

IN THE MATTER OF	:	BEFORE THE
Church of the Resurrection	:	HOWARD COUNTY
Roman Catholic Congregation, Inc.,	:	BOARD OF APPEALS
Petitioner.	:	HEARING EXAMINER
	:	Case No. BA-22-017C&V

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DECISION AND ORDER

On July 28, 2022, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure (“Rules”), heard the petition of **Church of the Resurrection Roman Catholic Congregation, Inc.,** Petitioner, for the alteration (on a temporary basis) of the existing Conditional Use for the temporary modification of the site of a Religious Facility (Section 131.0.N.42) and Private School (Academic) (Section 131.0.N.48) (“Petition”) to temporarily install and use a tent in which to hold services and other school and church activities and for temporary variances to reduce the 30-foot structure and 20-foot use setbacks from a public right-of-way to 0 feet for the proposed tent and use of the tent for religious and school activities. (Secs. 108.0.D.4.b.(1)(a)(i) & 108.0.D.4.b.2).

The Petitioner provided certification that notice of the hearing was advertised and certified that the property was posted as required by the Howard County Code. I viewed the property as required by the Rules.

The Petitioner was represented by William Erskine. The following people testified in support of the Petition: Mr. Paul Sill and Msgr. John Dietzenbach. There was no one attending online in opposition to the Petition.

FINDINGS OF FACT

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

A. **Property.** The subject property, located at 3175 Paulskirk Drive (the "Property"), comprises 23.63 acres and is in the RC-20 (Residential - Single) zoning district. The Property includes three (3) parcels located at Tax Map 24, Grid 4, Parcels 1117, 456, & 980. The Property is the site of an existing religious facility and private school.

B. **Vicinal properties.** To the south are B-2-TNC zoned parcels used for commercial and business purposes. To the north and east are R-20 parcels used for Single Family Residences. To the west are R-20 parcels used for Single Family Residences and RA-15 parcels used for apartments.

C. **Roads.** Paulskirk Drive intersects the Property and has two travel lanes within a 50-foot right-of-way. The speed limit is 25 miles per hour. Per the DPZ Technical Staff Report, Traffic count data was not available for this portion of Paulskirk Drive. North Chatham Road has two travel lanes within a 100-foot right-of-way. The speed limit is 25 miles per hour. Traffic count data was not available for this portion of North Chatham Road.

D. **Water and Sewer Service.** The Property is within the Planned Service Area for Water and Sewer. The property is served by public water and sewer.

E. **General Plan.** The Property is designated Established Community on the Designated Place Types Map of PlanHoward 2030. Paulskirk Drive is a local road and North Chatham Road is a minor collector.

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F. **Zoning History.** The religious facility and private school were originally constructed in 1966 at a time when religious facilities and private schools were permitted as a matter of right in residentially zoned districts. Later, the following zoning actions were taken:

May 26, 1988 Expansion: The Howard County Board of Appeals, in BA Case Number 87-51E, approved the expansion of the existing religious facility and private school to permit the construction of a parish office and chapel building, as well as an addition to the existing private school building.

March 31, 1998 Further Expansion: The Howard County Board of Appeals, in BA Case Number 97-51E, approved the further expansion of the existing religious facility and private school, to be completed in three phases as outlined below:

Phase 1 (to be completed within 3 years of the date of the Decision and Order)

- A 17,000 square-foot addition to the existing school building
- Demolition and reconstruction of an existing foyer
- Construction of a 1,500 square-foot basement area to rear of the existing church building

Phase 2 (to be completed within 5 years of the date of the Decision and Order)

Construction of a two-story multi-purpose and gymnasium facility measuring 85 feet by 72 feet and located to the southeast of the existing school building.

Phase 3 (to be completed within 7 years of the date of the Decision and Order)

- Construction of a larger sanctuary located between the existing sanctuary and the office/chapel building (larger sanctuary was approved to have a maximum seating capacity of 1,450 seats)
- Approval for the existing sanctuary to be converted to other religious facility uses (however, approval was given to use the existing sanctuary space on Christmas and Easter for religious services)
- The addition of a new parking lot comprised of 162 parking spaces, constructed to the north of the existing improvements
- The addition of 81 parking spaces to the existing parking lot

November 30, 2020 Further (Modified) Expansion: The Howard County Hearing Examiner, in Case No. BA-19-038C, approved the further modified expansion of the existing religious facility and private school.

