

IN THE MATTER OF	:	BEFORE THE
Your Journey Daycare	:	HOWARD COUNTY
	:	BOARD OF APPEALS
PETITIONER	:	HEARING EXAMINER
	:	BA Case No. 21-038C

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DECISION AND ORDER

On March 16, 2022, 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 Your Journey Daycare (Petitioner) for a Child Day Care Center Conditional Use in a RC-DEO (Rural Conservation) (Density Exchange Option) Overlay Zoning District, filed pursuant to Section 131.0.N.13 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. Petitioner was represented by Alexis Young (Petitioner) who testified in support of the Petition. Frank Manalansan Jr., Petitioner's professional land surveyor, and Diane Skeberdis, a member of the vestry of St. Andrews Episcopal Church, testified in support of the Petition. No one appeared in opposition.

At the hearing Petitioner submitted the following additional document:

1. Revised page 3 of the Petition.

FINDINGS OF FACT

Based upon the evidence of record, the Hearing Examiner finds the following facts:

1. Property Identification. The subject Property is located in the southwest quadrant of the intersection of Roxbury Mills Road (Md. Route 97) and Union Chapel Road. It is located in the 4th Election District, identified as Tax Map 14, Grid 16, Parcel 216, Lot 1 and is also known as 2892 Md. Route 97, Glenwood, Maryland (the Property).

2. Property Description. The 2.01-acre Property is a part of a larger 10.413-acre site which is improved with a Religious Facility (St. Andrews Episcopal Church). The Property is relatively flat with an average elevation of 560 feet. The Property has a sharp rise in elevation in the northwest corner from 564 feet to 588 feet.

3. Vicinal Properties. Vicinal properties to the north, south, and west are in the RC-DEO Zoning District and are improved with single-family detached dwellings. Properties to the east are in the RC-DEO/RR-DEO (Rural Conservation) (Rural Residential) (Density Exchange Overlay) Zoning District, are agricultural in nature, or are in the Roxbury Mills Road (Md. Rt. 97) right-of-way.

4. Roads. Roxbury Mills Road (Md. Rt. 97) has two travel lanes within an 80-foot variable width right of way. The posted speed is 45 miles per hour. Traffic count data is not available for this portion of Roxbury Mills Road (Md. Rt. 97). The property currently uses Roxbury Mills Road (Md Rt 97) as access.

5. Water and Sewer Service. The Property is not located within the Metropolitan District or the Planned Service Area for water and sewer. The Property will be served by private well and sceptic.

6. Zoning History.

Case No. BA-99-048E

Request: Special Exception for a Religious Facility

Action: Approved January 4, 2000

Case No. BA-15-046C

Request: Special Exception to add four columbaria and a patio

Action: Approved June 3, 2016

7. The General Plan. PlanHoward 2030 depicts the Property as "Rural Resource" on the Designated Place Types Map. Roxbury Mills Road (Md Rt. 97) is depicted as a Minor Arterial road on the PlanHoward 2030 Functional Road Classification Map.

8. The Requested Conditional Use. Petitioner is requesting approval of a Child Day Care Center consisting of 5,856 square feet located within the existing Religious Facility building and a maximum 3,000 square foot outdoor play area. There will be a maximum of 20 employees and 120 children during operating hours, 7:15 AM to 6:00 PM, Monday -Friday.

9. Department of Planning and Zoning. DPZ found that the Petition is in compliance with statutory requirements for a Conditional Use for a Child Day Care Center.

10. Agency Comments. The State Highway Administration provided:

MDOT SHA does not object to the proposed conditional use. Access is proposed from Roxbury Mills Road (Md. Rt. 97). Existing access and frontage improvements are adequate for the proposed additional use. No additional improvements within MDOT SHA right-of-way are proposed or required.

The Division of Land Development provided an advisory comment:

If the conditional use is approved by the Hearing Authority, the applicant will be required to do a red-line revision to the Site Development Plan (SDP-01-034), St. Andrews Episcopal Church, to add the day care use and proposed outdoor play area. The redline must be completed prior to applying for permits with the Department of Inspections, Licenses and Permits.

The Department of Fire and Rescue Services commented:

No objection to this request. The structure must meet all requirements for this use, to included sprinkler protection and egress. These requirements must be reviewed prior to use.

The Resource Conservation Division noted that the historic structure that was located to the north of the Property, HO-850, the Alfred and Sophia Mathews farmhouse, was demolished circa 2005.

Agency comments were received from the Development Engineering Division, Department of Planning and Zoning, indicating no objection to the instant Petition.

