached dwellings. To Martin Road's west is the Hickory Ridge Section 1, Area 2, Open Space Lot 304. To the northwest are the Clemens Crossing Elementary School and a community swimming pool.

4. Roads. Martin Road has two travel lanes and turning lanes along the Property's frontage and a variable pavement width within a variable right-of-way. The posted speed limit is 30 MPH. The estimated sight distance from the existing southern driveway entrance is more than 700 feet to the north and more than 500 feet to the south.

5. Water and Sewer. The Property is served by public water and sewer.

6. General Plan. PlanHoward 2030 Designated Place Types Map identifies the Property as "Established Community." The Transportation Map depicts Martin Road as a Major Collector.

7. Zoning History. In 2008, the Hearing Authority approved Petitioner's request (BA 08-051C) to extend the time to establish Petitioner's special exception request in BA Case No. 99-060E, an approved child day care center and enlargement of an existing religious facility and private school. Petitioner completed the private school prior to 2008. However, the proposed enlargement of the religious facility and the establishment of a day care center conditional uses are void because Petitioner failed to establish these uses by obtaining building within the requisite time, even with the extension.

8. Conditional Use Proposal. Petitioner is proposing what is identified as Phase III of the overall expansion of the use, an approximately 4,200 sq. ft. addition on the northeast side of the existing building as an enlargement of the private school.<sup>1</sup> Upon completion, the addition will replace the existing modular classroom, which will be removed. The proposed student body is about 200 and school hours are 8:15 a.m. to 3:30 p.m.

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<sup>1</sup> The petition also refers to a Phase IV, but as Petitioner clarified during the hearing, it is not part of the current request.

**CONCLUSIONS OF LAW**

Based upon the foregoing Findings of Fact, I conclude as follows:

**I. General Criteria for Conditional Uses (Section 131.B)**

A. The General Plan. Section 131.B requires the Hearing Authority to evaluate the proposed conditional use's harmony with the land uses and policies indicated in the Howard County General Plan for the R-12 zone. In evaluating a plan under this standard, the Hearing Examiner must consider (a) 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; and (b) if a conditional use is combined with other conditional uses or permitted uses on a site, whether the overall intensity and scale of uses on the site is appropriate, given the adequacy of proposed buffers and setbacks.

In this case, the institutional nature of the proposed low intensity use is consistent with the residential area. The 6.47-acre Property ensures that all setback requirements will be met, with adequate buffers from all adjacent properties, leading the Hearing Examiner to conclude that the scale of the proposed addition, in combination with the existing religious facility and private school uses, is appropriate.

B. Adverse Impacts. Unlike Section 131.B.1, which concerns the proposed use's harmony or compatibility with the General Plan, compatibility with the neighborhood is measured under Section 131.B.2's four "adverse effect" criteria": (a) physical conditions; (b) structures and landscaping; (c) parking areas and loading, and; (4) access.

When assessing a proposed conditional use under these criteria, we must begin with the realization that virtually every human activity has the potential for adverse impact. Zoning recognizes this fact and, when concerned with conditional uses, 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 me is not whether the proposed use would have adverse effects in an R-12 district. The proper question is whether those adverse effects are greater at the proposed site than they would be generally elsewhere within the R-12 district. *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, Petitioner has met its burden of presenting sufficient evidence under Section 131.B.2 of the Zoning Regulations to establish the proposed expansion will not have adverse effects on vicinal properties beyond those ordinarily associated with the expansion of a private school in the R-12 district.

**a. Physical Conditions. The impact of adverse effects such as noise, dust, fumes, odors, lighting, vibrations, hazards or other physical conditions will be greater at the subject site than it would generally be elsewhere in the zone or applicable other zones.**

The proposed addition will not generate inordinate adverse uses. The use will be predominately indoors, and the proposed addition will meet all setback requirements. There was no evidence of inordinate noise or lighting. I therefore conclude that any adverse impacts such as noise, dust, fumes, orders, lighting, vibrations, hazards, or other physical conditions will not be greater at the site than generally elsewhere.

**b. Structures and Landscaping. The location, nature and height of structures, walls and fences, and the nature and extent of the landscaping on the site are such that the use**

**will not hinder or discourage the development and use of adjacent land and structures more at the subject site than it would generally in the zone or applicable other zones.**

The location and height of the proposed addition will be similar to the existing buildings and will comply with R-12 height regulations. It will be sited about 50 feet from the closest lot line to the north, exceeding the 7.5-foot side yard setback. Although the approved Site Development Plan (SDP) for the most recent approved conditional use depicts 7 Leyland Cypress trees planted in the area behind the existing modular classroom, they were never planted. Therefore, as a condition of approval, Petitioner shall install this landscaping upon removal of the modular classroom.<sup>2</sup> Subject to this condition, I conclude the nature, location, and height of structures, walls and fences, and the nature and extent of the landscaping on the site are such that the use would not hinder or discourage the development and use of adjacent land and structures.

