

IN THE MATTER OF	:	BEFORE THE
ST. MARY COPTIC ORTHODOX CHURCH OF MARYLAND, INC., t/a ST. MARY COPTIC CHURCH	:	HOWARD COUNTY
	:	BOARD OF APPEALS
Petitioner	:	HEARING EXAMINER
	:	BA Case No. 17-010C

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DECISION AND ORDER

On June 8, 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 petition of St. Mary Coptic Orthodox Church of Maryland, Inc., t/a St. Mary Coptic Church (Petitioner) for a Religious Facilities, Structures and Land Used Primarily for Religious Activities conditional use located in an RC-DEO (Rural Conservation: Density Exchange Option), zoning district, filed pursuant to Howard County Zoning Regulations (HCZR) § 131.0.N.42.

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. Joan Becker, Esquire, represented the Petitioner. Father Mena Atta, Arafat Giurgiu's, Ashraf Shaker, John Carney, David Yungman, and Peter Abadir testified in support of the petition. Theodore Mariani testified in favor on behalf of the Western Howard County Citizens Association (WHCCA). No one appeared in opposition to the petition.

A Preliminary Matter

During the hearing, Petitioner introduced into evidence Exhibit 1, an amended, 3-page Conditional Use Plan (the Amended CUP) intended to respond to comments in the technical staff

report (TSR). Hearing Examiner Rule 9.4 requires a Petitioner who proposes an amendment during the course of the proceedings to submit the amendment as an exhibit. The Hearing Examiner determined the amendment was not substantive within the meaning of Hearing Examiner Rule 9.5 because it is intended to respond to TSR comments about revising the CUP to add BA 13-033C to General Note #13, include the entire property boundary, and depict all site improvements, including sports fields.

Petitioner introduced into evidence the exhibits as follows.

1. Amended Conditional Use Plan, June 8, 2017
2. Google Earth image of vicinal properties
3. Google Earth close-up image of Property
4. June 8, 2017 letter to John Carney from Karen Stires, Howard Count Dept. of Public Works, re: resolution to terminate use-in-common driveway
5. Architectural elevations of church
6. Church floor plan
7. June 6, 2017 letter to Hearing Examiner from Concerned Citizens of Western Howard County authorizing Theodore F. Mariani to represent it

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 property is located in the 4th Election District and located on the north side of MD 144 (Frederick Road) about 1,000 feet east of McKendree Road. It is referenced as Tax Map 0008, Grid 0024, Parcel 115 and known as 14196 MD 144 (the Property).
2. Property Description. The 66.1-acre, "Z" shaped Property is accessed from an existing driveway with divided ingress/egress lanes (the main driveway) lying about 810 feet west of the

southeast property corner. There are stream and wetland areas to the east and west of the front portion of the main driveway and a small pump house sited to the driveway's east. Farther into the Property, the main driveway becomes a two-lane drive curving to the northwest around the stream and wetlands area and a long stormwater management pond (SMP) to the northwest. Past the SMP, this driveway curves to the southwest, where it connects to a paved parking lot and vehicle circulation area. At the southeast end of this parking lot and vehicle circulation area is a one-story, approximately 27,500 sq. ft. former school building (the main building). To the parking lot's southwest are five large modular buildings, and in the same general area, several small accessory buildings and playground equipment. To the north, beyond this improved area, is an open area rising 30-40 feet in elevation to the rear lot line at the I-70 right-of-way (ROW). The Property is highest in elevation in the northeast corner of the Property, and lowest in the stream areas on each side of the main driveway.

3. Vicinal Properties. Adjacent properties are also zoned RC-DEO. To the north is I-70. Parcel 128 to the east is an approximately 60-acre Agricultural Land Preservation Easement horse farm (Cedar Lane Farm II, LLC). In the southern portion of Parcel 128 is a pond, farm buildings, and paddock areas. The northern area is open field. Further east is a thoroughbred breeding and training facility on an Agricultural Preservation Land Easement. To the Property's south, across MD 144, is Parcel 46, an approximately 130-acre Agricultural Land Preservation Easement horse farm (the Mobberly property). The eastern area of the Parcel directly across from the Property is wooded. There are paddocks in the western areas. On Parcel 46 is an historic building site designated HO-117 and known by two names, "Poverty Discovered" and "Dr. William Bryson