CONCLUSIONS OF LAW

1. General Criteria for Conditional Uses (Section 131.0.B)

HCZR Sections 131.0.B.1-3 require the Hearing Authority to evaluate whether the proposed Conditional Use will be in harmony with the landscape uses and policies indicated in the Howard County General Plan for district in which it is located through the application of three standards: harmony with the General Plan, overall intensity and scale of use, and atypical adverse impacts.

A. Harmony and Intensity of Use

Section 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.

There are no policies in the General Plan, PlanHoward 2030, that can be directly related to the proposed Conditional Use request for a Child Day Care Center. Child Day Care land uses are historically located in residential communities and are deemed generally compatible with residential areas.

Section 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 Child Day Care Center is proposed for 5,856 square feet within the existing Religious Facility (St. Andrews Episcopal Church) and a maximum 3,000 square foot outdoor play area. The 10.413-acre site exceeds the three-acre lot size requirement, and the proposal complies with all bulk regulations and Conditional Use criteria. The existing Religious Facilities parking lot contains 112 parking spaces, the majority of which will be available during the daytime for drop off/pick up of children. All parking lots and structures meet the setback requirements,

The Functional Road Classification Map of PlanHoward 2030 depicts Roxbury Mills Road (Md. Rt. 97) as a Minor Arterial road, which is an appropriate classification for the number and types of vehicles associated with the proposed use.

Therefore, 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 are appropriate for the site.

B. Adverse Impacts (Section 131.0.B.3)

Unlike HCZR Section 131.0.B.1, which concerns the proposed use's harmony or compatibility with the General Plan, or Section 131.0.B.2, which concerns the on-site effects of the proposed use, compatibility of the proposed use with the neighborhood is measured under Section 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) environmentally sensitive areas; and (f) impact on the character and significant historic sites.

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 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 Zoning District. 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*, 107 Md. App. 1, 666 A.2d 1253 (1995).

For the reasons stated below and as conditioned, Petitioner has met its burden of presenting sufficient evidence under HCZR Section 131.0.B.3 to establish the proposed use will not have adverse effects on vicinal properties beyond those ordinarily associated with a Child Day Care Center in the RC-DEO Overlay Zoning District.

Section 131.0.B.3.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.

Most of the proposed Child Day Care activities related to the use will occur within the existing Religious Facility building and in an outdoor play area that will be 84 feet from any

adjoining residentially zoned property and over 300 feet from the closest residence and screened by existing dense vegetation. There is no evidence of adverse effects such as noise, dust, fumes, odors, vibrations, increased lighting, hazards, or other physical conditions that would be greater at the subject Property than generally elsewhere in the RC-DEO Zoning District.

Section 131.0.B.3.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 Petitioner is not proposing any new landscaping or structures with the exception of a panel fence approximately four (4) feet in height around the perimeter of the proposed play area. The proposed play area is located at the rear of the Property and is separated from residential properties both by geographical distance and by existing dense vegetation.

The location, nature and height of the structures and landscaping will not hinder or discourage the development or use of adjacent land and structures more at the Property than generally elsewhere in the RC-DEO Zoning District.

Section 131.0.B.3.c. The number of parking spaces will be appropriate to serve the particular use. Parking areas, loading areas, driveways and refuse areas will be approximately located and buffered or screened from public roads and residential uses to minimize adverse impacts on adjacent properties.

Pursuant to HCZR Section 133.0, the off-street parking requirement for a Religious Facility is 10 spaces per 1,000 square feet of assembly area and three (3) spaces per 1,00 square feet for a Child Day Care Center. Therefore, a total of 86 parking spaces (68 for the 6,782 square foot Religious Facility and 18 for the 5,856 square foot Child Day Care Center) are required for both uses. The Revised Conditional Use Plan (January, 2022) depicts 112 parking spaces, including 107 standard parking spaces and 5 handicapped parking spaces. No changes are proposed for the parking and refuse areas.

Section 131.0.B.3.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 Property's ingress and egress drives access Roxbury Mills Road (Md. Rt. 97) which is under the jurisdiction of the Maryland State Highway Administration (SHA) for road improvements, including sight distance. The approval of SDP-01-034 for the existing Religious Facility and subsequent State Highway Access permit support a finding that the State's criteria for minimum, safe sight distance have been satisfied. The on-site addition of the Child Day Care Center will not affect the adequacy of sight distance.

The existing access driveway from Roxbury Mill Road (Md. Rt. 97) will not be shared with any other properties.

Section 131.0.B.3.e. The proposed use will not have a greater potential for adversely impacting environmentally sensitive areas in the vicinity than elsewhere.

