

IN THE MATTER OF : BEFORE THE

ST. LOUIS ROMAN CATHOLIC : HOWARD COUNTY
CONGREGATION, INC. :

Petitioner : BOARD OF APPEALS

: HEARING EXAMINER

: BA Case No. 19-007C

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DECISION AND ORDER

On June 14, 2019, 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 St. Louis Roman Catholic Church, Inc. to enlarge a Conditional Use site of an existing religious facility and private school, including additional property, the addition of a bell tower, and site improvements to the existing sanctuary entrance, in an RR-DEO (Rural Residential: Density Exchange Option) Zoning District, pursuant to § 131.N.42 of the Howard County Zoning Regulations (HCZR).

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

William Erskine, Esquire, represented the Petitioner. Jennifer Harrington 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, the Hearing Examiner finds the following facts:

1. Property Identification. The subject properties for the overall enlargement are located in the 5th Election District on the west side of MD 108 (Clarksville Pike) about 350 feet south of ten Oaks and also on the south side of Ten Oaks Road about 430 feet west of MD 108. The Properties are referenced as Tax Map 34, Grids 11 & 12, Parcels 196 (and 29, 30), Lot Par G&J (of Parcel 77) and are also known as 12500 MD 108.

2. Property Description. The proposed 23.37+/-acre Site is irregularly shaped. The significant improvements on the Site are located on Parcel 196, which lies on the west side of MD 108. Near the south lot line is the priests' residence with a side-loading garage and driveway access to MD 108. The area to the north is in lawn. To the northwest is a wooded stream area. A paved walkway extends from the residence through the lawn to connect to the southeast corner of the parking lot for the religious facility.

The L-shaped parking lot has a narrow parking area in its southeast portion and a significantly wide parking area to the west and northwest. The westernmost section of the parking lot runs generally parallel to Parcels G and J. This parking lot has a secondary function as a play area. At the southwest corner of the parking are a multibay maintenance building and shed. To the shed's west, on adjoining Parcel G is a stormwater management facility.

The main access to the parking lot is a wide, divided ingress/egress driveway on MD 108, at its intersection with Guilford Road. There are three secondary access driveways. The first lies about 400 feet north of the main access. The second accesses Ten Oaks Road and runs through Parcel 29. The third driveway also accesses Ten Oaks Road and runs along Parcel 30's easterly lot line.

The major Site improvements are concentrated to the northeast of the parking lot. From south to north are a one-story parish office building (the former main sanctuary, a church designated as historic building HO-277 on the county historic site listing), the present sanctuary and the school building and gymnasium. To the parking lot's north is a large playground equipment structure never approved through the conditional use process. According to the Technical Staff Report (TSR), this structure does not appear to comply with the 30-foot setback (although it would if the property line was an internal property line).

Lot Par. J to the west of the parking lot is an unimproved lawn area used occasionally for overflow parking on Easter Sunday and Christmas. The POR-zoned Parcels 29 and 30 are open lawn and some large trees. The Site slopes gently to the southwest and to the stream from the high point in the northeast corner.

3. Vicinal Properties. To the north of Parcel 196, the POR Parcels 32 and 34 front on Ten Oaks Road. Parcel 32 is improved with a one-story commercial building and Parcel 34, with two buildings in commercial use. At the southwest corner of the Ten Oaks intersection with MD 108, the B-2 (Business: General) Parcel A of Parcel 93 is the site of a bank. To the east, across MD 108, and north of Guilford Road, are B-2 zoned properties in various retail and service use. Directly across from the church is the B-1 (Business: Limited), one-story Clarksville Plaza retail center. South of Guilford Road is an RR-DEO zoned farm. To Parcel 196's south is the RR-DEO zoned Parcel 45, the site of a funeral home. To the west is the Parcel 77, the Preserve of Clarksville subdivision, which also created Parcels J and G. To the west of Parcels J and G is Parcel D, a non-buildable preservation parcel owned by the Howard County Department of Parks and Recreation.

4. Roads. MD 108 has two travel lanes, a center turn lane, and a dedicated right turn lane onto Guilford Road for northbound traffic. There is a variable paving width within a proposed 80-foot right-of-way (ROW). The posted speed limit is 35 MPH. Ten Oaks Road has two travel lanes and a left turn lane onto MD 108 for eastbound traffic. There is a variable paving width within a proposed 80-foot ROW. The posted speed limit is 40 MPH. The access driveways approved in previous plans will continue to serve the Site. According to State Highway Administration (SHA) data, the traffic volume on MD 108 south of Ten Oaks Road was 16,841 average daily trips (ADT) as of 2010. The traffic volume on Ten Oaks Road west of MD 108 was 10,748 ADT as of March 2009.

