

IN THE MATTER OF	:	BEFORE THE
	:	HOWARD COUNTY
DAR AL-TAQWA, INC.	:	BOARD OF APPEALS
Petitioner	:	HEARING EXAMINER
	:	BA Case No. 09-011C

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DECISION AND ORDER

On November 16, 2009, 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 Dar Al-Taqwa, Inc., to enlarge an existing religious facility for nonreligious assembly uses, pursuant to Section 131.N.39 of the Howard County Zoning Regulations (the "Zoning Regulations") and for a new Child Day Care Center and Nursery School, Day Treatment and Care Facility conditional use, pursuant to Section 131.N.13 of the Zoning Regulations on the subject property. The Property is located in an RC-DEO (Rural Conservation-Density Exchange Option Overlay) Zoning District.

The Petitioners certified to compliance with the advertising, posting and notice requirements of the Howard County Code. I viewed the subject property as required by the Hearing Examiner Rules of Procedure.

Sang Oh, Esquire, represented the Petitioner. Brian Cleary, Mickey Cornelius and Mumtaz Kahn testified on behalf of the Petitioner. Jim Truby testified in support of the petition. Anthony Ritrivi, William Guthrie, Thomas Showe, Mark Yotcheff, David Bork and Joan Pontius testified in opposition to the petition.

A Preliminary Matter

At the outset of the hearing, the Petitioner introduced an Amended Conditional Use Plan intended to respond to an adjoining property owner's concerns (Petitioner's Exhibit 1). According to Mr. Oh, the amendments include additional forest retention areas, changed parking areas, enhanced landscaping and motion sensors on the existing wall pack lights on the north and northeast side of Building B and on the proposed northwest and northeast walls of Building C, and an agreement to construct the northwest side of Building C in a darker color. The Petitioner also relocated the daycare center to Building C in response to Fire Department requirements. In accordance with Hearing Examiner Rule 9.5, I concluded the amendments are not substantive because they are intended to mitigate the proposal's impact on adjoining properties and, thus, are unlikely to impact vicinal property owners adversely.

FINDINGS OF FACT

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

1. The subject property is located in the 2nd Election District on the north side of MD 108 (Clarksville Pike), about 580 feet east of Manor Lane/Beech Creek Drive (the "Property"). The Property is referenced on Tax Map 29, Grid 11, as Parcel 12, and is also known as 10740 Clarksville Pike.
2. The 6.42-acre irregular "L" shaped Property is the site of the existing Dar Al-Taqwa religious facility. Lying about 57 feet from the MD 108 property line is a noncomplying frame building, once a single-family detached dwelling, whose use is

unknown ("Building A" as depicted on the Amended Conditional Use Plan). To its southeast is a 23-foot wide driveway entrance. This driveway proceeds through a gate past the nonconforming building to a parking lot. A basketball court and playground equipment to the east of the parking lot lie within the 30-foot structure and use setback and will be removed. To the parking lot's west are two trash receptacles and a one-story shed. To the parking lot's north is a two-story block mosque with a portico at the southwest entrance ("Building B" as depicted on the Amended Conditional Use Plan.) A small parking lot and a driveway lead up to the portico. The Property slopes to the southwest and beyond the mosque side to the Property, to the east.

3. Zoning History. In Board of Appeals Case No. 94-37E, the Board granted the Petitioner a special exception for a religious facility to accommodate up to 120 persons. The Findings state the Petitioner has no objection to the Board prohibiting parking on MD 108 as a condition of approval. The Decision and Order permitted the Petitioner to phase the development. The first phase permitted use of the former dwelling, and the second, the construction of the mosque. The Board also granted the petition subject to eight conditions: 1) compliance with all applicable federal, state and county laws and regulations, including the requirements of the State Highway Administration concerning access and road improvements; 2) installing a gate or chain across the entrance to the facility to prevent access during hours when the facility is not in use; 3) voidance of the Phase 2 approval unless a building permit is obtained on or before December 31, 2000; 4) screening the eastern, western and southern lot lines as indicated on Petitioner's Revised Plan for Phase 1 and 2, with Type "D" landscaping in accordance

with the Howard County Landscaping Manual; 5) limiting the granted special exception to the proposed religious facility as indicated in the revised plan for Phase 1 and 2, and not to any other structures, additions, activities or uses.

