

IN THE MATTER OF

: BEFORE THE

**LOCUST UNITED METHODIST  
CHURCH**

: HOWARD COUNTY

: BOARD OF APPEALS

Petitioner

: HEARING EXAMINER

: BA Case No. 17-006C&V

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**DECISION AND ORDER**

On August 17, 2017, 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 and variance petitions of Locust United Methodist Church (Petitioner) for a religious facility and building addition in an R-SC (Residential: Single Cluster) zoning district. The three requested variances are: 1) a reduction in the 30-foot structure and use setback from a collector street to 29 feet for the building addition, 2) a reduction in the 30-foot structure and use setback from a collector street to 15 feet for an accessible ramp, and 3) a reduction in the 30-foot use setback to 16 feet for parking and a drive aisle. The petitions are filed pursuant to §§ 131.0.N.42 & 130.0.B.2.a 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. Thomas Coale, Esq., represented the Petitioner. Joan Lancos testified in support of the petitions. No one appeared in opposition to the petitions.

At the outset of the Hearing, the Hearing Examiner stated she had no questions about the petition or the technical staff report. Mr. Coale therefore called no witnesses.

### 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 5<sup>th</sup> Election District on the north side of Martin Road at the intersection with Freetown Road. It is identified as Tax Map 0041, Grid 0006, Parcels 216, 283, and 284 and is also known as 6821, 6841 and 6851 Martin Road (the Property).
2. Property Description. The irregularly shaped, 5.98-acre Property is improved with a 2,536sf religious facility built in 1951, two parking lots with about 30 spaces, a 2,106sf foot parsonage, and multiple cemeteries located in the north and central sections. The western section across Freetown Road is wooded.
3. Vicinal Properties. The northern NT (New Town) zoned properties are generally each improved with a single-family detached dwelling. The southern NT and R-20 (Residential: Single) properties are also each improved with a single-family detached dwelling, as are the eastern R-SC (Residential: Single Cluster)/NT zoned properties and the western R-20, R-SC, and R-12 (Residential: Single) properties.
4. Roads. Freetown Road has two travel lanes and a variable pavement width within a proposed 60-foot right-of-way (ROW). The posted speed limit is 25MPH. Martin Road has two travel lanes and paved shoulders within a variable width ROW. The posted speed limit is 30MPH. The technical staff report (TSR) reports the estimated sight distance from the proposed driveway is about 250 feet to the east and about 220 feet to the west. According to the TSR, there is no current traffic volume data available for these sections of Freetown Road or Martin

Road. Department of Public Works data from March 1998 indicates the traffic volume on Freetown Road north of Harriet Tubman Lane was 2,321 ADT (average daily trips) and the traffic volume on Martin Road east of Freetown Road was 2,421 ADT.

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

6. The General Plan. The Property is designated "Established Community" on the PlanHOWARD2030 Designated Place Types Map. Martin and Freetown Roads are depicted as Major Collectors on the PlanHOWARD2030 Functional Road Classification Map.

7. Zoning History.

- (Voided) BA 05-027C&V, Locust United Methodist Church, Conditional Use for a Structure used Primarily for Religious Activities and variances to (i) reduce the required 30' use setback from a public street right-of way to as low as 1.85 feet for parking and (ii) reduce the 20' use setback from a lot line to as low as 14 feet for parking and (iii) reduce the 30' structure setback from a rear lot line to 21' for a church structure to be located in an R-SC (Residential - Single Cluster) Zoning District. Approved September 28, 2006, subject to the following conditions:
  - 1. The Conditional Use and Variances will apply only to the uses and structures as described in the petition and plan submitted, as amended herein, and not to any other activities, uses, structures or additions on the Property.
  - 2. All parking lot lights will be turned off by no later than 10:00 p.m. each night.
- NCU 17-002, Locust United Methodist Church, Nonconforming use confirmation for a cemetery granted April 7, 2017

8. The Requested Conditional Use Expansion (§ 131.0.N.42). The TSR reports Petitioner is seeking conditional use approval for a 2,745sf addition to the east side of the building, an enlarged accessible ramp, a new access point from Martin Road, and a 37-space parking lot. According to the conditional use/variance plan, the addition will include a multipurpose room for Bible study, Sunday school, and social gatherings for the congregation.

