

IN THE MATTER OF : BEFORE THE
CHIN BAPTIST CHURCH : HOWARD COUNTY
Petitioner : BOARD OF APPEALS
: HEARING EXAMINER
: BA Case No. 11-009C

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DECISION AND ORDER

On July 28, 2011 and October 13, 2011, 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 Chin Baptist Church (Petitioner) for Conditional Use approval of a Structure Used Primarily for Religious Facilities, in an RR-DEO (Rural Residential: Density Exchange Option) Zoning District, pursuant to Section 131.N.40 of the Howard County Zoning Regulations (the Zoning Regulations).

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

Thomas Meachum, Esquire, represented the Petitioner. Zo Tum Hmong, C Duh Kam, Lalbat Cinram, Tin Tin Tum, Siang Dun, Monica Uk, Patrick Richardson and Mike Nalepa testified in support of the petition. David Mister, Esquire, represented Opponents Brigitte Droegemeyer, Jeff Hyde, Bill Blackart, Dan Caufield, Lynn Young, Richard Tufts, Cathy Quinn, John Quinn, Jen Wendel, Wade Wendel, Dave Moyer, Holly Moyer, Karen M. Keller, Thomas A. Keller, Adeline Stocks, Bradley E. Walsh, Bette N. Walsh, Joe Stellone, Heidi Gaasch, Steven Cersovsky, Tim

Beltz, Stuart Balderson, Marie, Balderson, Lisa Preece, Leo Emond, Tie Wineman, Pat Wineman, David Yungmann, Lisa Shackelford, Sherry Sullivan, Mike Knowles, Bob Altieri, Diane Altieri, Michael Preece, John Milani, and Jaci Milani.

Richard Tufts, Bill Blackart, Dan Caulfield, Bridgette Droegemeyer, Scott Ortel, John Milani, Elisabeth Hobbs Blackart-Lioi, John Halper, Holly Moyer, Jeff High, Heidi Gaasch, Stuart Balderson, Marie Balderson, Christie Baehr, Tom Keller, Georgia Lee More, Robert Moore, Bradley Walsh, John Quinn Cathy Quinn, and Lew Glassmire testified in opposition to the petition.

Petitioner introduced into evidence the exhibits as follows.

1. Aerial photograph of Property

Opponents introduced into evidence the exhibits as follows.

1. Letter from Concerned Citizens of Western Howard County authorizing Richard Tufts to testify on its behalf, June 6, 2011
- 2A. Information about Gwyndl Oak Estates Homeowners Assoc., July 24, 2011
- 2B. Resolution of Board of Directors of Gwyndl Oak Estates Homeowners Assoc., July 25, 2011
- 2C. Resolution of members of Gwyndl Oak Estates Homeowners Assoc., July 25, 2011
3. Map depicting services, commercial uses, local services, Baptist churches, parks
- 4A-AM. Notebook of photographs
5. Map of Howard County 5th Council District
- 6A-C. Web based maps and Information about Howard County Parks and Western Regional Park

FINDINGS OF FACT

Based upon the preponderance of evidence presented at the hearing, the Hearing Examiner finds the following facts:

1. Property Identification. The subject property is located in the 4th Election District

on the southwest corner of the McKendree Road intersection with Hobbs Road. The Property is referenced as Tax Map 14, Grid 11, Parcel 217, Lot 2 and is also known as 2510 Hobbs Road (the Property.)

2. Property Description. The 10.02-acre, generally rectangular corner lot is currently improved with a highly visible frame barn in the southeast corner of the Property. To the barn's west are a garage, an in-ground pool, and the presumed foundation of a former dwelling. A narrow gravel driveway runs from the Property's southeast corner to these improvements. The Property is mostly open lawn/field, except for a wooded area along the south lot line, the area of the former dwelling, and an area at the southwest corner of the McKendree Road intersection with Hobbs Road. Fences enclose the open areas.

The Property has a moderate slope, the high point being the site of the former dwelling. From here, the land has a gradual slope toward the northeast corner and a steeper slope to the lowest point in the southeast corner.