4. Vicinal Properties. To the north, the RC-DEO zoned Lots 1 and 2 of the William C. Stevens Property subdivision are each improved by single-family detached dwellings sited in the lots' northern areas. Their southern areas are wooded and the lots are accessed from Manor Road to the west. To the east of the Property's northern section is Parcel 337, a 114-acre, RC-DEO zoned farm subject to an Agricultural Land Preservation Easement. To the south are two RC-DEO parcels. Parcel 17 is improved by a single-family detached dwelling, while Parcel 16 is unimproved.

5. To the Property's south and southeast, across MD 108, is the R-20 (Residential: Single Family) zoned Howard County Cedar Park, which features multiple active recreation improvements. The access to the park is sited near the Property's southeastern corner. To the park's west is the R-20 zoned Cedar Manor subdivision, the lots of which are each improved by two-story, single-family frame detached dwellings fronting on Cottonwood Way.

6. To the Property's west are five RC-DEO zoned parcels, three of which front on MD 108. Each parcel is improved by a one and one-half story, single-family frame detached dwelling. The other two parcels are each improved by two-story single-family detached brick and frame dwellings fronting on Manor Lane.

7. Roads. MD 108 in front of the Property has one east- and westbound travel lane. The Property and Cedar Park each have an acceleration and deceleration lane at

their respective entrances. MD 108 in this area has a variable paving width within a proposed 80-foot wide right-of-way. Sight distance from the existing driveway was previously deemed acceptable based upon the two site development plans approved for the development of the religious facility. According to State Highway Administration ("SHA"), the traffic volume on MD 108 west of Centennial Lane was 24,933 average daily trips as of May 2006.

8. Water and Sewer Service. The Property is served by public water and sewer facilities subsequent to a County Council Bill approving the site for access.

9. General Plan. The Property is designated "Rural Conservation" on the Policies Map 2000-2020 of the 2000 General Plan, which depicts MD 108 as a Minor Arterial.

10. The Proposal.

A. Phase III Expansion of the Existing Religious Facility. The Petitioner is proposing to expand the existing religious facility through the construction of a two-story, 24,000-square foot, "Building C" as depicted on the Amended Conditional Use Plan. Building C would have a flat roof, be no higher than 26-30 feet and would be similar in color and material to Building A (with, apparently, the exception of the darker northern façade). The two elevations submitted as Petitioner's Exhibit 3 depict a building with five entrances, a central entrance on the eastern side of the building and one each at the end sections of the southern entrance. No entrance is proposed on the western side.¹

¹ The wording on these exhibits appears to be upside down.

On the northern façade, two entrances are proposed: one, apparently, at the eastern section and one at mid-section.

According to the Amended Conditional Use Plan and the two floor plans introduced as Petitioner's Exhibit 2, the first floor would be about 15,100 square feet in area. On either side of the lobby entrance on the east side of the building are separate areas and locker rooms for men and women, behind which are a laundry and children's play area. A wide stage separates these areas from a large, two-story basketball court. The supplemental statement attached to the petition states "indoor activities consist of worship and assembly and religious education classes. Part of the facility would be used as a gymnasium and part for an exercise room with the possibility of a swimming pool primarily to serve Muslim women for which there is no similar facility in the area. The expansion facility will not be used for religious assembly."

Mumtaz Kahn testified that the purpose of the expansion is to permit new activities, religious education, sports, lectures, language, weddings, youth mentoring and, potentially, a pool for women. The size of Building C is intended to expand the number of classrooms, to provide food services, and to accommodate gender separation for the proposed activities.

B. The Child Day Care Center. The Petitioner is also proposing a new use, a child day care center in Building C. A maximum of 75 children are anticipated. They would arrive between 7:00 and 9:00 a.m. and be picked up between 4:00 and 6:00 p.m., Mondays through Fridays. The attendees would be dropped off at the eastern entrance. There would also be additional staff as required by state law. A fenced outdoor play area

with a sidewalk access to Building C would be sited between and just to the north of Buildings B and C. As discussed below in Part III of the Conclusions of Law, the Petitioner is seeking to reduce the 50-foot use setback to 30 feet to accommodate additional parking spaces. A solid wall would be constructed along the property lines shared with Parcels 16 and 17 to screen these spaces.