In accordance with the 1998 Decision & Order, the Petitioner successfully completed the improvements contemplated under Phase 1 and Phase 2 of the 1998 Decision & Order. Due to

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the lack of available funding, however, the Petitioner was not able to initiate Phase 3 of the contemplated improvements. Consequently, the approvals for the improvements under Phase 3 of the 1998 Decision & Order lapsed.

The Petitioner then filed a petition for approval of a smaller expansion of the existing religious facility and private school in lieu of the previously approved Phase 3 improvements. That petition and the plan accompanying it (the “2019 Plan and Petition”) were approved in a November 30, 2020, Decision and Order (the “2020 Approval”).

G. **Current Use.** The Property is currently used for an existing religious facility, private school, parish office and chapel.

H. **Proposal.** Petitioner filed a Petition dated May 6, 2022 (“2022 Petition”) and a Revised Plan dated May 24, 2022 (“2022 Revised Plan”), explaining and showing the temporary modifications being requested. Petitioner is proposing to erect a temporary 40 ft. x 100 ft. tent for religious services and related church and school activities during the renovation/expansion of the existing religious facility/private school building. The tent will be located internal to the site on the existing asphalt parking/driveway area and along the north side of the office/chapel building. Petitioner stated that the renovations will be completed within a twenty-four (24) month period following the issuance of building permits, and the tent will be removed after the renovation is completed.

For purposes of the 2022 Petition, the Petitioner categorized the phases of the project and conditional uses as Phase 1 and Phase 2. Because the 1998 Decision & Order includes the terms “Phase 1” and “Phase 2,” herein I will refer to the two separate phases as the **Temporary Phase 1 and Permanent Phase 2**. Temporary Phase 1 includes all parts of the 2019 Plan and Petition approved in the 2020 Approval *plus* all parts of the 2022 Petition and the 2022 Revised Plan.

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Temporary Phase 1 is projected to take up to twenty-four (24) months after issuance of building permits. **Permanent Phase 2** will begin when the temporary tent is removed and will include all parts of the 2019 Plan and Petition as approved in the 2020 Approval.

Technical Staff Report. The Department of Planning and Zoning issued a Technical Staff Report dated July 14, 2022 (“Staff Report”). I have adopted certain findings in the Staff Report as set forth herein.

I. Testimony.

1. Msgr. John Dietzenbach, Pastor. Pastor Dietzenbach explained that the flow of internal traffic on the site will change during the construction and renovations that were in the 2019 Plan and Petition and approved in the 2020 Approval. The current driveway area in front of (on the north side) the school and sanctuary building will be converted to one additional lane by removing the angled parking spaces so that it can accommodate more traffic. This is necessary because the back of the school building will not be available for drop-offs or parking due to the fact that construction staging will be taking place there.

2. Paul Sill, Sill Engineering Group, LLC. Mr. Sill is an engineer by profession with over 30 years of experience and testified that he is familiar with the requirements for conditional uses found in the zoning regulations. He and his office reviewed this proposal and the property for compliance with the zoning regulations and those related to religious and private school uses. Mr. Sill’s company prepared the 2022 Revised Plan. He testified and adopted the statements set forth in the 2022 Petition.

CONCLUSIONS OF LAW

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

A. General Criteria for Conditional Uses (Section 131.0.B of the Howard County Zoning Regulations).

- 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.**

As stated in the Staff Report, Howard County General Plan policies are not directly related to Conditional Use requests for religious facilities and private schools. The proposed temporary additions are compatible in character with the surrounding residential and commercial areas. PlanHoward 2030 recognizes that “County government, with support from community groups and private-sector partners, purposefully and diligently works to create institutional frameworks that support and enrich the lives of its residents.” (PlanHoward 2030, page 4). Also, the “Creating More Complete Communities” subsection of the “Community Design” section indicates that “Over time, however, many Established Communities can also become more complete . . . Added features could in some cases include appropriately sited and scaled new residential, institutional, or commercial development.” (PlanHoward 2030, page 137).

Thus, the proposed use in Temporary Phase 1 and Permanent Phase 2 will be in harmony with the Howard County General Plan and PlanHoward 2030.