3. Vicinal Properties. Adjacent properties are zoned RR-DEO. To the Property's north, across McKendree Road, is the mostly wooded area of Environmental Parcel C and Parcel 44, which is improved with a two-story, single-family detached dwelling. Across Hobbs Road to the east is Parcel 108, which is improved with a one and one-half story single-family detached dwelling close to Hobbs Road, and Parcel 55, an Agricultural Preservation Easement Parcel. To the south, Parcel 189 is improved with a one and one-half story dwelling set back from Hobbs Road and well screened by vegetation. To the west, Lot 6 of Parcel 217 is a stable facility with large paddock areas and a single-family detached dwelling located about 260 feet from the

Property's southwest corner.

4. Roads. McKendree Road has two travel lanes and about 23 feet of paving within a proposed 80-foot right-of-way (ROW). The posted speed limit is 30 MPH. The estimated sight distance from the proposed driveway entrance on McKendree Road is about 600 feet to the west and about 400 feet to the east. The Technical Staff Report (TSR) comments in Footnote 1 that on May 24, 2011, Petitioner submitted updated, more detailed sight distance information to DPZ. This information reasonably coincides with staff sight distance estimates and further recognizes the need to trim back the vegetation on the south side of McKendree Road to improve the sight distance to the east. There is no current traffic volume data available for McKendree Road. According to data from the Department of Public Works, traffic volume on McKendree Road east of MD 97 was 603 average daily trips as of January 1997. Hobbs Road has two travel lanes and about 24 feet of paving within a proposed 50-foot ROW. The posted speed limit is 30 MPH. The estimated sight distance from the proposed driveway entrance on Hobbs Road is more than 260 feet to the north and more than 700 feet to the south.

5. Water and Sewer Service. The Property is served by private water and sewer.

6. The General Plan. Policies Map 2000-2020 of the 2000 General Plan designates the Property as a "Rural Residential" land use. Transportation Map 2000-2020 of the 2000 General Plan depicts McKendree Road as a Minor Collector. Hobbs Road is a local Road.

7. Zoning History. There is no record of any specific Board of Appeals, Zoning Board or DPZ case for the Property.

8. The Conditional Use Proposal. Petitioner is proposing to demolish the existing

structures and develop the Property with a new one-story religious facility. The proposed facility is a one-story church with a 13,800 sf. ft. floor area. The facility would be generally sited in the southeast section of the Property, about 60 feet from the Hobbs Road ROW and about 184 feet from the south rear lot line.

Seats. The Petitioner is proposing 350 seats

Height. 34 feet

Access. Two 24-foot wide driveways would provide access. The McKendree Road driveway would be located near the northwest corner of the Property and extend south and southeast. The Hobbs Road driveway would be sited about 230 feet south of McKendree Road and it would extend west through the Property. The two driveways would lead to a generally rectangular parking lot to the north and northwest of the church

Parking. 120 parking spaces

Lighting. Petitioner proposes pole lighting about 18 feet high with 250-watt metal halide full cutoff light fixtures. A timer will turn the fixtures off at 9:15 p.m.

Playground. An outside playground is proposed to the west of the church, about 200 feet from the closest lot line to the south

Hours of Operation: Two Sunday services are proposed: 10:00 a.m. to 12:30 p.m. and 2:00 p.m. to 5:00 p.m. The petition states parishioners will be evenly distributed between the two services. Choir practice and committee meetings will be held from 6:00 p.m.-9:00 p.m., with 30-40 persons on site at such times. Mr. Hmong testified that the playground would be used on Sundays and from 6:00 p.m. to 9:00 p.m. during other evening activities. During the week, the church pastor would maintain office hours from 9:00 a.m. to 5:00 p.m.