11. Parking. The Petitioner is proposing to increase the number of on-site parking spaces for the two uses from 100 to 210. The Zoning Regulations requires 98 spaces for the main assembly area (which is stated to be 9,800-square feet on the Amended Conditional Use Plan) and 5 spaces for the daycare use.² Mickey Cornelius, a registered engineer with more than 20 years of traffic analysis, testified to reviewing the proposed enlargement and its traffic impacts. It was his testimony that the new traffic generated by the daycare center and other uses would be minimal and, thus, not impact or increase the Friday afternoon peak traffic hours. The sight distance from the driveway access meets state highway requirements. His review of 2004-2008 accident data found no reported accidents at the access and only one accident on a Saturday morning at the park. The additional parking proposed is intended to alleviate parking along MD 108.

With respect to the proposed day care use, he testified that, based on a maximum 75 children attending the day care center, there would be about 30 trips in and out during morning peak hours (7:00 to 9:00 a.m.), which would be accommodated with no impact on current traffic flows.

² Section 133.D.7.a of the Zoning Regulations requires 3 spaces for every 1,000 square feet of a daycare center and subsection D.7.h requires 10 spaces for every 1,000 square feet of a structure used primarily for religious facilities if the facility has no fixed seats.

As Mumtaz Kahn testified, the Petitioner employs off-duty police officers on Friday afternoons to manage traffic. The proposed activities would help to mitigate traffic patterns because persons attending services would stay later, thereby reducing afternoon peak hour traffic.

The Howard County Department of Recreation and Parks' September 4, 2009 comments notes the use of Cedar Lane Park during religious services at the Dar Al-Taqwa religious facility, stating, "[t]he County should not be expected to provide overflow parking to this facility with their proposed expansion. The County is requesting that there be enough additional parking added along with that [] proposed [by the] proposed Daycare/Preschool expansion, to accommodate the religious services parking."

Anthony Ritrivi introduced into evidence a traffic and parking report prepared by a neighbor who was not in attendance at the hearing (Opponents' Exhibit 1). Included in the Exhibit are 12 photographs taken on November 6, 2009 between 1:52 p.m. and 2:30 p.m. These photographs show cars parked along both MD 108 shoulders for some distance, and in Property's deceleration and acceleration lanes. They also depict cars parked in the Cedar Lane Park driveway, in a substantial portion of the park's parking lot, and on park lawn. Pedestrians can be seen walking in the MD 108 travel lanes, and crossing MD 108.

Thomas Showe testified to the difficulty of exiting Beech Creek Drive on Friday afternoons and religious holiday or holy days due to the number of cars parked along MD 108.

12. Hugh Truby, whose property adjoins the Property on its northern lot line, testified to supporting the expansion and explained that the amendments to the plan are intended to restore the rural character and views from his property.

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 "Rural Conservation" land use. Religious facilities and daycare centers are presumptively compatible and appropriate in an RC district. The religious facility has existed at the site for several years.

As the Technical Staff Report ("TSR") observes, most rural religious facilities and their associated schools and child day care centers are generally sited on larger properties

to meet well and septic requirements. In this case, however, the Property's size is not an issue because the County granted the Petitioner access to public water and sewer, which allows the site to accommodate the existing and proposed uses, in accordance with the General Plan. This access accords with the General Plan's Planned Service Area policy, which recommends limiting any expansion of the service area to provide for to a public or institutional use, such a religious facility (Page 98.1). Because the General Plan itself contemplates the expansion of the religious facility and the affiliate day care center, the proposed uses are inherently harmonious with that plan.

Intensity of Use

Pursuant to Section 131.B.1, my evaluation of the "intensity" of the proposed use or combination of uses is a three-part test. The first test evaluates "intensity" in terms of the location of the site with respect to access streets. In the second test, "intensity" is evaluated in terms of the size of the site in relation to the use. In the third test, the "intensity" of the proposed conditional use in combination with other conditional or permitted uses is evaluated in terms of the adequacy of the proposed buffers and setbacks. Absent specific recommendations or policies in the General Plan that the use would be inharmonious, if the proposed use or uses pass muster under these three tests, I must conclude the nature and intensity of the proposed use is harmonious with the Plan.