House," portions of which appear to date from the mid-18th century. Parcel 168 to the Property's west is the site of the Howard County Bureau of Highways Cooksville facility. A large, multi-bay service building fronts on MD 144. To this building's west are a three-bay garage and roofed vehicle storage area and to the north, another roofed building storage area, material storage buildings, outdoor material and equipment storage areas, and a commercial communications facility approved through Board of Appeals Case No. 93-20E for an existing tower. To the Property's northwest is the unimproved Parcel 109. To the east, at the southwest corner of MD 144 and McKendree Road is the HO-192 historic site, known as "Friendship Pines," dating from the late 19th century.

4. Roads. MD 144 has two travel lanes, generally, but at the Property's main driveway there is a westbound through lane, a westbound right-turn and acceleration lane, an eastbound through lane and an eastbound left turn lane. The ROW width in the area is variable. The posted speed limit is 50 MPH. The TSR reasons sight distance is not an issue at the main entrance, having been approved through the Woodmont Academy facility. The Amended CUP depicts a secondary driveway near the west side lot line, which the TSR explains is barricaded at MD 144. Per the TSR, the traffic volume on MD 144 east of MD 97 was 3,542 average daily trips as of January 2011.

5. Water and Sewer Service. The Property is served by private well and septic.

6. The General Plan. According to the TSR, the Property is designated "Rural Resource" on the PlanHOWARD2030 Designated Place Types Map. The PlanHOWARD2030 General Plan Transportation classifies MD 144 (Frederick Road) as a Minor Arterial on Map.

7. Zoning History.

BA 02-019C. The Board of Appeals on July 17, 2002, granted petitioner Woodmont Academy, Inc.'s request for two conditional uses, a private academic school and a retreat center, said uses to be constructed in four phases over a ten-year period. Because the school and retreat center have been vacant for at least three years, the use is voided by operation of HCZR § 131.0.k, which provides that a conditional use abandoned if it is discontinued for a continuous period of at least two years.

BA 13-033C. The Hearing Examiner granted petitioner Al-Huda, Inc., t/a Dar-us Salaam, conditional use approval for a religious facility, child day care center and private academic school on May 13, 2014 subject to 13 conditions of approval.

1. All three Conditional Use approvals are specific to Petitioner Dar Us Salaam and do not attach to or run with the land. The conditional use approvals shall not pass to any successors or assignees or be transferable from one owner to another. These approvals do not invest the current property owner, Woodmont Educational Foundation, Inc., (as stated in the petition) with any property right or interest in the conditional uses granted to Petitioner Dar Us Salaam.

2. The Conditional Uses shall be conducted in conformance with and shall apply only to the daycare facility, private school and religious facilities as described in the petition, and depicted on the plan accepted by DPZ on December 16, 2013, excluding the residence accommodation, and not to any other activities, uses, or structures on the Property.

3. The proposed residence accommodations building and use is DENIED. There shall be no residence accommodations associated with any use, any residential use of the Property or any residential dwelling constructed in connection with the approved conditional uses.

4. There shall be no overnight visitors or guests, excluding any summer camps. No persons other than maintenance or security personnel or security shall remain on site when the uses cease for the day.

5. No outdoor amplification is permitted.

6. There shall be no outdoor lighting anywhere on the site other than lighting for parking areas. This condition does not extend to any public safety or similar type of lighting required by the Howard County Code.

7. During the week of the Howard County Fair, the following use restrictions and traffic management requirements are imposed. These conditions shall be detailed on the Site Development Plan as notes.

a. The day-care, religious facility and private academic school uses shall not hold any non-religious event, including afterschool sports practice or event, any type of meeting, including study groups, clubs, or extracurricular activities.

b. Petitioner shall provide traffic management for all uses to assist in ingress and egress from the Property.

c. Petitioner shall prepare a traffic management plan to reduce vehicular traffic for Friday afternoon prayer service, or any high-holiday religious event, including alternative methods like busing or ride sharing. Petitioner shall develop a communication system to inform users of these alternatives.

d. Petitioner shall identify a coordinator responsible for ensuring compliance with these conditions. Coordinator contact information shall be posted on the Dar Us Salaam website.

8. The Site Development Plan shall call out clearly marked walkways between the parking area and Building 7 for every phase where the daycare facility area will be modified.