Dumpster. See Findings of Fact

Petitioner's Testimony

The Religious Facility and Conditional Use Plan

9. Zo Tum Hmong testified to being the founding member of the Chin Baptist church and a member of the building committee. The church currently rents space from another church in Silver Spring. The Chin Baptist church is seeking a more central location because members live in Frederick, Baltimore, Rockville, Virginia, Laurel and Savage.

Additionally, the church may only have services for 2½ hours on Sunday afternoon in the existing location, so only one service can be held. The church also has committee and other meetings and can meet only for a limited time at the current location. At the current location, parking is provided on nearby lots and the church has two passenger vans for transporting members. The current space cannot be altered because it is a rental, according to Zo Tum Hmong. The Church has 318 members, of which 98 are families. There are 250 active members (persons regularly attending services.)

10. During the week, the church pastor would maintain office hours with assistance from two employees. Mr. Hmong does not anticipate that many parishioners will be on-site during the day. Evening activities include committee meetings, choir practice, bible study, and membership and fellowship meetings. The church also has 13 special days, including Father's Day, Christmas, Thanksgiving Day, the church's birthday, and Mother's Day. No childcare is proposed. These events are held on Sundays and everyone attends the event. Since the church was founded, there have been four funerals and ten weddings on Saturdays. The church would also allow the community to use the church. Church music includes guitars and pianos.

11. On cross-examination, Mr. Hmong testified that the church has a 350-seat capacity and no permanent seats. The seating would be removed or rearranged depending on the use.

12. Patrick Richardson testified to being the civil engineer whose company prepared the conditional use plan. It was his testimony that the Petitioner amended the original conditional use plan) in response to the TSR. The Amended Conditional Use Plan (dated June 7,

2011) depicts a dumpster and additional parking spaces north near McKendree Road. The proposed dumpster is located near the center of the Property.

13. On cross-examination, Mr. Richardson testified that the religious facility would be sited on high ground, which is about 35 feet higher than roadways. The religious facility will be visible but not much higher than surrounding structures. The facility is not yet designed.

Landscaping and Elevation

14. Mr. Richardson also testified to the preparation of an alternative landscape plan (dated June 7, 2011) in response to the TSR. The revised landscaping plan moves some evergreen landscaping from the south side of Hobbs Road over to the north side. The dumpster is also landscaped and enclosed. The proposed landscaping will meet Landscape Manual perimeter requirements, according to Mr. Richardson.

15. Opponents' counsel cross-examined Mr. Richardson about comments from DPZ's Division of Land Development (DLD) attached to the TSR and concerning a pond delineated on the plan and which the Howard County GIS classifies as wetlands. Mr. Richardson explained that no investigation had been undertaken to determine if it is a wetland. If it were, a 25-foot buffer would be required. If the area of vegetation proposed to be removed to provide improved sight distance lay within the 25-foot buffer, it could not be removed, which would result in inadequate sight distance.

16. On rebuttal, Mr. Richardson testified that some trees would be taken down to provide sight distance along McKendree Road. The area where the trees would be removed is the hatched area depicted on the sight analysis plan. Only a small portion of the foliage would

be removed. Some 100 feet of substantial foliage extending for about 250 would remain. The trees in the area to be cleared are deciduous. New trees to be planted are required to be 2-2.5 inches in diameter when planted. The relocation of the vegetation in the alternative landscape plan would help motorists making turns at the intersection of Hobbs and McKendree Roads.

17. In response to questioning from the Hearing Examiner about the impact of the site's elevation, Mr. Richardson testified that the highest elevation is about 590 feet, which is where the parking lot would be located, and about 560-580 feet in the southeast corner. Mr. High's adjoining residence is lower in elevation. There is ample vegetation on site to buffer the uses.

Parking

18. Mr. Richardson testified that the Zoning Regulations require 1 parking space per 3 seats, so 117 spaces are required and 120 are proposed.

