

IN THE MATTER OF : BEFORE THE  
**PATMOS LODGE #70 A.F. and A.M.** : HOWARD COUNTY  
Petitioner : BOARD OF APPEALS  
 : HEARING EXAMINER  
 : BA Case No. 11-035C

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**DECISION AND ORDER**

On March 19, 2012, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Patmos Lodge #70 A.F. and A.M. for a Nonprofit Club/Lodge Conditional Use in an R-20 (Residential: Single Family) Zoning District, filed pursuant to Section 130.B.2 of the Howard County Zoning Regulations (the "Zoning Regulations").

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

Andrew Robinson, Esq., represented the Petitioner. Frank Manalansan, Stephen Brent Morris, James Citro, Sr., and Janis Sklaw, and testified in support of the petition. Frederick Polcari testified in opposition to the petition.

The Petitioner introduced into evidence the exhibits as follows.

1. Conditional Use Plan, November 12, 2011
2. Site, aerial photographs
3. Building Elevations
4. Photographs of property
5. Clarksville Pike, sight distance photographs

**FINDINGS OF FACT**

Based upon the evidence presented at the hearing, I find as follows:

1. Property Identification. The property is located at the south side of MD 108 about 1,200 feet west of Centennial Lane in the 5<sup>th</sup> Election District. It is officially identified as Tax Map 29, Grid 18, Parcel 106 and is also known as 10425 Clarksville Pike (the Property).

2. Property Description. The Property is generally rectangular in its rear portion. Along the Clarksville Pike section, two of the three western lot lines wrap around Parcel 105. It is currently improved with a single-family detached dwelling sited in the Property's northeastern area and a garage in the back section. Currently, two gravel driveways on either side of the dwelling provide access to the Property. The western entrance appears to have once provided access to a now-demolished large building. Wooded areas can be found around the dwelling and along the southeastern area. Elevation is lowest along the road frontage and the land rises to the high point in the southeast corner.

3. Vicinal Properties. To the north, across MD 108, the RC-DEO (Rural Conservation: Density Exchange) zoned property is a farm with an Agricultural Land Preservation Easement. All adjoining properties on the south side of MD 108 are zoned R-20. Lots 13, 14, 15, and 16 of the Beaverbrook Section 5 subdivision are each improved with a single-family detached dwelling fronting on either Dover Court or Durham Road. Parcel 105 to the west is improved with a commercial structure and related accessory structures confirmed as a nonconforming tavern use in Board of Appeals Case No. 02-005 and enlarged in Board of Appeals Case N. 03-009NV.

4. Roads. MD 108 in this location has two travel lanes and about 30 feet of paving within a proposed 150-foot right-of-way (ROW). The posted speed limit is 45 MPH. According to the Technical Staff Report (TSR), the estimated sight distance from the proposed entranceway is more than 750 feet to the east and west. State Highway Administration data reports the traffic volume on MD 108 west of US 29 was 36,381 average annual daily trips as of March 2011.

5. Water and Sewer Service. The Property is located within the Metropolitan District and the 0-5 Year Service Area for Water and Sewer. It is currently served by private well and septic.

6. General Plan. The Property is designated Residential Areas on the 2000 General Plan Policies Map 2000-2020. MD 108 is depicted as a Minor Arterial Road on the Transportation Map 2000-2020.

7. The Conditional Use Petition Request. The Petitioner is intending to raze the existing structure and erect an approximately 20-foot high, 50-foot by 115-foot Masonic lodge facility with a finished basement near the west side lot line in the Property's southern area. Access is to be provided via a short paved driveway leading to an elongated paved parking lot and vehicle circulation area and a one-way "drop-off" lane along the facility's front. Fifty-eight parking spaces are proposed. A trash receptacle would be located near the southeastern corner of the facility. A privacy fence is proposed along the Property's perimeter. Access to the facility would be restricted when not in use. The Petitioner is proposing to connect to public water and sewer. The existing well will be used for irrigation.

The Petitioner is also seeking a reduction in the 50-foot conditional use category west property line setback imposed by Zoning Regulations Section 131.N.36.a (see below) to 20 feet. In support of the reduction, the Conditional Use Plan is proposing a privacy fence along the west property line in addition to any Landscape Manual requirements.