5. Water and Sewer Service. Parcel G and J are in the No Planned Service Area. The remainder of the Site is served by public water and sewer.

6. The General Plan. Policies Map 2000-2020 of the 2000 General Plan designates the Property as a "Rural Residential" land use. Clarksville is designated a Village and Community Center. Transportation Map 2000-2020 of the 2000 General Plan depicts MD 108 south of MD 32 as a Major Collector and Ten Oaks Road as a Major Collector.

7. Zoning History. The substantial zoning history relating to the religious facility and private school dates back to 1978 and is covered in the TSR.

8. The Conditional Use Proposal. The Petitioner is proposing to expand the conditional use site to include Parcel 77, Lot Par G, to add a 48-foot tall, freestanding bell tower next to the existing sanctuary, and modify the sanctuary entrance staircase.

CONCLUSIONS OF LAW

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

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

A. On-Site Analysis: Harmony with the General Plan and Intensity of Use

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 General Plan designates the area as a Residential land use. The established presence of the religious facility and private school in the community is part of the area's character. Additionally, The General Plan encourages revitalization and redevelopment of traditional communities, including the expansion of public facilities such as churches in order to provide gathering places and "community focal points" (pg. 176).

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.

HCZR § 131.0.B.2 is an on-site evaluation of the proposed Conditional Use. The Property's size easily accommodates the increase in tower height, an indication that the size of the site can continue to accommodate the nature and intensity of use. The nature and intensity of use, as well as the scale of the use, and the location of streets providing access, are appropriate.

B. Adverse Impact

Unlike §§ 131.0.B.1 and 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 "adverse effect" criteria: (a) physical

conditions; (b) structures and landscaping; (c) parking areas and loading; (4) access; (5) impact on environmentally sensitive area, and; (6) 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 an RR-DEO zoning 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 to establish the proposed expansion of the conditional use will not have adverse effects on vicinal properties beyond those ordinarily associated with an existing religious facility conditional use in the applicable zoning districts.

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.

There is no evidence of record regarding atypical adverse effects on vicinal properties from dust, fumes, and odors, or hazards. Although the bell tower will sound, it is some distance from area residences and there is no evidence of the bells having any atypical adverse impact.

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.

There is no evidence of the proposed 48-foot tall bell tower and site improvements to the existing sanctuary entrance hindering or discouraging 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.

No new parking is proposed.

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.

There is existing good sight distance. 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 TSR-identified off-site, vicinal environmentally sensitive areas.

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

The closest off-site historic site (HO-935) is more than 500 feet north of the bell tower/staircase and existing buildings on the church property will screen the bell tower and staircase.

II. Specific Criteria for Structures Used Primarily for Religious Activities (§§ 131.0.N.42)

a. Lot coverage shall not exceed 25 percent of lot area.

With the proposed conditional use site expansion, bell tower, and reconfigured access, the lot coverage will be 2.33 acres, about 10 percent of the combined lot area.

b. Structures used primarily for religious activities 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 permitted height in the RR zoning district is 40 feet. The proposed tower is 48 feet and is more than 260 feet from all setbacks.

c. 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 subsection 133.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.**

The petition does not propose parking facilities on a lot separated by a public street.

ORDER

Based upon the foregoing, it is this **20th day of June 2019**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the request of St. Louis Roman Catholic Church, Inc. to enlarge a Conditional Use site of an existing religious facility/private school, to expand the use through the addition of a bell tower and site improvements to the existing sanctuary entrance, in an RR-DEO (Rural Residential: Density Exchange Option zoning district is hereby **GRANTED**;

Provided, however, that:

1. The Conditional Use shall apply only to the proposed site enlargements and revisions to the existing religious facility as described in the Petition and as depicted on the Plan, and not to any other activities, uses, or structures on the Property.
2. Petitioner shall comply with all applicable federal, state, and county laws.

HOWARD COUNTY BOARD OF APPEALS

HEARING EXAMINER



Michele L. LeFaivre

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.

In accordance with C.B. 51-2016, § 1 (HCC Sec. 22.902 - Computation of time), if the deadline to appeal is a Saturday, Sunday, or holiday, or if the County offices are not open, the deadline shall be extended to the end of the next open County office business day.