Access and Traffic

19. It was Mr. Hmong testimony that two services would help to disperse traffic. A church member survey indicated that 101 persons in 31 cars would attend morning service and 211 in 53 cars would attend afternoon services. The church also has two vans for driving up to 15 members. The survey also showed that for morning services, most members (19 cars) would use the McKendree Road access, and twelve cars would use Hobbs Road. For afternoon services, 28 cars would use the McKendree Road access and 25 cars, the Hobbs Road access. Few members would use the Hobbs/McKendree Roads intersection.

20. On cross-examination about the church's decision to select this site based on the

geography of church members, Mr. Hmong testified that 49 parishioners live in Laurel or Savage, 9 in Baltimore, 26 in Frederick, 10 in Virginia and others in various areas. When questioned about whether the church chose the proposed site in order to grow the church, Mr. Hmong testified that the church chose the site based on its location. Of course, the church anticipates growth.

21. It was Mr. Richardson's additional testimony that the proposed Ingress/egress driveways provide safe access and meet Design Manual sight distance requirements. Referring to the two-page sight distance analysis exhibit dated May 19, 2011 and submitted as a supplement to the petition he explained the required sight distance to the west is based on a Howard County Design Manual design speed of 35-37 MPH, which translates into a 530-539-foot sight distance. (Sight Distance Analysis Exhibit, Page 1).¹ On the east side, an approximately 580-583 foot sight distance can be accomplished by removing vegetation and creating an easement on the Property for Church to maintain the reduction in vegetation. On Hobbs Road, the best location for sight distance is the high point. Based on a design speed of 35-37 MPH, there is 287 feet of sight distance to north (based on a reduced speed due to configuration of road) and 477 feet to south to the south (Sight Distance Analysis Exhibit, Page 2).

22. Regarding the TSR comment about the possible need for a deceleration lane at the McKendree Road driveway, Mr. Richardson gave testimony that the scenario does not meet the Design Manual's recommendations for when an auxiliary lane should be installed. The

¹ The Hearing Examiner takes notice that the Petitioner submitted the sight analysis plans to the Hearing Examiner and DPZ on or about May 25, 2011. Because the sight distance analysis is a technical report, the Hearing Examiner postponed the hearing to a later date pursuant to Hearing Examiner Rule 7.4, which requires technical reports to be submitted at least 30 days prior to the date of the initial hearing.

Design Manual requires a 40+MPH speed, unloading and loading within driveway, and a location along a major collector road with a certain road volume. However, the Petitioner could provide one if required during the site development plan (SDP) review.

23. Traffic engineer Mike Nalepa testified that his company performed the traffic study for the proposed conditional use. The traffic study (prepared on May 18, 2011) was a traffic impact analysis (TIA) of county-designated intersections, which are determined by the access to the road, a traffic volume and capacity analysis of how intersections are currently performing, how intersections will perform based on approved (background) but not constructed development projects, and the proposed use. The base data is derived from Institute of Transportation Engineers (ITE) data, which generates trip rates for uses based on actual uses.

24. When Mr. Nalepa obtained the site plan, he reviewed the County critical intersections map and identified four intersections—MD 97 and McKendree Road, McKendree Road and Hobbs Road, McKendree Road at Rover Mill Road, and Burntwoods Road at Hobbs Road. His company conducted turning moving counts (at intersections) on weekdays and Sundays. One count was performed on Wednesday, March 30, between 7:00 and 9:00 a.m., and 4:00 to 6:00 p.m., the second on Sunday April 3, between 9:00 a.m. and 12:00 p.m. The TIA concludes that most studied intersections would operate at an "A" level of service. MD 97 at McKendree Road would operate at a "C" level during morning and evening peak hours and at an "A" level during Sunday peaks hours.

25. On cross-examination, Mr. Nalepa testified that other seasonal activities would

not necessarily affect the TIA's conclusions. Traffic counts were taken while schools were in session and the TIS included traffic from the Western Regional Park and the community center. The TIA traffic study did not count bicycles, which were observed during some counts.

26. According to Mr. Nalepa, the TIA could not consider speeding citations or any other citations because Howard County does not track this data for traffic studies, only accident data. The TIA concludes there is a low frequency of accidents.

