

IN THE MATTER OF : BEFORE THE  
**LISBON UNITED METHODIST** : HOWARD COUNTY  
**CHURCH** : BOARD OF APPEALS  
Petitioner : HEARING EXAMINER  
: BA Case No. 13-027C

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**DECISION AND ORDER**

On January 13, 2014, 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 Lisbon United Methodist Church (Petitioner) to expand an existing religious facility, land, and structures used primarily for religious activities through the addition of a pavilion, in an RC-DEO (Rural Conservation: Density Exchange Option) zoning district, pursuant to Howard County Zoning Regulations Sections 131.0.J and 131.0.N.42.

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.

The Petitioner was not represented by counsel. Tim Feaga, Eugene Winters and Alvin Frederickson appeared in support of the petition. No one appeared in opposition to the petition.

The Petitioner concurred with the Technical Staff Report (TSR) and presented no additional testimony or evidence in support of the petition.

**FINDINGS OF FACT**

Based upon the preponderance of evidence presented at the hearing, the Hearing Examiner finds the following facts:

1. Property Identification. The 4.12-acre parcel is located in the 4<sup>th</sup> Election District on the south side of Frederick Road, about 500 feet east of Church Alley. It is referenced as Tax Map 7, Grid 7, Parcel 484, Lot 4 and is known as 15875 MD 144 (Frederick Road) (the Property).

2. Property Description. The rectangular-shaped Property has about 300 frontage feet on Frederick Road. The topography is level, with a small hill spanning the eastern and southern edges. It is improved with the 10,072-s.f. Lisbon United Methodist Church religious facility sited in the Property's southwestern section. There are paved parking lots directly north and south of the religious facility and 94 parking spaces. To the facility's northeast are three storage sheds. A fenced play area lies some 85 feet to the east of these sheds. A paved driveway running along the westerly property line provides ingress and egress for the site. A stand of trees runs along the easterly lot line.

3. Vicinal Properties. All adjoining properties are zoned RC-DEO. Parcel 241 to the west is the site of Lisbon Elementary School. Parcel 5 to the south and east is the site of Kimberly Turf Farm, which near the Property is improved with multiple farm buildings. Parcels 104 and 150 to the north, across Frederick Road, supports a pasture and animal enclosure.

4. Roads. Frederick Road has two travel lanes and about 30 feet of paving within a variable width right-of-way. A deceleration lane provides access to the driveway entrance. The posted speed limit is 35 MPH. The estimated sight distance is more than 800 feet to the east and more

than 1,000 feet to the west. Visibility does not appear to be an issue. According to Public Works data, traffic volume on Frederick Road was 16,230 average daily trips as of 2011.

5. Water and Sewer Service. The Property is served by private well and septic.

6. The General Plan. The Property is designated "Rural Conservation Area" on the PlanHOWARD2030 Designated Place Types Map. MD 144 (Frederick Road) is classified as a Minor Arterial on the Functional Road Classification Map.

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7. Zoning History.

BA 88-12E. Special Exception granted to amend BA 970C and BA 82-41E to expand a facility for existing day care operations, July 20, 1988, subject to conditions. Petitioner: Lisbon United Methodist Church

BA 82-41E. Special Exception granted for a day care center, granted January 7, 1983. Petitioner: Lisbon United Methodist Church

BA 970C Special Exception granted to a building to be used for religious activities, granted August 23, 1978 subject to conditions. Petitioner: Lisbon United Methodist Church

8. The Conditional Use Proposal. Petitioner is proposing to expand an approved Conditional Use by erecting an 1,800 s.f., 12.9-foot high, rectangular pavilion to the east of the existing religious facility. The pavilion would be used for outdoor fellowship, sunrise services, vacation bible school, Sunday school, youth activities, and church picnics. No set hours are proposed. The pavilion will sit about 38 feet from the eastern lot line. With the pavilion, lot coverage will increase to 6,335-s.f, or four percent of the total acreage. Additional landscaping is proposed along the easterly lot line.

**CONCLUSIONS OF LAW**

Based upon the foregoing Findings of Fact, the Hearing Examiner concludes as follows.

**I. General Criteria for Conditional Uses (Section 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.

**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.**

PlanHOWARD2030 designates the Property as "Rural Conservation Area" on the Designated Place Type Maps. The existing religious facility is a long-standing use and religious facilities are presumptively compatible in Rural Conservation Areas absent specific Plan policies that assembly uses in a Rural Conservation Area are inharmonious.

**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 1,800 s.f., 12.9-foot pavilion is an accessory structure and use and will only moderately increase the intensity of use. Many uses associated with the pavilion already occur on site, apparently, so the nature of the use will not change the use substantially. With the pavilion, the use will comprise only four percent of the site and the structure meets all setback requirements. The Property has access to MD 144, a Minor Arterial. A deceleration lane provides access. Sight distance appears to be adequate.

