

IN THE MATTER OF : BEFORE THE
BETHEL MINISTRIES, INC. : HOWARD COUNTY
Petitioner : BOARD OF APPEALS
 : HEARING EXAMINER
 : BA Case No. 11-022C

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DECISION AND ORDER

On September 8, 2011, 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 Bethel Ministries, Inc. to expand a private academic school in an R-SA-8 (Residential: Single Attached) zoning district pursuant to Section 131.N.48.

The 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. Pastor Johnny Green testified in support of the petition. No one appeared in opposition to the petition.

At the outset of the hearing, Pastor Green stated he agreed with the findings and conclusions in the Technical Staff Report (TSR).

FINDINGS OF FACT

Based upon the preponderance of evidence presented at the hearing, I find the following facts:

1. Property Identification. The subject property is located in the 6th Election District on the east side of Savage Guilford Road about 250 feet north of Baltimore Street (the "Property"). The Property is referenced as Tax Map 47, Grid 11, Parcel 768, and is also known as 8455 Savage Guilford Road.

2. Property Description. The irregularly shaped 3.65-acre Property has about 213 frontage feet on Savage Guilford Road. The northern portion of the Property is zoned R-12 (Residential: Single) and the area of the proposed improvements is zoned R-SA-8. The Property is improved with a two-story brick building with one and two-story rear additions. There is a playground near the south property line; a second playground is located near the rear property line, north of the building additions. The building is surrounded by asphalt.

A one-way entrance is located on the building's south side. Also on the building's south side are 32 angled parking spaces. The parking space driveway extension of the entrance continues around the building's rear, past three striped parking spaces on the building's north side. The driveway continues along the building's north side to an egress in the northern section of the property line. There are two handicap parking spaces on the northeast side of the building. Twelve parking spaces are depicted on the conditional use perpendicular to the street frontage and in front of the building. However, according to the Technical staff Report (TSR)

there are currently five striped parking spaces in this location. A total of 55 striped spaces are now on the Property.

The northern portion of the Property is an open grass field. Scattered trees dot the grassy area along the south side lot line.

3. Vicinal Properties. Parcel 725, the adjoining property to the north is zoned R-12 and is the site of the Savage Volunteer Fire Station, which has a parking lot adjacent to the Property. To the east, the R-12 zoned lots have rear yards abutting the Property and are each improved with a single-family detached dwelling. To the south, the lots are each improved with a single-family detached dwelling. The B-1 (Business: Local) Parcel 720 is the site of the Storch Realty, Inc., office and the B-1 zoned Parcel 417 is the site of the Savage Post Office. To the west, across Savage Guilford Road, the R-12 zoned parcels are each improved with a single-family detached dwelling.

4. Roads. Savage Guilford Road has one travel lane in each direction within an ultimate 50-foot right-of-way (ROW). The posted speed limit is 30 MPH.

5. Water and Sewer Service. The Property 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 "Residential" land use. Transportation Map 2000-2020 of the 2000 General Plan depicts Savage Guilford Road as a Minor Collector.

7. Zoning History. There is a significant zoning history for a private academic school and Religious Facility associated with the Property and this history is set forth in the TSR. Most recently, on December 10, 1998 the Board of Appeals in BOA Case No. 98-039E&V approved a

special exception to expand a private academic school and variances to reduce the 30-foot use setback from a collector street ROW to 16.4 feet for parking and the 20-foot setback from a lot line to 10 feet for a driveway, subject in pertinent part to a 365-maximum student enrollment.

8. The Existing Conditional Use and Proposal. The Property is the site of an approved special exception for a private academic school with a maximum 365-student body as well as a religious facility. The Petitioner is now proposing to expand the private academic school with two 24-foot by 30-foot modular classroom structures. According to the conditional use plan (the Plan), the modular classroom units would be sited within the paved area adjacent to the building's north side. Specifically, they would be located about 10 feet from the existing school building and 50 feet from the property line of the closest residentially zoned adjoining property.

The school enrollment is expected to increase from the current 220-student body to 256 students. The number of staff would increase from 53 to 57. No changes to the hours of operations, access, or bus loading facilities are proposed. Minimal exterior lighting is proposed, if necessary.

9. Pastor Green testified the classroom structures would be 13.9 feet in height.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, I conclude as follows:

I. General Criteria for Conditional Uses (Section 131.B)

A. Harmony with the General Plan. Section 131.B.1 requires me to evaluate whether the proposed conditional use plan will be in harmony with the land uses and policies indicated in

the Howard County General Plan for the district based on in which it is located. In making this evaluation, I am required to consider:

- a. **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; and**
- b. **If a conditional use is combined with other conditional uses or permitted uses on a site, whether the overall intensity and scale of uses on the site is appropriate given the adequacy of proposed buffers and setbacks.**

General Plan Policies. The Howard County General Plan designates the area in which the Property is located as a "Residential" land use. Private academic schools affiliated with a long-existing religious facility are presumptively compatible with this land use.

The Nature and Intensity of the Use. The majority of activities and uses will occur indoors and the outdoor uses will be well separated from vicinal residential uses. The Board of Appeals previously approved a special exception private academic school for a maximum of 365 and the current proposal to increase the number of students from the current enrollment of 220 students to 256 is less intense than permitted. Although the use would intensify, the private academic school is a long-standing facility and the proposed use is consistent with other expansions of private academic schools associated with small religious facilities.

The Size of the Site in Relation to the Use. The proposed expansion will comply with all bulk regulations.

The Location of the Site With Respect to Streets Giving Access to the Site. The Board of Appeals has previously determined the existing access drives provide safe access and it is likely these drives will continue to provide safe access.