8. Agency Comments. The State Highway Administration (SHA) does not object to the proposed use and notes that the proposed access must meet SHA access permit requirements. The Howard County Health Department comments it must approve the conversion of the potable well to irrigation prior to building permit approval. The Howard County Fire Department notes the parking area must have a 45-foot turning radius around the parking area and comments that an access box will be required for the building and gate.

9. Stephen Brent Morris testified that the Lodge is seeking permanent quarters. Meetings start at around 7:30 p.m. and members gather around 7:00 p.m. Meetings adjourn between 9:30 and 10:00 p.m. There will be no standing bar. There will be no commercial kitchen, maybe only a reheating kitchen and an area to prepare light meals made from food brought in by lodge members. No bingo nights or other similar events are held. There are no employees. The lodge would have a main lodge space with seating along the sides. Other rooms are used for storage, record-keeping, committee meetings, other non-official meetings, possibly a small library and a member lodge might like a dedicated room.

10. Mr. Morris further testified that the proposed uses include monthly lodge meetings, officers meetings, and membership learning meetings. Patmos Lodge would hold about one meeting a week. The lodge may also rent spaces to other lodges, which is common. The

building could therefore be used 3-4 times a week. There may be an occasional barbecue, but no outside activity is proposed, other than parking. The proposed building will have muted colors to blend into the community. The lodge reached out to the community in an informal meeting to discuss the plans and many of the design features came from the community.

11. In an exchange between Mr. Morris and the Hearing Examiner about those atypical occasions when a lodge anticipates a large attendance, Mr. Morris agreed that the lodge would provide a traffic management coordinator to manage ingress/egress.

12. It was also Mr. Morris' testimony that other lodges are located in residential areas.

13. According to Mr. Morris, the lodge does not want to provide parking to other area uses, hence the proposed gate.

14. Frank Manalansan, the land surveyor for the lodge, testified that two bio-retention ponds would be located near the front of the site and that these would be designed as distinct site features. Twenty-five percent of the site will be open space. Petitioner's Exhibit 3 depicts current conditions on the site, including substantial perimeter and landscape vegetation.

15. As Mr. Manalansan further testified, a preliminary study indicates sight distance is adequate and that no acceleration or deceleration lanes are required. These sight distances are visible in the photographs comprising Petitioner's Exhibit 3. The new driveway entrance would be sited near the western edge of the Clarksville Pike front property line.

16. Concerning the Technical Staff Report's (TSR) comments that the parking space calculations do not include the square footage of the basement, Mr. Manalansan testified that the Zoning Regulations parking requirements do not provide specific parking requirements for

the proposed use. If the Petitioner later proposes to use the basement for an alternative use, it would have to redo its parking calculations.

17. James Citro, Sr., testified to residing next to the Property. His property adjoins the rear property line. In his opinion, the proposed facility is the best use for the Property considering what is happening to the adjoining property and further down Clarksville Pike.

18. Janis Sklar testified to residing next to the Property. Her property adjoins the southeastern corner of the Property. She supports the proposed use. She would likely be the property owner granting the easement to allow the facility to be served by public water and sewer.

19. Frederick Polcari, who also resides in the adjoining Beaverbrook subdivision, testified in opposition to the proposed conditional use. In his opinion, the use is one of many commercial-like uses operating along the highly trafficked MD 108, which experienced a high volume of traffic accidents. He would not object to the use if the facility were to be used only by the Patmos Lodge.

### **CONCLUSIONS OF LAW**

Based upon the foregoing Findings of Fact, the Hearing Examiner concludes 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. Lodges are presumptively compatible with this land use.

The Nature and Intensity of the Use. The proposed use is a small institutional use of low to moderate intensity and would be an appropriate transitional use between the commercial use to the west and the residential neighborhood to the east and south. The majority of activities and uses will occur indoors and the use will be well separated from vicinal residential uses. Petitioner's request to reduce the western setback will aid in this separation.

The Size of the Site in Relation to the Use. Because the Petitioner meets the requirements for a reduced setback, the size of the site for such a low or moderate intensity use is appropriate and the proposed expansion will comply with all other bulk and open space requirements.