The closest environmentally sensitive area is a stream located over 400 feet east of the proposed Child Day Care Center, which exceeds the stream buffer requirement in the Subdivision and Land Development Regulations. Therefore, the proposed use will not have a greater potential for adversely impacting environmentally sensitive areas in the vicinity than elsewhere in the RC-DEO Zoning District.

Section 131.0.B.3.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 historic site, Oak Grove Cemetery (HO-270), is located over 600 feet to the north of the subject Property and is screened from view of the Property by existing dense vegetation and intervening residences. Therefore, the proposed use will not have a greater

potential for diminishing the character and significance of historic sites in the vicinity than elsewhere in the RC-DEO Zoning District.

2. Specific Criteria for Child Day Care Centers and Nursery Schools, Day Treatment and Care Facilities (Section 131.0.N.13)

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-HED, R-A-15, IQ-APT, R-VH, HO, or HC Districts for day treatment and care facilities, child day care centers and nursery schools provided that:

a. On-site circulation and parking areas shall be designed to minimize vehicular/pedestrian conflicts and to provide safe areas for dropping off and picking up passengers.

There is an existing drop-off/pick-up lane that will be used by the Child Day Care Center. Also, the Religious Facility's parking lot contains 112 parking spaces, 107 standard parking spaces and 5 handicapped parking spaces, the majority of which will be available for drop-off/pick-up of children from 7:15 AM — 6:00 PM, Monday through Friday.

b. The minimum lot size in the RC and RR Districts shall be three acres and the minimum lot size in the R-ED, R-20, R-12, R-SC, R-SA-8, R-A-15, R-APT, R-VH, HO or HC Districts shall be one acre, except that uses approved prior to October 6, 2013 shall not be subject to this criteria.

The Property is zoned RC-DEO and is 10.413-acres.

c. Outdoor play areas or activity areas shall be fenced, located to the side or rear of the principal structure, and buffered from adjoining residential properties by landscaping or adequate distance or both.

The proposed outdoor play area will be enclosed by a fence, located to the rear of the building, and buffered from adjoining properties by existing dense vegetation. No additional landscaping is proposed for the outdoor play area. The outdoor play area is over 84 feet from closest residential property and over 300 feet from residences on adjoining properties.

d. Parking areas shall be located and landscaped to minimize their visibility from roads and adjacent residential properties.

The Petitioner proposes to utilize the Religious Facility's parking lot which was approved through SDP-01-034. No changes are proposed.

e. The design and massing of proposed structures or additions to existing structures shall be generally compatible in scale and character with residential properties in the vicinity of the site, as demonstrated by architectural elevations or renderings submitted with the petition. Additional setbacks from property lines and landscape buffering shall be required if necessary to make the appearance of the site compatible with surrounding residential properties.

The proposed use will occur within the existing Religious Facility building which was approved through SDP-01-034. No new structures, except a panel fence, are proposed; therefore, this criterion does not apply.

f. For facilities with a capacity of more than 30 children or adult clients at one time, the following standards apply:

- (1) 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 July 12, 2001 are permitted.**
- (2) Buildings, parking areas and outdoor activity areas will be at least 50 feet from adjoining residentially-zoned properties other than public road rights-of-way.**
- (3) At least 20% of the area within the building envelope shall 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.**

The Child Day Care Center will have a maximum capacity of 120 children and the Petition meets these requirements.

ORDER

Based upon the foregoing, it is this 17th day of March, 2022, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the Petition of Your Journey Daycare for a Child Day Care Center Conditional Use in a RC-DEO (Rural Conservation) (Density Exchange Option) Overlay Zoning District, Tax Map 14, Grid 16, Parcel 216, Lot 1, identified as 2892 Md. Rt. 97 (Roxbury Mills Road) Glenwood, Maryland, is hereby **GRANTED;**

Provided, however, that:

1. The Conditional Use shall be conducted in conformance with and shall apply only to the uses as described in the Petition and depicted on the Conditional Use Plan (January, 2022) and not to any other activities, uses, structures, or additions on the Property.
4. Petitioner shall obtain all required permits.
5. Petitioner shall comply with all federal, state and county laws and regulations.
6. There shall be no parking of vehicles anywhere on the Property otherwise than in the designated parking spaces.
7. The Petitioner shall provide a red-line revision to the Site Development Plan (SDP-01-034), St. Andrews Episcopal Church, to add the Child Day Care Center use and proposed outdoor play area. The redline must be completed prior to applying for permits with the

Department of Inspections, Licenses and Permits. Petitioner may initially construct a play area smaller than 3,000 square feet, but a maximum play area of 3,000 square feet is approved.

HOWARD COUNTY BOARD OF APPEALS

HEARING EXAMINER



Joyce B. Nichols

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.