Lighting

27. Mr. Richardson testified that the lighting would be no more than 18 feet in height with shielding to prevent light spillover. In response to questioning from the Hearing Examiner about the possibility of installing alternative lighting less than 18 feet in height, he explained that the height ensures even coverage across the parking lot.

The Dumpster

28. Mr. Newton testified that the dumpster would be 6 cubic yards in size and could be adjusted in size for a larger dumpster is needed, although the use is not anticipated to generate a lot of trash. It would be enclosed by a fence or masonry wall and landscaped. The service agreement with a private trash collector could include a condition that servicing would occur only during business hours.

Opponent Testimony

29. Richard Tufts testified as a representative of Citizens of Western Howard County. It was his testimony that the organization opposes the proposed structure because of traffic

safety. The current road system is the cause of accidents.

30. Bill Blackart testified to residing east of the site and growing up on area roads. He would not allow his children to ride their bikes on area roads. He is concerned the church will be visible because there are only deciduous trees on the surrounding preservation parcel, which in the winter would cause light to affect his home because he would be able to see the proposed structure clearly. He can see the traffic light at MD 97 and hears sounds from Western Regional Park. He is concerned about construction noise and the noise generated by the dumpster service. The size of the proposed structure is incompatible with area homes. On cross-examination, Mr. Blackart marked the location of his home on Petitioner's Exhibit 1. He has resided there since 2007.

31. Dan Caulfield testified to residing immediately south of the proposed religious facility site. He has lived there for 12 years. When he debated whether to purchase his property, he knew of several proposed uses, but was shocked to have learned that a church could be built in the middle of a rural residential area. He has witnessed accidents on McKendree and Hobbs Road. Motorists slide off the roads during bad weather. On Saturdays and Sundays, bicyclists in the hundreds cycle through the late spring and summer. He is concerned about an increase in noise from the vehicles. His house, which is about 200 feet from the common property line from the proposed church Property, is surrounded by trees, which do not shield his view of the existing barn in the winter. In his opinion, the size and height are incompatible with surrounding homes. His home is 13 feet in height. He is also concerned that the use will accommodate many more members than proposed. In his opinion, the church

should be located near a major intersection.

32. Brigitte Droegemeyer testified to residing across McKendree Road from the proposed church site. The proposed location of the existing barn is about 900 feet from her home. She would be able to see the church from her house if the vegetation along McKendree Road were removed. She purchased her property in 2008, demolished the existing home and constructed a new home, which many neighbors admire. She spent about three years looking for a lot and picked the lot because there were newer homes in the area and the area is wooded. She would not have purchased her home had she known a large church and parking lot was going to be constructed across the street. She was also unaware of the traffic levels on McKendree Road at all times of the day when she bought her home. McKendree Road is a major cut-through. Cars stack up on McKendree Road waiting to turn onto MD 97 and vice versa. In her opinion, most people attending the religious facility would use the McKendree Road access within a brief time.

33. It was Ms. Droegemeyer's further testimony that she witnessed four accidents in front of her house, including motorists running off the road onto her property. People run off the road into her yard when there is water during the wet season. She also saw a vehicle flip over at the proposed McKendree Road access. People speed through the curve along the northeast corner of the Property. She walked the religious facility site once and saw water on the area of the proposed parking lot. She has observed the other side of McKendree Road covered in water. The culvert pipe is overrun with water and the pipe runs into the intersection. There is poor drainage and water flow. Water comes from her side yard to her front yard and

over to McKendree. From the church, water flows across the road. The water was 6-8 inches in her front yard during recent heavy rains. She is also concerned about contamination to her well and septic and that the church would look more like a commercial structure. In her opinion, MD 97 is the more appropriate location for a religious facility. She is also concerned about noise because she can already hear horses, trucks, and cars. The church will add more traffic. It was Ms. Droegemeyer's opinion that there may be a problem with churches in rural residential areas. Some may be in keeping if they look nice. The current churches serve the Glenwood area. The proposed facility is incompatible because it does not serve anyone within a 10-mile radius. The parishioners will be unfamiliar with how people drive in the area.