- 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 nature and intensity of the proposed use during Temporary Phase 1 and Permanent Phase 2 will continue to be appropriate given the large size (23.63 acres) of the Property in relation to the proposed temporary use. In Temporary Phase 1, the Petitioner is proposing a

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temporary modification that does not increase religious attendees or student enrollment. The 23.63-acre property exceeds the one-acre requirement for religious facilities/private schools and all setbacks (except for temporary internal lot line and use setbacks for which a variance is requested) and conditional criteria and environmental buffers are met.

The Functional Road Classification Map of PlanHoward 2030 depicts Paulskirk Drive as a local road and North Chatham as a minor collector. The number of attendees/school enrollment are not proposed to increase in Temporary Phase 1 and Permanent Phase 2, and the access points will remain as approved in BA-97-051E.

Therefore, 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 is appropriate for the site.

- 3. 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 not be greater at the proposed site than it would generally be elsewhere in the same zoning district or other similar zoning district.**

The proposed modification during Temporary Phase 1 is the installation of a 40 ft. by 100 ft. tent. The location of the proposed tent is interior to the site and is well buffered and screened. This location is completely surrounded by either existing heavy vegetation and trees or the adjacent church office and chapel. The tent will be removed when no longer necessary. There was no testimony or 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.

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The proposed use at the proposed location during Temporary Phase 1 and Permanent Phase 2 will not have adverse effects on vicinal properties beyond those ordinarily associated with such uses. To the extent such impacts may exist those impacts certainly will not be greater at the subject site than they would generally be elsewhere in the R-20 zone or applicable other zones; particularly in light of the large size of the subject property and the fact that it is largely surrounded by commercial uses or high density residential uses. In areas where the subject property adjoins single-family detached residential development there exist well-established landscape buffers that have proven to be very effective at screening the proposed use from such vicinal properties.

Therefore, the impact of adverse effects will not be greater at the proposed site than it would generally be elsewhere in the R-20 zoning district.

- 4. 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 location, nature and height of structures, walls and fences, and the nature and extent of the landscaping on the site are such that the proposed conditional use in both Temporary Phase 1 and Permanent Phase 2 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 R-20 zone or applicable other zones. This is particularly true in light of the large size of the subject property and the fact that it is largely surrounded by commercial uses or high density residential uses. Further, the proposed use in Temporary Phase 1 is temporary.

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Therefore, the use will not hinder or discourage the development and/or use of adjacent land and structures more at the subject site than generally elsewhere.

- 5. 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.**

The Zoning Regulations require the following:

- a. Religious Facility Use: 93 parking spaces required (10 spaces per 1,000 square feet of assembly area; $9,262 \text{ sf} / 1,000 \times 10 = 93 \text{ spaces}$)
- b. School Use: 117 parking spaces required (1 space per 6 students; 700 students (maximum allowed per BA-97-051E) / 6 = 117 spaces)
- c. Office Use: 30 parking spaces required (3.3 spaces per 1,000 square feet; $9,040 \text{ sf} / 1,000 \times 3.3 = 30 \text{ spaces}$)
- d. Religious Facility Tent: 40 parking spaces (10 spaces per 1,000 square feet of assembly area; $4,000 \text{ sf} / 1,000 \times 10 = 40 \text{ spaces}$)

Temporary Phase 1 - The total number of parking spaces available during Phase 1 is 341. The school, office, and religious facility tent will operate during Temporary Phase 1 and will require 187 parking spaces.

Permanent Phase 2 - The total number of parking spaces available during Permanent Phase 2 is 351. The religious facility, school, and office will operate during Permanent Phase 2 and will require 240 spaces.

The existing and proposed parking areas during both Temporary Phase 1 and Permanent Phase 2 will be of adequate size for the particular uses. In addition, parking areas, loading areas, driveways and refuse areas will continue to be properly located and screened from public roads and residential uses to minimize adverse impacts on adjacent properties.

The parking spaces are screened from the public roads and adjacent properties by existing and proposed landscaping. There are no additional refuse areas on the Revised Plan for

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Temporary Phase 1. Dumpsters shown on the 2019 Plan and Petition and approved in the 2020 Approval are to be located on the southeastern side of the church building near the maintenance building which will not be visible from the public right-of-way or adjacent properties.

The number of parking spaces will be appropriate to serve the particular use. Parking areas, loading areas, driveways and refuse areas are appropriately located and buffered or screened from public roads and residential uses to minimize adverse impacts on adjacent properties.