The Location of the Site With Respect to Streets Giving Access to the Site. The proposed lodge will front on and have access only from an arterial highway.

The Appropriateness of the Conditional Use in Combination with a Permitted Use on the Site. The proposed expansion will not be combined with a permitted use.

**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 lodge will not have adverse effects on vicinal properties beyond those ordinarily associated with a lodge in the R-20 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 proposed use is a predominately-indoor use, 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 locations of the structure, fencing, and landscaping (including existing vegetation) are intended to buffer the proposed use from adjacent residential uses. There is no evidence that the proximity of the structure to the adjoining commercial use to the west will hinder or discourage its use. The proposed structure, fences and extent of the landscaping are such that they will not 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.

As the TSR explains, the parking provisions of the Zoning Regulations (Section 133.D) do not establish minimum parking requirements for lodges. The proposed calculation of 58 parking spaces appears to be based on the 10 space per 1,000-sq. ft. requirement for religious facilities and it excludes the basement, which is currently proposed as a storage use. The TSR further notes that in the absence of specified parking requirements for a specific use, a petitioner

ordinarily provides a parking needs study as provided in Section 133.D.8. If the used floor area is only 5,570 square feet (as stated in the petition) in the parking needs study, then the proposed number appears to be adequate.

As currently depicted on the Conditional Use Plan, the parking areas, driveways and refuse areas will be properly located and screened from public roads to minimize adverse impacts on adjacent properties.

**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.**

Based on the TSR and the evidence of record, the proposed driveway appears to provide safe access with adequate sight distance.

**II. Specific Criteria for Nonprofit Clubs, Lodges, Community Halls and Camps (Section 131.N.36)**

**a. 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:**

- (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 Petitioner is requesting a reduction in the requisite 50-foot structure setback to 20 feet. Pursuant to Section 131.N.36.a.(2), the Petitioner is proposed to screen the structure through existing vegetation, additional landscaping and a privacy fence.

The Hearing Examiner concludes the proposed buffering will provide an attractive and effective buffer for neighboring properties, in accordance with Section 130.N.36.a(2).

**b. 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.**

Twenty-five percent of the applicable area will be green space, in accordance with Section 130.N.36.b.

**c. Outdoor uses will be located and designed to shield residential property from noise or nuisance.**

Outdoor uses will be limited to the parking lot, the refuse area and the occasional barbeque. The proposed perimeter fence will shield residential property from noise or nuisance, in accordance with Section 130.N.36.c.

**d. The site has frontage on and direct access to a collector or arterial road designated in the General Plan.**

The site has frontage on and direct access to MD 108, an arterial road, in accordance with Section 130.N.36.d.

**ORDER**

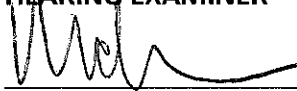
Based upon the foregoing, it is this **29<sup>th</sup> Day of March 2012** by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the Conditional Use petition of Patmos Lodge #70 A.F. and A.M. for a Nonprofit Club/Lodge in an R-20 (Residential: Single Family) Zoning District is **GRANTED**;

**Provided, however, that:**

1. The Conditional Use shall be conducted in conformance with and shall apply only to the proposed Nonprofit Club/Lodge as described in the petition and depicted on the Conditional Use Plan for the "Patmos Lodge #70 AF and AM" submitted on December 16, 2011 and not to any other activities, uses, or structures on the Property.
2. The Conditional Use authorizes the use of the parking lot on the Property only by the Lodge use and not to any other use. Parking lot use by any use other than the lodge will require a reassessment of the Conditional Use.
3. The Petitioner shall erect an ingress/egress gate and provide a Fire Department access box for the building and gate. The gate shall always be locked when not in use by the facility.
4. The Petitioner shall post a sign at the ingress/egress gate clearly stating that the parking on the site is for Lodge use only.
5. The Lodge and all affiliate uses shall provide a traffic management coordinator, preferably an off-duty police officer, to manage ingress/egress during high attendance events.

HOWARD COUNTY BOARD OF APPEALS  
HEARING EXAMINER



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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.