a. The location of the site with respect to streets giving access to the site. Based on the evidence and testimony of record, I conclude the location of the streets giving access to the site is adequate to support the nature and intensity of the existing and proposed uses, subject to the traffic and parking conditions of approval discussed below

in the adverse impacts evaluation. There is no credible evidence suggesting the driveway access and the acceleration and deceleration lanes themselves provide inadequate access to the site. There are no reported accidents at the driveway access. As discussed below, while overall traffic levels will increase, the persons who drop off and pick up children in daycare, daycare staff and the users of the expanded religious facility will generally not enter and leave the site at the same time.

b. The size of the site in relation to the uses. The lot coverage for the religious facility use, including the proposed expansion, the new daycare use and Building A, is about 10 percent, which is less than the 25 percent maximum religious facility conditional use lot coverage standard.³ The intensity of the religious facility use as proposed to be expanded is therefore relatively low for this type of use. I conclude the size of the site in relation to the proposed expansion of the religious facility use is adequate to support the nature and intensity of the proposed uses.

c. The overall intensity and scale of the combined uses on the site. To meet the third "intensity" test, the Petitioner must demonstrate the appropriateness of the intensification of uses and scale, based on the adequacy of the proposed buffers and setbacks. In this case, the religious facility and day care uses meet or exceed the setback and will be adequately buffered, even with the lesser setback approved (see Part III).

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

³ Section 103.A.90 of the Zoning Regulations defines lot coverage as "[t]hat portion of a lot which, when viewed directly from above, would be covered by a structure or any part of a structure."

measured under Section 131.B.2's four "adverse effect" criteria": (a) physical conditions, (b) structures and landscaping, (c) parking areas and loading, and (d) access. Any assessment of a proposed conditional use under these criteria initially recognizes that virtually every human activity has the potential for adverse impact. Zoning recognizes this fact and, when concerned with conditional uses, accepts some level of such impact in light of the beneficial purposes the zoning body has determined to be inherent in the use. The test here, then, is not whether the proposed uses would have an adverse impact on the neighborhood, but rather whether there are facts and circumstances showing the particular use proposed at the particular location would have any adverse effects greater than those inherently associated with such a 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). Subject to the conditions of approval set forth below, the Petitioner has met its burden of presenting sufficient evidence under Section 131.B.2 of the Zoning Regulations to establish this proposed use will not have adverse effects on vicinal properties beyond those ordinarily associated with an expansion of a structure used primarily for religious activities and for a daycare center in an RC zoning 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 testimony and evidence indicate the proposed uses, being primarily indoor uses, will not generate inordinate noise, significant outdoor lighting or other physical effects detectable within the neighborhood. With respect to Buildings B and C, the Petitioner has agreed to enhance the landscaping along the northern property line, which reduce any increase in noise emanating from the outdoor play area, and to install and maintain motion sensors on the existing wall pack lights on the north and northeast side of Building B and on the proposed northwest and northeast walls of Building C. Additionally, the Petitioner is proposing to erect a solid wall along the property lot lines abutting Parcels 16 and 17. Consequently, I conclude the Petitioner has adequately shown that noise, lighting or other physical conditions generated by the proposed uses will not be greater than that which is ordinarily associated with an expanded structure used primarily for religious purposes and a daycare center.

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.

Based on the evidence, I conclude the Petitioner has met its burden of demonstrating the proposed uses comply with Section 131.B.2.b. The record indicates the height of all structures will be less than the maximum permitted. All landscaping buffers meet county standards and there is no material evidence that the inherent operational characteristics of the proposed uses will inordinately discourage the use of adjacent land and structures, as is discussed below.

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.

A key issue in this case is whether the size of the proposed parking areas is adequate for the proposed uses. The Amended Conditional Use Plan complies with the required number of parking spaces for existing religious facility, its proposed expansion and the new daycare center use. Nonetheless, the Petitioner's witnesses frankly acknowledged the problems associated with Friday prayer service parking needs, which regularly result in overflow parking in the Property's acceleration and deceleration lanes, along both MD 108 shoulders and in Cedar Lane Park across the street. On Friday afternoons, persons attending prayer service fill up the park's parking lot, the driveway and even park on the lawn. The Howard County Department of Recreation and Parks is unhappy with the facility's use of Cedar Lane Park and has requested there be enough additional parking to accommodate the additional uses.