9. The Requested Variances.

- 1) Reduce the 30-foot structure and use setback from a collector street to 29 feet for the

building addition (§ 110.0.D.4.a(1)(a)).

2) Reduce the 30-foot structure and use setback from a collector street to 15 feet for an accessible ramp (§ 110.0.D.4.a(1)(a)).

3) Reduce the 30-foot use setback to 16 feet for parking and a drive aisle (§ 110.0.D.4.a(2)).

The variance requests are predicated on the Property's irregular shape caused by the curved Martin Road ROW, existing cemeteries, and multiple 40"-48" diameter oak trees on the Property's west side.

10. DPZ Recommendation. DPZ recommends the petitions be granted.

### **CONCLUSIONS OF LAW**

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

HCZR §§ 131.0.B.1-3 require the Hearing Authority to evaluate a proposed Conditional Use through the application of three standards, harmony with the General Plan, overall intensity and scale of use and adverse impacts.

##### **A. Harmony and Intensity of Use (§§ 131.0.B.1 & .2)**

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 that can be related to the proposed use. Religious facility land uses are historically located in Established Communities. The use has existed at the site for over 100 years.

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 religious facility addition and related improvements are for a low intensity, small-scale use and the Property easily accommodates the use. The use is

appropriately accessed from Major Collector roads. The overall intensity and scale of the use is appropriate for the site.

**B. Adverse Impacts (§ 131.0.B.3)**

Unlike § 131.0.B.1, which concerns the proposed use's harmony or compatibility with the General Plan, or § 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 § 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) 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 Hearing Examiner is not whether the proposed use would have adverse effects in the 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 applicable 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 HCZR §131.0.B.3 to establish the proposed use will not

have adverse effects on vicinal properties beyond those ordinarily associated with a religious facility in the zoning district.

**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 any atypical adverse effects on vicinal properties from noise, dust, fumes, odors, intensity of lighting or hazards or other physical conditions. The petition complies with § 131.O.B.3.a.

**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.**

No new walls or fences are proposed. The current landscaping will be retained. The proposed addition and accessible ramp will be oriented toward a Major Collector Road and separated from most residential uses by distance and landscaping. The petition complies with § 131.O.B.3.b.

**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.**

HCZR § 133.0 requires 10 spaces per 1,000sf feet of assembly area for a religious facility. Based on a 3,044sf assembly area, 31 parking spaces are required and 45 spaces will be provided. The number of parking spaces will be appropriate to serve the particular use. Parking will be buffered or screened from public roads and residential uses to minimize adverse impacts on adjacent properties. No new refuse or loading area is proposed. The petition complies with § 131.O.B.3.c.

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 are no reported sight distance problems and no evidence of unsafe access. For this reason, no acceleration or deceleration are necessary. The conditional use driveway is not shared with other residential properties. The petition complies with § 131.O.B.3.d.

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

There are no off-site environmentally sensitive areas in the vicinity.

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 off-site historic sites in the vicinity.

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

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 Property is 5.98 acres, exceeding the one-acre minimum lot size requirement in the R-SC District. Lot coverage will be 3%, below the permitted 25% maximum.

The petition complies with § 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 34-foot high existing structure and the 32-foot high religious facility addition do not exceed the 34-foot height limit. The petition complies with § 131.0.N.42.b.

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

No shared access is proposed, in compliance with § 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.