**3. The proposed use at the proposed location will not have adverse effects on vicinal properties above and beyond those ordinarily associated with such uses. In evaluating the proposed use under this standard, the Hearing Authority shall consider whether or not:**

**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.**

Unlike §§131.0.B.1 and 2, which concerns the proposed use's harmony or compatibility with the General Plan, compatibility with the neighborhood is measured under §131.0.B.3's four "adverse effect" criteria": (a) physical conditions; (b) structures and landscaping; (c) parking areas and loading, and; (4) access.

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 an RC-DEO district. The proper question is whether there are facts and circumstances showing the particular uses 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, the Petitioner has met its burden of presenting sufficient evidence under §131.0.B.3 of the Zoning Regulations to establish the proposed use will not have adverse effects on vicinal properties beyond those ordinarily associated with a religious facility, structures and land used primarily for religious activities in the RC-DEO zoning district.

There is no evidence of record regarding atypical adverse effects on vicinal properties from dust, fumes, odors, intensity of lighting or hazards. Although some noise associated with an outdoor use is to be expected, there is no evidence of any inordinate noise effects and the any such noise will be buffered by existing and proposed landscaping and distance.

**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.**

As represented in the Conditional Use Plan, the 1,800-s.f., 12.9-foot high, rectangular pavilion complies with RC-DEO zoning district location and height requirements. No walls or fences are proposed. Existing and proposed landscaping along the closest lot line will mitigate any typical adverse impacts. There is no evidence that the proposed pavilion would 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.

**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.**

According to the TSR, Site Development Plan SDP-80-157 will be redlined to indicate the parking space requirement for the use is 28 spaces. The TSR further notes the 94 current spaces exceed parking requirements for all uses, even with the additional required parking spaces.

**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 long-existing use has utilized the same access, including an existing deceleration lane, with no apparent safety concerns. Sight distance appears to be adequate. There is no shared driveway access.

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

There are no environmentally sensitive areas in the vicinity. This section is inapplicable.

**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 are no identified historic sites in the vicinity. This section is inapplicable.

**II. Specific Criteria for Religious Facilities, Structures and Land Used Primarily for Religious Activities (Section 131.0.N.42)**

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, R-12, R-SC, R-SA-8, R-

H-ED, R-A-15, R-APT, R-MH, or R-VH Districts for structures and land used primarily for religious activities provided that:

**a. The minimum lot size in the RC and RR Districts is three acres and the minimum lot size in the other districts is one acre, however, existing religious facilities previously approved as a Special Exception or a Conditional Use are exempted from this requirement. Lot coverage shall not exceed 25% of the lot area.**

The religious facility was previously approved as a Special Exception in 1978 and so is exempt from this requirement. Moreover, total lot coverage is about four percent. The petition complies with Section 131.0.N.42.a.

**b. Structures may be erected to a greater height than permitted in the district in which it is located, provided that the front, side and rear setbacks shall be increased one foot for each foot by which such structure exceeds the height limitation.**

The proposed pavilion will be 12.9 feet in height, less than the 25 foot height limitation for accessory structures in the RC zoning district. The petition complies with Section 131.0.N.42.b.

**c. The access to the facility shall not be on a driveway or private road shared with other uses.**

Access is provided through a private driveway not shared with other uses, in compliance with Section 131.0.N.42.c.

**d. The Hearing Authority may approve parking facilities which are accessory to a religious facility, and are located on a separate lot, but do not meet the location requirements of Section 133.0.B.4.d of the parking regulations by being separated from the religious facility by a public street, if the Hearing Authority finds that the accessory parking facility complies with the following criteria:**

**(1) The accessory parking facility is not separated from the lot containing the principal use by an arterial highway of any category.**



(2) A pedestrian street crossing connecting the accessory parking facility lot to the principal use lot is provided and is made clearly noticeable to drivers by means of both pavement marking and signs

(3) The pedestrian street crossing is safe, based upon such factors as, but not limited to: traffic volume at the times(s) of the use of the accessory parking facility; practical traffic speeds; sight distance; length of the crossing; and adequate markings and signage.

(4) The entire pedestrian pathway from the accessory parking facility to the principal religious facility is a durable, paved, no-step path.

This standard does not apply, as no parking facilities on a separate lot are proposed.

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ORDER

Based upon the foregoing, it is this 21<sup>st</sup> day of January 2014, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the Conditional Use petition of Lisbon United Methodist Church to expand an existing religious facility, land, and structures used primarily for religious activities through the addition of a pavilion in an RC-DEO (Rural Conservation: Density Exchange Option) zoning district, is hereby **GRANTED**;

**Provided, however, that:**

1. The Conditional Use shall be conducted in conformance with and shall apply only to the religious facility and daycare facility as described in petition and depicted on the plan accepted by DPZ on October 23, 201 and not to any other activities, uses, or structures on the Property.
2. Petitioner shall comply with all agency comments.
3. Petitioner shall comply with all applicable federal, state, and county laws and regulations.

**HOWARD COUNTY BOARD OF APPEALS  
HEARING EXAMINER**

  
\_\_\_\_\_  
Michele L. LeFavre

**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.