- 6. 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.**

Pastor Dietzenback provided testimony about the internal traffic flow during construction. Only internal flow will change; there will be no change to ingress/egress onto either North Chatham Road or Paulskirk Road. Paulskirk Road is not a through street and no other properties west of the church use it for access. The estimated site distance is over 200 feet in both directions on North Chatham Road. According to the American Association of State Highway and Transportation Official (AASHTO) guidelines, based on an estimated stopping sight distance of 155 feet for a car going 25 miles per hour, the proposed access point on North Chatham Road appears to provide safe access with adequate stopping sight distance. Mr. Sill testified that site distances are adequate for the proposed changes. The development will not share a driveway with other residential properties.

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Thus, I find that this criterion has been met as to both Temporary Phase 1 and Permanent Phase 2.

7. The proposed use will not have a greater potential for adversely impacting environmentally sensitive areas in the vicinity than elsewhere.

The environmentally sensitive areas in the vicinity consist of floodplain, steep slopes, and a perennial stream. The stream will be protected by a 100-foot buffer. the proposed temporary modification will not have a greater potential for adversely impacting environmentally sensitive areas in the vicinity than elsewhere.

The environmentally sensitive areas are unlikely to be disturbed by the Temporary Phase 1 or Permanent Phase 2.

Therefore, the proposed use will not have a greater potential for adversely impacting environmentally sensitive areas in the vicinity than elsewhere.

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

There is a single historic structure in the vicinity of the subject property. This historic structure is designated as "The Lyons House" HO-588 on the Howard County Historic sites survey. This historic site is located at 3309 Ambra Court, Ellicott City, MD approximately 1,300 feet from the structures and uses associated with the Petition. The tent in Temporary Phase 1 will not be visible from the historic site as it will be buffered by significant distance, existing homes, and dense forest.

Therefore, the proposed use will not have a greater potential for diminishing the character and significance of historic sites in the vicinity than elsewhere as to Temporary Phase 1 and Permanent Phase 2.

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B. Evaluation of Petition according to Section 131.0.N.42 (Specific Criteria for Religious Facilities, Structures and Land Used Primarily for Religious Activities):

- 1. 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 lot size exceeds one acre (total land area is 23.63 acres). Also, the lot coverage of the conditional use area including the 4,000 SF tent in Temporary Phase 1 is 68,624 square feet (1.57 acres) or 6.6% which is less than the maximum 25% lot coverage.

This criterion is met for Temporary Phase 1 and Permanent Phase 2.

- 2. 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 height of the church structure was previously approved in BA-19-038C. The height of the church is not proposed to change with this Petition for either **Temporary Phase 1** or **Permanent Phase 2**. (The maximum permitted height of principal structures in the R-20 zoning district is 34 feet. Pursuant to Sec. 128.0.A.3, spires, steeples, and belfries are exempt from height limitations. The 576 square foot stair tower will be 44 feet tall and is not a structure that would be exempt from height limitations. The proposed height of 44 feet is acceptable because the building is setback more than 60 feet (50 +10) from property lines.

This criterion is met in both Temporary Phase 1 and Permanent Phase 2.

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- 3. The access to the facility shall not be on a driveway or private road shared with other uses.**

The access to the facility is not on a driveway or private road shared with other uses.

This criterion is met in both Temporary Phase 1 and Permanent Phase 2.

- 4. 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:**

- a. The accessory parking facility is not separated from the lot containing the principal use by an arterial highway of any category.**
- b. 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.**
- c. 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.**
- d. The entire pedestrian pathway from the accessory parking facility to the principal religious facility is a durable, paved, no-step path.**

This criterion is *not applicable to either Temporary Phase 1 or Permanent Phase 2* since neither include parking facilities which are accessory to a religious facility and are located on a separate lot.

C. Evaluation of Petition according to Section 131.0.N.48 (Specific Criteria for Schools, Colleges, Universities—Private (Academic)):

Modification of the school building was previously approved in BA-19-038C. The school building is not proposed to change with this Petition. The proposed temporary tent will be used primarily for religious services, but some school activities may take place there.

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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-20, R-ED, R-12, R-SC, R-SA-8, R-H-ED, R-A-15, R-APT, R-MH, or R-VH Districts for private academic schools, colleges and universities, which may include child day care centers and nursery schools as an accessory use, provided that:

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

The proposed pupil density is 29.62 pupils per acre ($700 \text{ pupils} / 23.63 \text{ acres} = 29.62$ pupils per acre), which is less than the maximum density permitted on a lot that is three acres or greater (100 pupils per acre).

