

IN THE MATTER OF : BEFORE THE  
**GRACE CHINESE** : HOWARD COUNTY  
**CHRISTIAN CHURCH** : BOARD OF APPEALS  
Petitioner : Case No. BA **18-021C&V**  
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**DECISION AND ORDER**

The Howard County Board of Appeals (the “Board”) met on November 8, 2018 to hear and deliberate the petition of Grace Chinese Christian Church (Petitioner), for a conditional use for a Religious Facility, Structures and Land Used Primarily for Religious Activities and variances to reduce the 20-foot side setback from lot lines for uses other than structures to 0-feet for existing drive aisles and parking. The petition is filed pursuant to Sections 131.0.N.42 and 130.0.B.2 of the Howard County Zoning Regulations (the “Zoning Regulations”).

Board members James Howard, Neveen Kurtum, John Lederer, Steven Hunt and William Santos participated in the hearing. Board member James Howard presided over the hearing and deliberation of the case. Barry M. Sanders, Assistant County Solicitor, served as legal advisor to the Board.

The notice of the hearing was advertised and the property was posted as required by the Howard County Code. The Board members indicated that they had viewed the property as required by the Zoning Regulations.

The hearing was conducted in accordance with Section 2.209 of the Board’s Rules of Procedure. The Howard County Charter, the Howard County Code, the Howard County Zoning Regulations, the various technical staff reports and agency comments, the Department of Planning and Zoning’s Technical Staff Report recommendation of conditional use approval dated October 25,

2018, the General Plan for Howard County, the General Plan of Highways, and the conditional use and variance petitions and plan, and the September 18, 2018 recusal letter from the Board of Appeals Hearing Examiner to Chairman James Howard were incorporated into the record by reference.

The Petitioner was represented by counsel, Andrew H. Robinson.

Paul Sill, a licensed professional engineer, testified in favor of the petition. Dwight Barnhouse and Jason Griego testified they were not opposed to the petition, but concerned about the existing ingress and egress easements being terminated on the subject property.

### **FINDINGS OF FACT**

Based upon the testimony and evidence presented at the hearing, the Board makes the following Findings of Fact:

1. The 1.3-acre subject property is zoned R-12 (Residential: Single). The property is in the 1st Election District on the south side of Old Washington Boulevard (a/k/a Old Washington Road) approximately 320 feet east of Montgomery Road. It is identified as Tax Map 38, Grid 8, Parcel 200 and known as 6275 Old Washington Boulevard (the Property).

2. The Property has been owned by the Elkridge Volunteer Fire Department since 1943 and has been in operation as a fire station since May 31, 1948. The Property contains an 8,254-square foot two-story fire station, a 432-square foot tower and a paved parking lot. The Property has two access points on Old Washington Boulevard that provide access to the parking lot behind the building.

3. All adjacent properties are similarly zoned R-12 and improved with single-family detached dwellings.

4. Old Washington Boulevard has two travel lanes and 22 feet of paving within an existing 40-foot wide right-of-way. The speed limit is 30 miles per hour. The estimated sight distance is

over 500 feet in both directions.

5. The Property is within the Metropolitan district and the Planned Service Area for water and sewer.

6. The Property is designated “Established Community” on the Designated Place Types Map of PlanHoward 2030. Old Washington Boulevard is depicted as a Minor Collector on the Transportation Map of the PlanHoward 2030 General Plan.

7. The Petitioner proposes to repurpose the existing principal structure on the site to a Religious Facility consisting of a 2,945-square foot assembly area, kitchen and breakout/office areas. The Religious Facility will offer religious service/education on Sundays between 10:00 a.m. and 12:30 p.m., small group fellowship for members on Wednesdays and Fridays and special church services during holidays/cultural events. The Petitioner shall provide 41 parking spaces, including 3 handicapped spaces. The fire training building (burn tower) is not included nor shall be utilized by Petitioner under the proposed Plan. The existing ingress and egress easements shown under Liber 2461 Folio 345 and Liber 2694 Folio 471 shall be terminated at such time that this site’s use changes to anything other than a Fire Department and/or Public Safety Facility.

8. The Petitioner proposes the following variance from Section 109.0.D.4.c.3 of the Zoning Regulations: to reduce the 20-foot side setback from lot lines for uses other than structures to zero feet for existing drive aisles and parking along the northeast and southwest property lines.

**Howard County Zoning Regulations** – The Petition must comply with the following applicable Regulations:

- § 131.0.B – General Standards Required for Approval;
- § 131.0.N.48 – Specific Conditional Use Criteria for Religious Facilities, Structures and Land Used Primarily for Religious Activities; and
- § 130.0.B.2 – Variance Criteria.