The Appropriateness of the Conditional Use in Combination with a Permitted Use on the Site. The proposed expansion will be combined with an approved religious facility condition use. The combination of uses is appropriate.

B. Adverse Impacts. Unlike Section 131.B.1, which concerns the proposed use's harmony or compatibility with the General Plan, compatibility with the neighborhood is measured under Section 131.B.2's four "adverse effect" criteria": (a) physical conditions; (b) structures and landscaping; (c) parking areas and loading, and; (4) access.

The assessment of a proposed conditional use under these criteria recognizes the potential for adverse impact by virtually every human activity. 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 uses would have adverse effects in an RC 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 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).

For the reasons stated below, and as conditioned, the Petitioner has met its burden of presenting sufficient evidence under Section 131.B.2 of the Zoning Regulations to establish the

proposed uses will not have adverse effects on vicinal properties beyond those ordinarily associated with a structure used primarily for religious activities in the RR district.

a. Physical Conditions. The impact of adverse effects such as noise, dust, fumes, odors, lighting, vibrations, hazards or other physical conditions will be greater at the subject site than it would generally be elsewhere in the zone or applicable other zones.

The TSR concludes the proposed use will be conducted predominately indoors, and there is no evidence of inordinate noise, significant outdoor lighting, or other physical effects detectable within the neighborhood. The uses will not generate inordinate dust, fumes, odors, glare, vibrations, or hazards.

b. Structures and Landscaping. The location, nature and height of structures, walls and fences, and the nature and extent of the landscaping on the site are such that the use will not hinder or discourage the development and use of adjacent land and structures more at the subject site than it would generally in the zone or applicable other zones.

The proposed modular classroom structures will be adequately separated from adjacent land and structures and there is no evidence the proposed structures would have any atypical adverse impact such that it would hinder or discourage the development and development and use of adjacent land and structures more at the subject site than it would generally in the zone or applicable other zones.

c. Parking and Loading. Parking areas will be of adequate size for the particular use. Parking areas, loading areas, driveways and refuse areas will be properly located and screened from public roads and residential uses to minimize adverse impacts on adjacent properties.

The existing parking is adequate to serve the existing and proposed uses, although there are fewer striped parking spaces than depicted on the Plan, without atypical adverse impact.

d. **Access.** 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.

The Board of Appeals has previously determined the existing access drives provide safe access and it is likely these drives will continue to provide safe access.

II. Specific Criteria for Structures Used Primarily for Schools, Colleges, Universities – Private Academic (Section 131.N.48)

a. **The maximum density permitted is 60 pupils per acre for lots less than three acres, and 100 pupils per acre for lots three acres or greater.**

The proposed number of students at the private academic school on the 3.6-acre site is 256, well below the 365-student maximum enrollment cap approved in BOA Case No. 98-039E&V. The petition accords with Section 131.n.48.a.

b. **In addition to meeting the area requirements of Section 131.N.54.a, schools with residence accommodations shall provide an additional 500 square feet of lot area per site resident. Residents shall include students, staff members, caretakers and their families who reside on the site.**

This section is inapplicable as no residential accommodations are proposed. The petition accords with Section 131.n.48.b.

c. **A private school may be erected to a greater height than permitted in the respective district, provided that no structure is more than three stories in height and the front, side and rear setbacks shall be increased two feet for each foot by which such structure exceeds the height limitation.**

This section is inapplicable, as no building will be erected to a greater height than 13.9 feet. The petition accords with Section 131.n.48.c.

d. **Sufficient off-street school bus loading areas shall be provided if bus service is provided for students.**

No change to the existing bus service or bus loading and parking is proposed. The petition accords with Section 131.n.48.d.

e. Outdoor uses will be located and designed to shield residential property from noise or nuisance. Play areas, athletic fields and similar uses shall be buffered from residential properties by fencing, landscaping, adequate distance or other appropriate means.

There are no proposed changes to the previously approved outdoor play areas. The petition accords with Section 31.n.48.e.

f. Buildings, parking areas and outdoor activity areas will be at least 50 feet from adjoining residentially zoned properties other than a public road right-of-way. The Hearing Authority may reduce this setback to no less than 20 feet or the minimum setback required by the zoning district, whichever is greater if:

- (1) The adjoining land is committed to a long term institutional or open space use that provides an equivalent or better buffer for vicinal residential development; or**
- (2) The petition includes detailed plans for screening, consisting of a combination of a solid fence or wall and landscaping, or an equivalent combination, that presents an attractive and effective buffer for neighboring properties.**

The proposed modular classroom structures would be sited 50 feet from the nearest residentially-zone property line, in accordance with Section 31.n.48.f.

g. At least 20 percent of the area within the building envelope will 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.

Although the Plan does not calculate the amount of green space to be provided, the TSR concludes at least 20 percent will be green space. The petition accords with Section 131.n.48.g.

h. 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 the effective date of Council Bill No. 11-2001 are permitted.

The Property fronts on and has direct access to a Minor Collector and is an expansion of a conditional use approved prior to the effective date of Council Bill 11-2001, in compliance with Section 131.n.48.h.

ORDER

Based upon the foregoing, it is this 15th day of September 2011, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the conditional use petition of Bethel Ministries, Inc. to expand a private academic school in an R-SA-8 (Residential: Single Attached) zoning district is hereby **GRANTED;**

Provided, however, that:

1. The conditional use shall be conducted in conformance with and shall apply only to the Conditional Use for an expansion of a private academic school as described in the petition and as depicted on the Conditional Use Plan submitted on July 22, 2011, and not to any new structures or uses on the Site or any additions thereto.
2. The modular classrooms shall be no higher than 15 feet.
3. The Petitioner shall comply with all applicable federal, state, and county laws and regulations.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**



Michele L. LeFaivre

Date Mailed: 9/15/11

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.