

IN THE MATTER OF : BEFORE THE
BETH SHALOM CONGREGATION : HOWARD COUNTY
Petitioner : HEARING EXAMINER
: BA Case No. 13-015C

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DECISION AND ORDER

On July 8, 2013, 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 Beth Shalom Congregation (Petitioner) for the expansion of an existing structure used primarily for religious activities with a trailer to be used as a Hebrew school in an R-12 (Residential: Single) zoning district, pursuant to Section 131.N.40.

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.

Richard Talkin, Esquire, represented Petitioner. No one appeared in opposition to the petition.

At the outset of the hearing, Mr. Talkin stated Petitioner agreed with the Technical Staff Report (TSR), excepting a note about certain "modifications" in the recommendation to approve the petition. He introduced into evidence Petitioner's Exhibit 1, a July 8, 2013 DPZ email to him clarifying the inadvertent mistakenness of the "modification" language.

FINDINGS OF FACT

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

1. Property Identification. The 3.85-acre parcel is located in the 5th Election District on the southwest side of Harriet Tubman Lane approximately 179 feet northwest of Freetown Road. It is referenced on Tax Map 35, Grid 24, Parcel 256 and is also known as 8070 Harriet Tubman Lane.

2. Property Description. The eastern section of the Property is improved with the Temple Beth Shalom religious facility. In the Property's western section is a 128-space paved parking lot. There is a storage shed near the rear corner of the facility. A second shed is sited in the southeast corner of the Property, next to the facility. On the facility's eastern side is an existing trailer. The Property is accessed by two driveways, one on the Property's west side and the other on the Property's east side

3. The General Plan. The Property is designated "Residential Area" on the Policies Map 2000-2020 of PlanHoward 2030. Harriet Tubman Lane is depicted as a Major Collector on the Functional Road Classification Map.

4. Zoning History. The Property has a substantial zoning history described in the TSR.

5. Vicinal properties. To the north and across Harriet Tubman Lane is Parcel 292, which is zoned R-SC (Residential: Single Cluster) and partially improved by the Board of Education Harriet Tubman Building. To its east are two, one-story single-family detached dwellings. The

eastern and western R-20 (Residential: Single Family) zoned lots are each improved with a single-family dwelling.

6. Roads. Harriet Tubman Lane has two travel lanes, a variable width and acceleration and deceleration lanes in this area. The posted speed limit is 30 MPH. As of March 2004, the traffic volume on Harriet Tubman Lane was 904 ADT (average daily trips).

7. The Conditional Use Proposal. Petitioner is proposing to add a second, 768-sq. ft., 9.5-ft. high trailer classroom to the southeast of the existing facility. The classroom will be used generally as a Hebrew school with 40 maximum students. It would operate on Wednesdays from 4:30 pm to 6:30 pm and on Sundays, between 8:30 am to 12:30 pm with. On occasion, meetings will be held in the trailer. One teacher and one aide will be employed, with a second teacher when the maximum number of students are attending.

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 the Hearing Examiner to evaluate whether the proposed enlargement of an approved 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 Howard County, the Zoning Regulations provide two policy standards by which to evaluate harmony with the General Plan.

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.

In applying this test, the Hearing Examiner is guided by the decisions of the Maryland Courts, which has said that an evaluation of whether a proposed conditional use is in harmony with the General Plan is not synonymous with "in conformity with," "consistent with" or in "compliance with" the General Plan. Rather "in harmony with" is a more flexible standard requiring a Hearing Examiner determination as to whether the particular proposed use would be "so inimical or injurious to the announced objectives and goals of the comprehensive development plan so as not to be able to co-exist with the plan's recommendations." *Richmarr Holly Hills, Inc. v. American PCS L.P.*, 117 Md. App. 607, 656, 701 A.2d 879, 903 (1997).

In the review of any proposed conditional use, the use would have to frustrate or preempt achievement of the plan's recommendations before a finding of non-harmony would be justifiable. This approach is consistent with the legal nature of a conditional use, which is presumed to be valid and correct absent any fact or circumstances negating the presumption. Where the Plan stands silent, the use will be found to meet the test. *Id.* Thus, in order to defeat the presumption of harmony, an opponent must identify from within the General Plan a use or policy that would be frustrated by the proposed use.

PlanHoward2030 designates the Property as a "Residential Area" land use. Religious facilities are a common component of residential communities. Indeed, there is no argument that a structure used primarily for religious activities is a use that is in harmony with a residential land use designation.

The proposed use is a 768-sq. ft. trailer classroom on a 3.8 acre-Property, which can easily accommodate the use. The use will be accessed from a Major Collector. The combination and scale of uses is appropriate. The Property's perimeter is landscaped and the use will meet all setback requirements.

B. Adverse Effect

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; (d) access.

The assessment of a proposed conditional use under these criteria recognizes the potential for adverse impact from virtually every human activity. 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. Thus, the question in the matter before the Hearing Examiner is not whether the proposed use would have adverse effects in an R-12 zoning district. The proper question is whether there are facts and circumstances showing that 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 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 subject to appropriate conditions of approval, the Hearing Examiner concludes the Petitioner has met its burden 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 a religious facility.

a. Physical Conditions. Whether 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 use will be conducted indoors. No outdoor play areas are proposed. There is no evidence of inordinate noise, dust, fumes, odors or vibrations.

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 trailer classroom will be buffered by landscaping and distance. 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.

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.

There are 108 parking spaces, in excess of the required parking for all uses. No new parking is proposed.

d. Access. The ingress and egress drives will provide safe access with adequate sight distance, based on actual conditions, and with adequate acceleration and deceleration lanes where appropriate.

The existing ingress and egress drives have served the existing religious facility for many years. Sight distance appears to be adequate. There are also existing deceleration and acceleration lanes.

II. Specific Criteria for Structures Used Primarily for Religious Activities (Section 131.N.40)

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

The lot coverage is about 16 percent, in compliance with Section 131.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.

Section 131.N.39.c does not apply because the petition does not propose any structure higher than 16 feet.

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.**

Section 131.N.39.c does not apply because the petition does not propose parking facilities on a lot separated by a public street.

ORDER

Based upon the foregoing, it is this 22nd day of July 2013, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the petition of Beth Shalom Congregation for the expansion of an existing structure used primarily for religious activities with a trailer classroom in an R-12 zoning district is hereby **GRANTED;**

Provided, however, that:

1. The conditional use shall be conducted in conformance with and shall apply only to the uses described in the petition and depicted on the conditional use plan submitted on April 22, 2013, and not to any other activities, uses, or structures on the Site.
2. 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: _____

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.