**Maryland's Common Law - *Schultz v. Pritts* and its Progeny**

Maryland law requires the Board to apply the *Schultz* test when evaluating the Petition – a two-part test (or standard) that “lurks” within each individual factor the Board must consider under the Regulations. *People's Counsel for Baltimore Cty. v. Loyola Coll. in Md.*, 406 Md. 54, 68-69 (2008) (citations omitted) (explaining *Schultz v. Pritts*, 291 Md. 1 (1981)). First, a conditional use is presumed to be “in the interest of the general welfare, and therefore, valid.” *Loyola Coll.*, 406 Md. at 84 (citations and internal quotation marks omitted). Second, the favorable presumption incorporates the inherent adverse effects of the use. *Id.* at 79 (citations omitted).<sup>1</sup> *Schultz* “essentially adds language to statutory factors to be considered in evaluating proposed [conditional uses.]” *Id.* at 69 (citations omitted).

Once a conditional use complies with the applicable zoning regulations, notwithstanding even “severe” inherent adverse effects, it cannot be denied without evidence of adverse effects that are “above and beyond those inherently associated with [the use] . . . .” *Mossberg v. Montgomery Co.*, 107 Md. App. 1, 9 (1995); *see also Schultz*, 291 Md. at 22-23; *Loyola Coll.*, 406 Md. at 90, 99. The *Schultz* presumption can only be overcome with “strong and substantial” evidence of “detrimental effects above and beyond the inherent ones ordinarily associated with such uses.” *Loyola Coll.*, 406 Md. at 85 (emphasis added) (citing *Anderson v. Sawyer*, 23 Md. App. 612, 625 (1974)).

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<sup>1</sup> The *Schultz* test is consistent with the Regulations, which presume a conditional use is “generally appropriate and compatible in the specified zoning districts” and require a finding that a conditional use does not have any “adverse effects above and beyond those ordinarily associated with such uses.” Regulations, §§ 131.0.A, 131.0.B.3.

## CONCLUSIONS OF LAW

Based upon the evidence presented to the Board in this case, and upon the Board's review of the evidence, the Board makes the following Conclusions of Law:

### **A. General Criteria for Conditional Uses (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. Section 131.0.B.1.**

The Howard County General Plan designates the area in which the Property is located as an Established Community land use. The Petitioner is proposing to repurpose an existing, older institutional/governmental use with another institutional use, i.e., a religious facility use, of a lower level of intensity, all in a manner which will ensure the continuing compatibility of the use and structures with the community. The Howard County General Plan (PlanHoward 2030), remarks one of Howard County's greatest assets is the strength of its communities. The General Plan acknowledges, however, the need to ensure that established communities become more complete over time. In furtherance of this aim, The General Plan advises that,

“communities become more complete by supplementing valued features with those that enhance a community's design. These can include sidewalks, bike routes, or transit to improve access to surrounding employment, services, and open space. Added features could in some cases include appropriately sited and scaled new residential, institutional, or commercial development.” General Plan, Section IV (Community), Part 10, pg. 137.

Furthermore, with specific regard to infill development/repurposing, Policy 10.1(d) of The General Plan provides:

- Policy 10.1 – Protect and enhance established communities through compatible infill, sustainability improvements, and strategic public infrastructure investments.
- d. Flexible Infill. Consider zoning modifications that would provide more flexibility

to allow limited, compatible infill that enhances an existing community.

The Petitioner's plan represents a well-suited infill repurposing aimed at completing and enhancing a community through the replacement of an existing, older institutional/governmental use with another compatible institutional use, i.e., a religious facility use, with a lower level of intensity.

As such, the Plan is in harmony with the land uses and policies in the General Plan.

- 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. Section 131.0.B.2.**

The overall intensity and scale of the proposed uses are appropriate for the site given that the Petitioner is proposing to utilize the existing structures and virtually all the religious facility use shall occur indoors. Outdoor activities shall be limited to parking. The subject property is designated for governmental and institutional uses under the current Land Use Maps of Howard County, and, thus, suited for the proposed religious facilities use. The subject section of the Old Washington Boulevard public right-of-way is developed with a mix of residential, commercial, and institutional uses and has historically provided access to the same for decades. The Property has been used as a busy fire station for over 70 years and the Petitioner's proposed use represents a far less intensive use of the site.