In my view, considering the testimony concerning the actual parking needs of the religious facility on Friday afternoons in light of the testimony that, as a general practice, persons attending Friday prayer services would be staying to use the new facility or pick up children in daycare, the proposal represents the limit of what can be considered an appropriate use for the site. Recognizing this, the Petitioner has proposed increasing the 110 existing spaces to 210 to help alleviate parking along MD 108. Although these additional spaces will certainly provide some relief, and considering the Opposition's uncontradicted photographic evidence, I am persuaded of the strong likelihood that

persons who remain onsite after Friday prayer services are likely to continue using MD 108 and Cedar Lane Park for "overflow" parking. Certainly, there is no mechanism in place to ensure these persons will actually park onsite.

For these reasons, I am imposing the following parking-related conditions on my decision to grant the petition. First, persons attending Friday services at the religious facility and/or remaining to use the facilities in Building C shall not park in the site's deceleration and acceleration lanes, along MD 108 or in Cedar Lane Park. Second, the Petitioner shall prepare a parking management plan. This plan shall detail the steps the Petitioner will undertake to prohibit parking in the site's deceleration and acceleration lanes, along MD 108 and in Cedar Lane Park and to manage traffic. This plan will also detail how the Petitioner will address infractions of any parking violations, and include alternative methods for transporting attendees to Friday afternoon services, such as buses or some other type of transport. The entirety of the parking management plan shall be noted in detail on the Site Development Plan.⁴

The imposition of these conditions is supported in law by Section 131.N.39 of the Zoning Regulations, as noted below in Part II. This section prohibits religious facilities from using accessory parking facilities if an arterial highway of any category separates the lot containing the parking facility from the lot containing the principal use. In short, the Petitioner is barred from using Cedar Lane Park for overflow parking. Section 130.C provides additional legal grounds, instructing me not to approve an application if the use

⁴ If the Petitioner is unable to comply with these conditions, the proposed expansion is necessarily too intense for the site and the Petitioner must explore alternate means of providing onsite parking, such as using its adjoining property.

would menace public safety, the general welfare or result in dangerous traffic conditions. Clearly, a use that condones pedestrians crossing or walking along MD 108, an arterial highway, is a menace to public safety, to general welfare, and a dangerous traffic situation.

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.

Subject to the parking management plan conditions of approval, the existing access drive will continue to provide access for the uses on the Site and will likely provide access with adequate sight distance, based on actual conditions. Further evaluation for safe access and adequate sight distance will be conducted at the site development plan stage and may result in design refinements.

II. Specific Criteria for Structures Used Primarily for Religious Activities
(Section 131.N.39)

a. Lot coverage shall not exceed 25 percent of lot area.

Based on the floor area information on the Amended Conditional Use Plan October 2009, the estimated lot coverage is slightly more than nine percent. Even with the inclusion of Building A, whose use is unknown, the petition complies with Section 131.B.N.39.a.

b. Structures used primarily for religious activities 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 proposed Building C will be no higher than 26-30 feet, which is less than the 40-foot maximum height permitted as a matter of right under Section 104.E.2 of the Zoning Regulations. This section is therefore inapplicable.

c. 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 subsection 133.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.

These criteria do not apply because the petition is not proposing accessory parking on a separate lot. However, as explained above, these requirements bar attendees of the expanded religious facility or the daycare center from using Cedar Lane Park as an accessory parking facility.

III. Specific Criteria for Child Day Care Centers and Nursery Schools, Day Treatment and Care Facilities (Section 131.N.13)

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

As a condition of approval, the area of the driveway used for dropping off and picking up passengers shall be closed off and the circulation area (including the entrance

driveway) will be denoted by traffic cones and/or signage, in accordance with Section 131.N.13.a.

b. For child day care centers or nursery schools in industrial or commercial districts, outdoor play areas shall be fenced, screened and located to minimize exposure to noise and other emissions from roads, parking areas, and industrial activities.

This section does not apply.

c. The minimum lot size for child day care centers shall be 500 gross square feet of lot area per child.

The minimum lot area for 75 children is 37,500 square feet and the Property is more than 6 acres in size. The proposed use complies with Section 131.N. 13.c.

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

The proposed playground will be located between and just north of Buildings B and C, as depicted on the Amended Conditional Use Plan for Phase III, which also notes the playground will be fenced and depicts additional buffering along the northerly areas. Additionally, the playground is buffered from the adjoining properties to the north by a forest conservation easement. The proposed use complies with Section 131.N. 13.d.