This criterion is met in both Temporary Phase 1 and Permanent Phase 2.

- 2. In addition to meeting the minimum area requirements above, schools with residence accommodations shall provide an additional 500 square feet of lot area per site resident. Residents shall include students, staff members, caretakers and their families who reside on the site.**

The proposed private school does not have residence accommodations, so this criterion does not apply to either Temporary Phase 1 or Permanent Phase 2.

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

The maximum permitted height of principal structures in the R-20 zoning district is 34 feet. Pursuant to Sec. 128.0.A.3, spires, steeples, and belfries are exempt from height limitations. The 576 square foot stair tower will be 44 feet tall and is not a structure that would be exempt from height limitations. Therefore, the stair tower is setback more than 60 feet (50 +10) from property lines.

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Regarding the temporary tent, The maximum permitted height of accessory structures in the R-20 zoning district is 15 feet and the tent will be 13 feet tall.

This criterion is met in both Temporary Phase 1 and Permanent Phase 2.

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

The proposed additions will not impact student enrollment. The Conditional Use Plan depicts existing school bus loading that is sufficient for the current enrollment.

This criterion is met in both Temporary Phase 1 and Permanent Phase 2.

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

A type “B” vegetative buffer is proposed along the perimeters adjacent to roadways. A type “C” buffer is proposed along the perimeters adjacent to perimeter properties. The existing vegetation covering the entirety of Parcel 980, portions of Parcel 456, and the southern and southeastern portions of Parcel 1117 will remain. Existing and proposed landscaping, coupled with distance of the proposed development from property lines, will adequately shield residential property from noise or nuisance and buffer play areas, athletic fields and similar uses from residential properties.

This criterion is met in both Temporary Phase 1 and Permanent Phase 2.

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- 6. Buildings, parking areas and outdoor activity areas will be at least 50 feet from adjoining residentially-zoned properties other than a public road right-of-way.**

The closest building, parking area or outdoor activity area is approximately 87 feet from an adjoining residentially-zoned property.

This criterion is met in both Temporary Phase 1 and Permanent Phase 2 .

- 7. At least 20% 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.**

The plans for Temporary Phase 1 and Permanent Phase 2 depicts 39.5% of the area within the building envelope as green space (326,066 square feet of green space /825,026 square feet of area within the building restriction lines = 39.5%).

This criterion is met in both Temporary Phase 1 and Permanent Phase .

- 8. 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 July 12, 2001 are permitted.**

The site has frontage on and direct access to North Chatham Road (a minor collector). However, the proposals in both Temporary Phase 1 and Permanent Phase 2 are for expansion of a Conditional Use that was approved prior to July 12, 2001, so this criterion does not apply.

This criterion is met in both Temporary Phase 1 and Permanent Phase 2 .

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- 9. The minimum lot size in the RC and RR Districts for a new private academic facility is three acres. The minimum lot size in the R-20, R-ED, R-12, R-SC, R-SA-8, R-H-ED, R-A-15, R-APT, R-MH, or R-VH Districts for a new private academic facility is one acre. An existing private academic facility is not required to comply with these criteria.**

This proposal meets the minimum lot size of one acre (the total land area is 23.63 acres).

However, because this is a proposal to expand/modify an existing private academic facility, this criterion does not apply in either Temporary Phase 1 or Permanent Phase 2.

This criterion is met.

D. Evaluation of petition according to Section 130.0.B.2.a. of the Zoning Regulations (general criteria for evaluating variances) only as to Temporary Phase 1:

- 1. That there are unique physical conditions, including irregularity, narrowness or shallowness of lot or shape, exceptional topography, or other existing features peculiar to the particular lot; and that as a result of such unique physical conditions, practical difficulties or unnecessary hardships arise in complying strictly with the bulk provisions of these regulations.**

The Property has an irregular shape resulting from curvilinear rights-of-way of North Chatham Road and Paulskirk Drive and is subject to 50-foot and 30-foot setbacks from these rights-of-ways, respectively. Additionally, a stream, wetland, and floodplain area traverse the western and southern portions of the lot that the religious facility, school, office, and parking lots are located on. These unique physical conditions restrict the developable area of the Property and result in practical difficulties in complying with the required setback from the public rights-of-way.