- 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. Section 131.0.B.3.**

Unlike Section 131.0.B.1, which tests the proposed uses' harmony or compatibility with the General Plan, and Section 131.0.B.2, which tests certain on-site aspects of the proposed use relative to the subject property, Section 131.0.B.3 measures the use's off-site compatibility with the neighborhood under six "adverse effect" criteria: (a) physical conditions; (b) structures and

landscaping; (c) parking areas and loading; (d) access; (e) impact on vicinal environmentally sensitive areas; and (f) impact on vicinal 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 has determined to be inherent in the use. Thus, the question in the matter before the Board is not whether the proposed use would have adverse effects in an RR 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 zone. *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). The *Schultz* adverse impact test, a non-inherent, off-site impact analysis, narrowly focuses on the locality of the specific proposal.

- 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.**

The Petitioner is not proposing any new structures or exterior modifications to existing structures on site and Petitioner will continue to utilize the existing parking facility on site (subject to minor adjustments). All uses associated with the proposed conditional use shall be contained within the existing principal structure and will not generate physical conditions such as noise, dust, fumes, odors, lighting, or vibrations which would be discernible from abutting and vicinal properties. The Property has been used as a busy fire station for over 70 years and the Petitioner's proposed use represents a less intensive use of the site. As such, 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 not be greater at the proposed site than it would generally be elsewhere in the R-12 zoning district or other similar zoning districts.

- 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 previously stated, the Petitioner is not proposing any additional structures or exterior modifications to the existing structure. The Plan represents a re-purposing of the existing building and parking facility on site. The existing structures are well-established in the community and the use of the same as an active fire station have not hindered or discouraged development and/or use of adjacent land and structures. The Petitioner is proposing a six-foot tall wood privacy fence and six to seven-foot tall trees along the southwest and northeast property lines to screen the proposed parking lot from adjacent residential properties. Therefore, the location, nature and height of structures, fencing and proposed landscaping will not hinder or discourage the development or use of adjacent land and structures more at the Property than 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 impact on adjacent properties.**

The Petitioner is proposing to use 2,945 square feet for the assembly area; therefore, pursuant to Howard County Zoning Regulations 30 spaces are required. The Revised Conditional Use plan shows 41 spaces, including 3 handicap spaces in the existing parking lot. Parking areas shall



continue to be utilized in substantially the same location and configuration as presently situated. The loading of supplies (if any) will occur in the rear of the principal structure away from the view of neighboring residential properties and public roads. All trash will be collected within the principal structure and disposed of via regular curbside pickup. The Petitioner is not proposing the installation of a dumpster/outdoor refuse storage area or dumpster pad. The Petitioner is not proposing the installation of any new drive aisles. The existing drive aisles alongside the principal structure will continue to be used by the Petitioner, but portions located within the Easement Areas shall be removed such that all drive aisles shall be located solely on the subject property. The drive aisles will continue to be buffered from neighboring residential dwellings by the existing perimeter privacy fencing, as extended by Petitioner and perimeter landscaping.

- 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 Petitioner is not proposing the installation of any new drive aisles for ingress/egress. Rather, the Petitioner shall continue to use the same dedicated ingress and egress drives which have served the property since 1948. These existing ingress and egress drives have safe and adequate sight distance with acceleration and decelerations lanes where appropriate and have provided adequate circulation for large firetrucks and other equipment and apparatus for decades without incident. The access drives shall, however, be modified to remove those portions located within the Easement Areas, thus, reducing the widths to allow 11' by 9' wide drive aisles. This reduction removed existing portions of the drive aisle that were on the adjacent property so that all drive aisles will be located on the Property. Sight distance from the existing access drives is clear and

unobstructed and has served the uses of the Elkridge Volunteer Fire Department for over 70 years. As such, the Board concludes that the ingress and egress drive will provide safe access with adequate sight distance, based on actual conditions

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

The subject property does not contain any environmentally sensitive areas including: floodplains, wetlands, streams, and forested areas. No exterior modifications or expansions are proposed for the site. Therefore, the proposed use will not have a more significant potential for adversely impacting environmentally sensitive areas in the vicinity than elsewhere.

- 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 TSR notes the adjacent properties contain single family dwellings designated as historic sites HO-803, 804, 805, 806 and 807. Petitioner is not proposing any exterior modifications to the existing building. Therefore, the proposed use will not have a greater potential for diminishing the character and significance of historic sites in the vicinity than elsewhere.

**B. Conditional Use Criteria for Religious Facilities, Structures and Land Used Primarily for Religious Activities (Section 131.0.N.42.b)**

- 1. **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. 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 Property is zoned R-12 (Residential: Single) and is 1.3 acres in size. The Revised Conditional Use plan indicates that the square footage of all buildings will be 8,975 square feet which equates to approximately 16% of the lot area.