9. The Site Development Plan shall call out all off-street school bus loading areas.
10. The Site Development Plan shall detail which modular buildings will be removed and when they will be removed as phases are built out.
11. The Site Development Plan shall note the location of all refuse areas
12. Petitioner shall comply with all development phasing requirements of the Howard County Subdivision and Land Development Regulations.
13. Petitioner shall comply with all Howard County Bureau of Environmental Health and all State of Maryland well and septic requirements, especially as they related to phased development.

BA 13-033C. On appeal by petitioner from the Hearing Examiner decision and order, the Board of Appeals on February 11, 2016 dismissed the petition on a motion to dismiss from opposition, who had also appealed the decision. The board granted the motion because Petitioner no longer had a contract to purchase the Property and therefore lacked standing to appeal. Additionally, the actual property owner withdrew its consent to allow the petitioner to file the conditional use petition. On appeal to Circuit Court filed by Al-Huda, Inc., ta/ Dar-us-Salaam, the court on October 11, 2016 affirmed the Board of Appeals decision. On November 10, 2016, Petitioner appealed the circuit court decision to the Court of Special Appeals, which has not yet issued its opinion.

8. The Conditional Use Proposal.

Phase One. Phase One would begin upon approval of the Conditional Use and redline modifications to the existing Site Development Plan to reflect a change in use from a school to a religious facility. During Phase One, the 27,500sf school building will be used for religious services and programs and the existing 60'x60' multipurpose area will be converted to the assembly area for the religious facility. The 98 existing parking spaces, including six (6) accessible spaces will meet Phase One requirements. Existing lighting will be utilized during Phase One. During Phase One, lot coverage will be 7%.

Phase Two. Phase Two would begin at approximately 3-5 years from the date of approval of the Conditional Use. During Phase Two, a 14,258sf Church will be added on the northwesterly side of the school building, separated by a breezeway. The proposed Church dome would be 60.5'

in height and the petition narrative supplement states the closest distance from the church to an adjoining property owner would be 237 feet from the western Cooksville Bureau of Highways Division lot line. The assembly room would be converted back to a multipurpose room. Existing modular building 2 will be removed.

A new parking lot with 142 parking spaces, including six (6) additional accessible spaces will be added to the west and south of the Church addition, bringing the total number of spaces to 240. One existing modular building will be removed to accommodate the addition. Lighting will also be added to the pathway connecting the proposed church addition to the existing school building. The Phase Two lot coverage will be 10%.

Additional Information. The proposed use of the subject property is for religious activities, which include Liturgy (Mass Service), Sunday school, vocational Bible school, and fellowship meetings. The Church recognizes January 7 as Coptic Christmas and the week of Easter as Passion Week; these activities, along with weddings and baptisms are considered special occasions. Outdoor activities would include the use of the existing playground areas. The current hours of operation includes small group gatherings for specific classes and clubs on Monday and Friday evenings from approximately 7:00 to 10:00 pm. Attendance ranges from 10 to 40 people. On Wednesday mornings, 6:00 to 8:00 am, a liturgy (mass) service is held, and attendance is around 20 people. Service on Saturday mornings is 8:30 to 11:00 am with evening classes and clubs from 6:30 to 9:30 pm. Attendance on Saturday is approximately 50 people. Service on Sunday mornings is 8:30 to 11:30 am, followed by Sunday school and meetings until approximately 2:00 pm. Sunday attendance is approximately 100 families. The current size of the congregation is 200

families, and is estimated to be 3.5 individuals per family. The Church employs two full time priests and two part-time employees.

On a typical weekday, 10-40 vehicles use the driveway and parking area. On Sunday, the vehicles number is estimated to be no greater than 100. Outdoor lighting will comply with all Howard County regulations and will be directed downward and shielded to minimize any impact on adjacent properties. There are no plans for storage of materials outdoors.

9. Agency Comments.

DPZ, Division of Public Service and Zoning Administration, through the TSR, recommends approval of the proposed conditional uses subject to petitioner revising the CUP to add BA 13-033C to General Note #13, to include the entire property boundary, and to depict all site improvements including sports fields.