**c. Parking and Loading. Parking areas will be of adequate size for the particular use. Parking areas, loading areas, driveways and refuse areas will be properly located and screened from public roads and residential uses to minimize adverse impacts on adjacent properties.**

There are 101 parking spaces and 33 are required for the 220-student population. These parking spaces are adequately sized and properly located. All parking areas, loading areas, driveways, and refuse areas will remain properly located and screened from public roads and residential uses to minimize adverse impacts on adjacent properties.

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<sup>2</sup> The school principal, Ms. Peeke, resides on the property to the north. After considering her request that there be no such plantings (to allow her to observe the school property), the Hearing Examiner concludes Petitioner is obliged to plant the trees per the site development plan.

**d. Access.** 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.

The ingress and egress drives will continue to provide safe access with adequate sight distance, based on actual conditions.

**II. Specific Criteria for Structures Used Primarily for Schools, Colleges, Universities – Private Academic (Section 131.N.48)**

**a.** The maximum density permitted is 60 pupils per acre for lots less than three acres, and 100 pupils per acre for lots three acres or greater.

The permitted number of students at the private academic school on the 6.47-acre site is 647, and Petitioner is proposing 200, in accordance with Section 131.n.48.a.

**b.** In addition to meeting the area requirements of Section 131.N.54.a, schools with residence accommodations shall provide an additional 500 square feet of lot area per site resident. Residents shall include students, staff members, caretakers and their families who reside on the site.

This section is inapplicable as no residential accommodations are proposed.

**c.** A private school may be erected to a greater height than permitted in the respective district, provided that no structure is more than three stories in height and the front, side and rear setbacks shall be increased two feet for each foot by which such structure exceeds the height limitation.

This section is inapplicable, as no building will be erected to a greater height than permitted.

**d.** Sufficient off-street school bus loading areas shall be provided if bus service is provided for students.

No change to the existing bus service or bus loading and parking is proposed. The petition accords with Section 131.n.48.d.

**e. Outdoor uses will be located and designed to shield residential property from noise or nuisance. Play areas, athletic fields and similar uses shall be buffered from residential properties by fencing, landscaping, adequate distance or other appropriate means.**

There are no proposed changes to the previously approved outdoor play areas. The petition accords with Section 31.n.48.e.

**f. Buildings, parking areas and outdoor activity areas will be at least 50 feet from adjoining residentially zoned properties other than a public road right-of-way. The Hearing Authority may reduce this setback to no less than 20 feet or the minimum setback required by the zoning district, whichever is greater if:**

- (1) The adjoining land is committed to a long term institutional or open space use that provides an equivalent or better buffer for vicinal residential development; or**
- (2) The petition includes detailed plans for screening, consisting of a combination of a solid fence or wall and landscaping, or an equivalent combination, that presents an attractive and effective buffer for neighboring properties.**

The proposed addition would be sited 50 feet from the nearest residentially-zone property line, in accordance with Section 31.n.48.f.

**g. At least 20 percent of the area within the building envelope will be green space, not used for buildings, parking area or driveways. The building envelope is formed by the required structure setbacks from property lines and public street rights-of-way.**

Although the Plan does not calculate the amount of green space to be provided, the TSR concludes at least 20 percent will be green space. The petition accords with Section 131.n.48.g.

**h. The site has frontage on and direct access to a collector or arterial road designated in the General Plan, except that expansions of a conditional use that was approved prior to the effective date of Council Bill No. 11-2001 are permitted.**

The Property fronts on and has direct access to a Major Collector, Martin Road, in compliance with Section 131.n.48.h.



**ORDER**

Based upon the foregoing, it is this 27<sup>th</sup> day of June 2013, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the petition of the Chesapeake Conference Association of Seventh Day Adventists to expand an existing private school is **GRANTED**.

**Provided**, however, that:

1. The conditional use be conducted in conformance with and shall apply only to the proposed private school addition as described in the petition and as depicted on the Conditional Use Plan, and not to any other activities, uses, or structures on the subject property.
2. The Petitioner shall provide the required landscape buffer in the area to the north of the proposed addition.

**HOWARD COUNTY BOARD OF APPEALS  
HEARING EXAMINER**



Michele L. LeFaivre

Date Mailed: 6/27/13

**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.