2. **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 Petitioner is not proposing any external modifications; therefore, this criterion does not apply. The existing two-story principal structure upon the subject property is 28' in height (6' lower than the maximum permitted height). The existing fire training tower (burn building) located in the middle of the parking facility is 40' in height, but shall not be used by the Petitioner for any use relating to the proposed conditional use.

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

The existing driveways are not shared with other uses.

4. **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 33.0.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:**

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

**(b) 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 sign.**

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

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

The parking will be located on the Property; therefore, this criterion does not apply.

**C. Criteria for Variances - Section 130.0.b.2**

- 1. There are unique physical conditions, including irregularity, narrowness or shallowness of lot or shape, exceptional topography, or other existing features peculiar to the particular lot; and that as a result of such unique physical conditions, practical difficulties or unnecessary hardships arise in complying strictly with the bulk provisions of these Regulations.**

The Petitioner is requesting variances to reduce the 20-foot side setback from lot lines for uses other than structures to zero feet for existing drive aisles and parking along the northeast and southwest property lines. The existing principal structure on the property was constructed prior to the adoption of Zoning Regulations in Howard County, Maryland and placed into service as a fire station on May 31, 1948. The noncomplying structure is situated 15.4' and 9.45' from the adjacent lot lines, with the existing parking facility located entirely in the rear of the site. The size and location of the existing noncomplying structure require ingress and egress drives to be placed along the side lot lines with minimum widths to satisfy County regulations. Likewise, to allow safe and adequate vehicular circulation in and around the existing rear parking facility, parking must be sited along the lot lines to the north and south as per the Revised Conditional Use and Variance Plan.

- 2. The variances, if granted, will not alter the essential character of the neighborhood or district in which the lot is located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare.**

The current drive aisles and parking facility are screened by sections of perimeter fencing along portions of the side lot lines and by heavily vegetated and wooded slopes in the rear of the site. The Petitioner will be extending the existing wood privacy fencing along the perimeters of the site into the interior of the site and will provide additional landscaping buffers as shown on the revised plan. Therefore, the proposed variances will not alter the character or impair the appropriate use of adjacent properties.

3. **That such practical difficulties or hardships have not been created by the owner provided, however, that where all other required findings are made, the purchase of a lot subject to the restrictions sought to be varied shall not itself constitute a self-created hardship.**

The practical difficulties are due to the noncomplying structure and narrowness of the Property and were not created by the Petitioner.

4. **That within the intent and purpose of these Regulations, the variance, if granted, is the minimum variance necessary to afford relief.**

The Petitioner is seeking variances to allow the Petitioner to continue to use the existing and historical drive aisles and parking facility on site relating to its use of the noncomplying structure on site. Therefore, the requested variances are the minimum necessary to afford relief within the intent and purposes of the Zoning Regulations.

#### **D. CONCLUSION**

Weighing all the testimony and evidence of record under a “preponderance of the evidence” standard, the Board concludes that the instant petition complies with Sections 131.0.B (General Standards), 131.0.N.42 (Specific Criteria), and 130.0.B.2 (Variance Criteria) of the Zoning Regulations.

#### **ORDER**

Based upon the foregoing Findings of Fact and Conclusions of Law, it is this 29<sup>th</sup> day of

January, 2019, by the Howard County Board of Appeals, ORDERED:

That the Petition and Revised Plan dated September 7, 2018 of Grace Chinese Christian Church for a Conditional Use for Religious Facilities, Structures and Land Used Primarily for Religious Activities and variances to reduce the 20-foot side setback from lot lines for uses other than structures to 0-feet for existing drive aisles and parking along the northeast and southwest property lines in an R-12 (Residential: Single) Zoning District is **GRANTED**, subject to the

following conditions:

1. The Petitioner shall saw-cut the existing asphalt at the property line of Parcel 199.
2. The Petitioner shall extend the six-foot tall wood privacy fence on the northeast property line to within 2-feet of existing garage building on Parcel 723.
3. The Petitioner shall comply with all applicable Federal, State and County laws and regulations.

ATTEST:

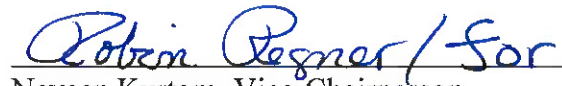
HOWARD COUNTY BOARD OF APPEALS



Ann Nicholson, Secretary



James Howard, Chairperson



Neveen Kurtom, Vice-Chairperson

PREPARED BY:  
HOWARD COUNTY OFFICE OF LAW  
GARY W. KUC  
COUNTY SOLICITOR



John Lederer



Barry M. Sanders  
Assistant County Solicitor



Steven Hunt



William Santos