DPZ, Division of Land Development

1. A redline to SDP-03-090 must be submitted to establish the change in use (Academy to Religious Facility).
2. The extension of the existing private road must comply with the structure and use setback. In addition, an access permit must be approved by the State Highway Administration.
3. The proposed improvements under Phase 2 will require the submission of a new Site Development Plan. Lot coverage shall not exceed 25% of the lot area. It appears that the improvements exceed the maximum height limitations. Per Section 131.0.N.42.b. structures may be erected to a greater height provided that the front, side and rear setback shall be increased one foot for each foot by which such structure exceeds the height limitation permitted under RC Zoning Regulations.
4. Advisory: The Forest Conservation obligation for this site was satisfied under SDP-03-090. There are no environmental disturbances proposed under BA-17-010C.

DPZ, Development Engineering Division

1. The request appears to have no adverse engineering impact on the adjacent properties.
2. All improvements must comply with current Howard County design criteria including APFO requirements and stormwater management.

Fire Department

- All buildings will be protected by an approved automatic sprinkler system.
- Existing access to the rear of the school shall remain and needs to be maintained
- Access to the site and access around buildings will be reviewed when SDP is submitted.
- Areas may be designated as fire lanes when the SPD is submitted.
- It is recommended that a cistern be installed on the property. This for the safety of the parishioners and to assist the fire department with water supply in event of a fire.

State Highway Administration. No comment or objection.

10. Father Mena Attwa testified about the current religious facility in Savage and the congregation's need for larger space. There are about 200 families in the congregation. The proposed religious facility uses at the Property include church services, bible and vocational school. The only outdoor use is the existing play area. No sports fields are proposed. In Phase One, church services would be held in the main building's multipurpose room. During Passion Week before Easter and before Coptic Christmas (January 7), there are additional services. The church also has fellowship meetings, baptisms, funerals, and weddings. A bazaar is held in September where about 200 people attend. There will be no residential use of the Property.

11. Raafat Guirguis testified to being an engineer and serving on the church's engineering committee and being involved with the proposed conditional use. It would not create noises, as there is minor outdoor activity where children play. There may be the occasional barbecue. There is an existing commercial kitchen. During the fall bazaar, there may also be an outdoor barbecue. When questioned by the Hearing Examiner, Mr. Guirguis stated the petitioner would agree to not holding the fall bazaar during the week of the Howard County Fair.

12. John Carney testified to Exhibit 1 being the 3-page Amended CUP. Page 1 is an enlargement of the existing and proposed improvements area and depicts proposed parking landscape buffers for Phase Two. Page 2 depicts the entire Property. Page 3 depicts vicinal properties, topography, and vegetative areas. He testified to there being no sports or playing fields, only the outdoor play area. All structures are a significant distance from area residences and are generally not visible because the improvements sit at a lower elevation than neighboring

properties, as shown on pg. 3 of the Amended CUP. The approved existing septic and well system is adequate for the proposed use. There is a secondary driveway for right-turn ingress and egress shown on the BA 02-019C Site Development Plan (SDP) 03-090, but it is currently barricaded. During Phase Two, a State Highway Administration (SHA) access permit will be required to establish this entrance. A survey is being conducted to determine the driveway's distance from the western lot line. Existing and proposed parking lot lighting will be shielded. The new church building will be lit.

13. Mr. Carney also testified to there being a use-in-common driveway shared with the county-owned Public Works facility adjoining the western lot. Exhibit 4, a June 8, 2017 letter to Mr. Carney from Karen Stires, Howard County Department of Public Works, Real Estate Services Division, discusses the department's agreement with the proposed termination of this driveway and the need for a County Council-approved termination resolution. No traffic study is necessary because Woodmont Road was designed for higher traffic. About 30-40 vehicles would use the access on weekdays and about 100 vehicles on the weekend. Existing and proposed parking lots are some distance from residential areas. The closest residential structures on the eastern Cedar Farm lie about 1,603 feet from the existing parking lot and about 1641 feet from the proposed future parking lot. The Mobberley farm to the south lies about 1,597 feet from the existing parking lot and 1,051 feet from the proposed future parking lot. Additional landscaping will be added during Phase Two to buffer and screen the use.