### **III. The Specific Standards for Variances**

The standards for variances are contained in HCZR § 130.0.B.2.a. Pursuant to this section, the Hearing Examiner may grant a variance only if the Petitioner demonstrates compliance with all four variance criteria. Based upon the foregoing Findings of Fact, and for the reasons stated below, the Hearing Examiner finds the requested variances comply with §§ 130.0.B.2.a(1) through (4), and therefore may be granted.

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



The first criterion for a variance is that there must be some unique physical condition of the property, e.g., irregularity of shape, narrowness, shallowness, or peculiar topography that results in a practical difficulty in complying with the particular bulk zoning regulation. Section 130.0.B.2.a(1). This test involves a two-step process. First, there must be a finding that the property is unusual or different from the nature of the surrounding properties. Secondly, this unique condition must disproportionately impact the property such that a practical difficulty arises in complying with the bulk regulations. *Cromwell v. Ward*, 102 Md. App. 691, 651 A.2d 424 (1995). A “practical difficulty” is shown when the strict letter of the zoning regulation would “unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.” *Anderson v. Board of Appeals, Town of Chesapeake Beach*, 22 Md. App. 28, 322 A.2d 220 (1974).

With respect to the first prong of the variance test, the Maryland courts have defined “uniqueness” thus.

In the zoning context, the ‘unique’ aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon neighboring property. ‘Uniqueness’ of a property for zoning purposes requires that the subject property have an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions. In respect to structures, it would relate to characteristics as unusual architectural aspects and bearing or party walls. *North v. St. Mary’s County*, 99 Md. App. 502, 514, 638 A.2d 1175 (1994) (*italics added*).

The practical difficulty compelling the need for this variance arises from the curving Martin Row. There are also large diameter trees on the Property's west side, which the Hearing

Examiner concludes are a unique physical condition.<sup>1</sup> Consequently, I find that the lot line curvature and trees cause practical difficulty in complying with the required setbacks. The petition accords with § 130.0.B.2.a(1).

**(2) That the variance, 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.**

There is no evidence of the variances altering the essential character of the neighborhood or district or impairing the use of development of adjacent property. The petition complies with § 130.0.B.2.a(2).

**(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 Petitioner did not create the practical difficulties, which are attributable to unique physical conditions. The petition complies with § 130.0.B.2.a(3).

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

The proposed variances are for a reasonable use of the Property, in compliance with § 130.0.B.2.a(4).

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<sup>1</sup> In so concluding, I follow the Court of Appeals decision in *McLean v. Soley*, 270 Md. 208, 210, 310 A.2d 783 (1973), wherein the Court implicitly acknowledged that the granting of a variance to prevent the destruction of trees is a "close case"; i.e., it meets the uniqueness requirement, but only just. Such conclusions are extremely rare, as they should be.

**ORDER**

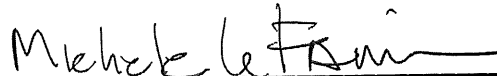
Based upon the foregoing, it is this **6<sup>th</sup> day of September 2017**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the Petition of Locust United Methodist Church for an existing religious facility and building addition and for variances to reduce the 30-foot structure and use setback from a collector street to 29 feet for the building addition; reduce the 30-foot structure and use setback from a collector street to 15 feet for an accessible ramp, and; reduce in the 30-foot use setback to 16 feet for parking and a drive aisle in an R-SC (Residential: Single Cluster) zoning district, are hereby **GRANTED**;

**Provided, however, that:**

1. The Conditional Use shall be conducted in conformance with and shall apply only to the uses and structures as described in the petition and as depicted on the Conditional Use/Variance Plan and not to any other activities, uses, structures, or additions on the Property.
2. All lighting shall be residential in character and oriented away from area residences and in compliance with county lighting regulations.
3. Petitioner shall obtain all required permits.
4. Petitioner shall comply with all federal, state, and county laws and regulations.

**HOWARD COUNTY BOARD OF APPEALS  
HEARING EXAMINER**



Michele L. LeFaivre

**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.