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

The parking lot enlargement will be located and landscaped appropriately, based on the Amended Conditional Use Plan, which will minimize the addition's visibility, in accordance with Section 131.N.13.e.

f. The design and massing of proposed structures or additions to existing structures shall be generally compatible in scale and character with residential properties in the vicinity of the site, as

demonstrated by architectural elevations or renderings submitted with the petition. Additional setbacks from property lines and landscape buffering shall be required if necessary to make the appearance of the site compatible with surrounding residential properties.

The elevations introduced into evidence depict a rather plain, somewhat boxy structure. The Petitioner has agreed to construct the northwest side of Building C in a darker color, a condition that I am requiring for all four facades to minimize its massing. Building C will be buffered from adjoining residential properties by the existing and additional landscaping. The scale is compatible with vicinal residential properties. Although a few area residents testified they would like Building C to have more character, the structure's plain character is nonetheless generally compatible with area residential properties, if only because it will not "catch the eye" of passersby. The petition accords with Section 131.N.13.f.

g. For facilities in residential districts with a capacity of more than 30 children or adult clients at one time, the following standards apply:
(1) The site has frontage on and direct access to a collector or arterial road designated in the General Plan, except that expansions of a conditional use that was approved prior to the effective date of Council Bill No. 11-2001 are permitted.

The proposed use fronts on and has access to a Minor Arterial, in accordance with Section 131.N.13.g(1).

(2) Buildings, parking areas and outdoor activity areas will be at least 50 feet from adjoining residentially zoned properties other than public road right-of-ways.

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:

(a) 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 (b) 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 residential properties.

(3) At least 20 percent of the area within the building envelope shall be green space, not used for buildings, parking area or driveways. The building envelope is formed by the required structure setbacks from property lines and public street rights-of-way.

The proposed Building C will be sited more than 50 feet from the surrounding residentially zoned properties.

The Petitioner is seeking a reduction in the 50-foot setback to 30 feet for parking areas within the setbacks for the residentially adjoining Parcel 16. To the criteria for this reduction, Note 15 on the Amended Conditional Use Plan states that about 24 percent of the area within the building envelope will be green space. Additionally, the Petitioner is proposing to construct a solid fence along the common property line, as is depicted on the Amended Conditional Use Plan.

Because the solid fence will be combined with existing landscaping, and considering the relative distance of the sole adjoining residence from the proposed parking areas, I conclude the petition accords with Section 131.N.13.g(2) and may be granted.

ORDER

Based upon the foregoing, it is this 7th day of December 2009, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the petition of Dar Al-Taqwa, Inc., to enlarge an existing religious facility conditional use for nonreligious assembly uses, pursuant to Section 131.N.39 of the Howard County Zoning Regulations (the "Zoning Regulations") and for a new Child Day Care Center and Nursery School, Day Treatment and Care Facility, pursuant to Section 131.N.13 of the Zoning Regulations, on property is located in an RC-DEO (Rural Conservation-Density Exchange Option Overlay) Zoning District is hereby **GRANTED;**

Provided, however, that:

1. The conditional uses shall be conducted in conformance with and shall apply only to the uses described in the petition and depicted on the Phase III Conditional Use Plan dated July 2009, as amended October 2009, and not to any other activities, uses, or structures on the Site.
2. There shall be no religious assembly use of Building C, including, but not limited to prayer services. Building C shall not contain a prayer hall.
3. The Petitioner shall denote the area and location to be dedicated to the day care use in Building C on the Site Development Plan.
4. The Petitioner is prohibited from using the site's acceleration and deceleration lanes, MD 108 and Cedar Lane Park for parking.
5. The Petitioner shall detail a parking management plan on the Site Development Plan (as a specific note). This plan shall detail: a) the steps the Petitioner will undertake

to prohibit parking in the site's deceleration and acceleration lanes, along MD 108 and in Cedar Lane Park and to manage Friday afternoon prayer service traffic, b) alternative methods for transporting attendees to Friday afternoon services, such as buses or some other type of transport, and c) how the Petitioner will address infractions of any parking plan violation.

6. Building C shall be constructed in a darker color than Building B.
7. The playground equipment in the front section of the Property shall be removed.
8. The Petitioner shall note the use of Building A on the Site Development Plan.
9. 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: 12/17/09

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.