14. Ashar Shaker testified to being the church architect and a member of the church for twenty years. The main building will be modified as part of the construction of the 14,258sf, 61.5'-

high church addition shown in the Exhibit 5 renderings and will incorporate elements of the existing buildings, including a standing seam roof. It will sit 237 feet from the closest property line and 300 feet from Route 144. The unlit dome has a special symbolism, heaven. Exhibit 6 is the church floor plan and shows an approximately 70'x74' assembly area and multiple secondary uses. There is no current plan to use the four modular buildings to remain, as some are in only fair condition. He further testified to the church being partially visible only when vehicles approach the Property. Discussing his familiarity with the mechanical systems, he explained there is an existing cistern and the main building has a full sprinkle system. Two modular buildings also have sprinkler systems. There is also a pump house with 1,000-gallon underground tanks to feed the sprinkler system. Lastly, he explained that about half the congregation is unable to attend service at the Savage church because it is too small.

15. Dr. Peter Abadir testified to the work of the congregation in service of the community. The facility will be open to the community for use.

16. Theodore Mariani, testifying for Concerned Citizens of Western Howard County, believes the proposed use is a good fit for the community.

17. David Yungmann testified to his belief being that the proposed religious facility is a reasonable use and would be compatible in the rural community.

CONCLUSIONS OF LAW

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

HCZR §§ 131.0.B.1-3 require the Hearing Authority to evaluate whether 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

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.

This mandate is reflected in the language of § 131.0.B.1, where the "harmony with the General Plan" standard is clarified to mean that the evaluation of a conditional use plan under the "in harmony with" the General Plan standard shall be premised on land uses and policies that can be "related to the proposed use."

PlanHOWARD2030 designates the Property as "Rural Resource" on the Designated Place Type Maps. Religious and private school facilities are presumptively compatible in Rural Resource Areas absent specific Plan policies that such institutional or assembly uses in a Rural Resource Area inharmonious. There are no Howard County General Plan policies directly relating to the proposed use. However, religious facilities/institutional uses are generally compatible with residential and nonresidential uses and operate with Conditional Use approval throughout the R-C District. The petition accords with § 131.0.B.1.

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 religious activities will predominately occur indoors. During Phase One, the land use will operate within previously approved structures and will comprise approximately 7% of the lot. Phase Two will comprise approximately 10% of the lot, well below the 25% permitted lot

coverage. The overall intensity and scale of the use is appropriate for the 66.1-acre site and the existing access from MD 144, a Minor Arterial. The petition accords with § 131.O.B.2.

B. Adverse Impacts

Unlike HCZR §§ 131.O.B.1 and B.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.O.B.3's six, off-site "adverse effect" criteria: (a) physical conditions; (b) structures and landscaping; (c) parking areas and loading, (d) access, (e) impact on environmentally sensitive area; and (f) impact on the character and significance of 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 RC-DEO zoning districts. 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 County*, 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 § 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 conditional use in the district.

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.

The religious activities associated with the Conditional Use will occur indoors predominately and are not likely to create adverse effects. The occasional outdoor activity will occur a considerable distance from vicinal properties. Existing lighting projects downward and future lighting will be limited to the Church building and pathway and will be directed downward and appropriately screened from neighboring properties. During Phase Two, the western, secondary driveway – which is subject to SHA access permit approval - will be paved. There is no evidence of atypical adverse effects such as noise, dust, fumes, odors, vibrations, increased lighting, hazards or other physical conditions that would be greater at the subject site than generally elsewhere. The petition accords with § 131.0.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.

The existing structures are not readily visible from the roadway or the adjacent properties because of their location, existing vegetation and landscaping, and topography. The proposed Church addition to be constructed during Phase Two will be connected to an existing building on

the property, and appropriately screened from adjoining property owners so as not hinder or discourage the development of adjacent land and structures.

Because the proposed church building height exceeds the 34'-high maximum height limit, it is subject to § 131.O.N.42.b (Specific Criteria #2 below), which requires the front, side and rear setbacks to be increased one foot for each foot by which the building exceeds the height limitation. The church building is therefore set back an additional 27.5 feet to accommodate the increased height. The petition accords 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 of the Zoning Regulations requires ten spaces per 1,000 square feet of assembly area for a religious facility. There is no specific parking requirement for the other proposed religious facility uses. During Phase One, the existing 60'x60' multipurpose area will be converted to an assembly area for the religious facility. Based on the 3,600sf assembly area, 36 parking spaces are required. There are 98 existing parking spaces on the site, including six accessible spaces.