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- 2. That the variance, if granted, will not alter the essential character of the neighborhood or district in which the lot is located; will not substantially impair the appropriate use or development of the adjacent property; and will not be detrimental to the public welfare.**

The temporary tent in Temporary Phase 1 will be in the western corner of the lot adjacent to an unimproved portion of the Paulskirk Road right-of-way. The parcel across the unimproved right-of-way is owned by the Petitioner and is included in the conditional use area. West of the proposed tent location is the North Chatham Road right-of-way. Single family detached dwellings are located to the northeast, east, and southeast and will be over 600 feet from the temporary tent. The tent will be screened from adjacent properties and rights-of-way by existing and proposed vegetation as well as existing buildings on the Property. Therefore, the variances will not alter the essential character of the neighborhood, substantially impair the appropriate use or development of the adjacent property or be detrimental to the public welfare.

- 3. That such practical difficulties or hardships have not been created by the owner provided, however, that where all other required findings are made, the purchase of a lot subject to the restrictions sought to be varied shall not itself constitute a self-created hardship.**

The practical difficulties related to the environmentally sensitive areas, irregular lot shape, and location of the Property at the intersection of two (2) public rights-of-way were not created by the Petitioner, who purchased the Property in 2010.

- 4. That within the intent and purpose of these regulations, the variance, if granted, is the minimum variance necessary to afford relief.**

The Petition has demonstrated that there are practical difficulties that justify relief from the 30-foot structure and 20-foot use setbacks from the unimproved portion of the Paulskirk Road right-of-way. The proposed location of the tent in Temporary Phase 1 will mitigate adverse

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impacts of outdoor religious service on the residential properties in the area and have the least impact to church and school attendees/staff. The tent is a temporary structure that will be removed once construction and renovation of the church/school building are complete.

Therefore, the variance is the minimum necessary to afford relief.

- 5. That no variance be granted to the minimum criteria established in Section 131.0 for Conditional Uses except where specifically provided therein or in an historic district. Nothing herein shall be construed to prevent the granting of variances in any zoning district other than to the minimum criteria established in Section 131.0.**

The requested variances are to the bulk regulations in Sec. 108.0.D and the Property is not in a historic district; therefore, this criterion does not apply.

ORDER

Based upon the foregoing, it is this 1st day of August 2022, by the Howard County Board of Appeals Hearing Examiner:

ORDERED, that the Petition of Church of the Resurrection Roman Catholic Congregation, Inc. for the alteration (on a temporary basis) of the existing Conditional Use for the temporary modification of the site of a Religious Facility (Section 131.0.N.42) and Private School (Academic) (Section 131.0.N.48) (“Petition”) to temporarily install and use a tent in which to hold services and other school and church activities and for temporary variances to reduce the 30-foot structure and 20-foot use setbacks from a public right-of-way to 0 feet for the proposed tent and use of the tent for religious and school activities. (Secs. 108.0.D.4.b.(1)(a)(i) & 108.0.D.4.b.2) shall be and hereby is **GRANTED**;

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Provided, however, that:

1. The uses during Temporary Phase 1 as defined above shall be conducted in conformance with, and the conditional use and variances shall apply only to the uses and structures as described in, the Petition filed on or around May 6, 2022, and the Revised Conditional Use Plan dated May 24, 2022, and not to any other activities, uses, structures or additions on the Property; and
2. The “Temporary Phase 1 Conditional Use Termination Date” shall be the date that is the *earlier* of:
 - a. twenty-six (26) months from the date of this Decision and Order (October 1, 2024), or
 - b. thirty (30) days from the date that renovation and construction to complete the changes allowed in Permanent Phase 2 are completed.
3. As of the Temporary Phase 1 Conditional Use Termination Date:
 - a. the temporary uses and variances allowed during Temporary Phase 1 as defined above shall cease, and the approvals herein relating to the installation and maintenance of the temporary tent shall be void;
 - b. the tent installed per the Revised Conditional Use Plan dated May 24, 2022, shall be removed from the Property and the Property where the tent was installed shall be returned to its previous state; and

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Church of the Resurrection
Roman Catholic Congregation, Inc.**

- c. the uses and approvals relating to Permanent Phase 2 that were approved in the November 30, 2020, Decision and Order (the “2020 Approval” as defined above) shall continue to remain valid and effective as if fully set forth herein.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**

Katherine L. Taylor

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.