Phase Two will add a 14,258sf assembly area for the religious facility, which requires 143 parking spaces. Petitioner is proposing to add 142 spaces, for a total of 240 parking spaces. The 3,600sf Phase One assembly area will revert to multipurpose use for which there is no parking requirement.

Existing landscaping and vegetation buffer the current parking area and additional parking edge, landscaping compliant with the Landscape Manual is proposed during Phase Two,

as shown on pg. 1 of the Amended CUP. The existing trash receptacles will be utilized as shown on the Amended CUP and are appropriately located and buffered from public roads and residential areas. The petition accords with § 131.0.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.

Petitioner proposes to use the existing SHA-approved main entrance for ingress and egress during Phase One. During Phase Two, the western secondary driveway, subject to an SHA-approved permit entrance and sight distance analysis, would be added. SHA will review the proposed driveway and require acceleration and deceleration lanes where appropriate. The proposed Religious Facility does not share a driveway access with residential properties. As discussed at the hearing, as a condition of approval, to ensure continued safe access, the yearly bazaar will not be held during the Howard County Fair. Subject to this approval condition, the petition accords with § 131.0.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 near the Property. The petition accords with § 131.0.B.3.e.

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

HO-117, an historic residence and accessory building, is located across MD 144 to the south and sits approximately 1,051 feet from the edge of the proposed expansion. Due to

distance and topography, which will render the proposed Church addition less visible, the proposed use will not have a greater potential for diminishing the character or significance of the historic site in the vicinity due to the distances between the proposed use and the historic sites. The petition accords with § 131.O.B.3.f.

II. Specific Criteria for Religious Facilities, Structures and Land Used Primarily for Religious Activities (§ 131.O.N.42)

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-H-ED, R-A-15, R-APT, R-MH, or R-VH Districts for structures and land used primarily for religious activities provided that:

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 66.1 acres. The petition complies with § 131.O.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 church dome is 61.5' high. The building is proposed to be set back greater than 230 feet from the side property line and 300 feet from the front property line. The petition complies with § 131.O.N.42.b.

c. The access to the facility shall not be on a driveway or private road shared with other uses.¹

¹ This conditional use standard was added through the 2013 Comprehensive Zoning Plan. The Comprehensive Zoning Plan (Zoning Regulations § 103.0) redefined "direct access" to mean "[v]ehicular access from a proposed development or use to a public road where the access is not by way of an easement or a common driveway where the access is shared with other properties or uses." Although perhaps inartfully drafted, the Hearing Examiner takes

The current access is a private driveway not shared with other uses, in compliance with § 131.0.N.42.c. Petitioner is working with the Howard County Department of Public Works, Real Estate Service Division, to terminate a use-in-common driveway through a County Council-approved termination resolution. Subject to the condition of approval that the County Council terminate this driveway by resolution before Phase Two, the petition complies 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.

notice that the § 131.0.N.42.c regulatory bar on shared access repeats in multiple conditional use categories. The intent of this language is to eliminate the extra wear on a shared access that may arise from certain conditional uses. It is not intended to bar multiple uses on one property from sharing direct access to a public road through a shared driveway.

ORDER

Based upon the foregoing, it is this **20nd day of June 2017**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the Conditional Use petition of St. Mary Coptic Orthodox Church of Maryland, Inc., t/a St. Mary Coptic Church (Petitioner) for a Religious Facility, Structures and Land Used Primarily for Religious Activities conditional use located in an RC-DEO (Rural Conservation: Density Exchange Option), is hereby **GRANTED**;

Provided, however, that:

1. The Conditional Use shall be conducted in conformance with and shall apply only to the religious facility as described in the petition, and as depicted on the June 8, 2017 Amended Conditional Use Plan, and not to any other activities, uses, or structures on the Property.
2. During the week of the Howard County Fair, no bazaar shall be held. This condition shall be noted on the Site Development Plan redline and the Phase Two Site Development Plan.
3. The redline Site Development Plan shall contain a note stating a County-Council approved resolution terminating the use-in-common driveway with the Howard County Department of Public Works shall be a requirement for the Department of Planning and Zoning's acceptance and/or processing of Phase Two.
4. Petitioner shall comply with all federal, state and local laws and regulations.
5. Petitioner shall obtain all required permits.

**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.