34. Scott Ortel testified as a representative of the Gwyndl Oak Estates Homeowners Assoc. He introduced into evidence resolutions by the association board and association members in opposition to the proposed religious facility because the association supports the maintenance of the rural residential fabric of the community. There are 35 homes in the association and some are within 100 yards of the proposed site.

35. John Milani testified to residing within 300-400 yards of the Property, in Glenwood Springs. He is concerned about the impact of the use on his property because there is only one road in and out via Hobbs Road. Motorists cut through Hobbs Road from MD 32 to uses along MD 97. Noise will also be a factor. In his opinion, the new trips would come from folks who do not live within the area and these folks would not know the roads. There are better roads to handle the traffic. MD 97 is a more appropriate location for a destination church, which would be more visible and noisier when the leaves on trees have fallen. On cross-

examination, he testified that the Glenwood Springs subdivision lots generally do not abut the Property.

36. Elisabeth Hobbs Blackart Lioi testified to residing about 1,000 yards from of the proposed site. In her opinion, the intensification of activity at the proposed site would be detrimental to the community. Her mother owns adjoining property across Hobbs Road and her family home, Hobbs Regulation, dates back to 1742. She has a lot on the farm. Among the historic landmarks in the area is the former Bushy Park Farm, the resting place of a revolutionary patriot. Her family's farm is subject to a Howard County preservation easement and a nearby relative's farm is subject to a similar state easement. For this reason, the church is inappropriate to a rural area subject to agricultural preservation easements. The church does not serve her community. Referring to a map of western Howard County showing land in agricultural preservation, Ms. Hobbs Blackart Lioi testified to the location of these and other agricultural easements and county open space parcels in the area. The green area is county agricultural preservation easement land, and the brown, state agricultural preservation parcels.² On cross-examination, Ms. Hobbs Blackart Lioi testified that the brown area is the former Bushy Park Farm, which is state preservation land. Bushy Park Elementary School and Glenwood Middle School are adjacent this preserved land. Western Regional Park is right across from the state preservation land that used to be Bushy Park Farm. At the corner of MD 97 and Carrs Mill Road are two shopping centers. Some of the area in dark green (land in county preservation) lie along MD 97.

² Opponents did not introduce the agricultural preservation map into evidence.

37. John Halper testified to residing in Glenwood Springs. In his search for a new home, he looked at places that would be appropriate to his son's special needs. He is concerned about traffic from the religious facility. He is especially opposed to the facility because he does not believe it would be a benefit to the community. He would support the church if it were proposed by a group from the community.

38. Holly Moyer testified to residing in Glenwood Springs. She is opposed to the proposed religious facility because it is not in keeping with the rural character of the community. The McKendree/Hobbs Road intersection is unsafe and there is a significant amount of traffic on McKendree Road. The parishioners are not from the community so they would make more unsafe traffic. MD 97 is an appropriate location for such a use.

39. Jeff High testified to residing directly north of the proposed site, across McKendree Road. He introduced into evidence Opponents' Exhibit 3, a map depicting services (red dot), commercial uses (yellow dot), local services (blue dot), Baptist churches (brown dot) and parks (black dot).³ He marked the locations from where the photographs comprising Exhibit 4A-AM were taken on Opponents' Exhibit 5, which denotes the location of various services and houses of worship in the 5th county council district.

³ The Hearing Examiner held the record open to permit Opponents to submit a copy of Opponents' Exhibit 3, which as introduced used pushpins to denote the various uses. The Hearing Examiner takes notice that the exhibit subsequently submitted includes the location of "available parcels" contrary to her ruling excluding this information. As the Hearing Examiner explained during the proceeding, Opponents' desire to present evidence about alternative sites runs afoul of *People's Counsel for Baltimore County v. Loyola College in Maryland*, 406 Md. 54, 956 A.2d 166 (2008), which holds in part that a zoning body considering the adverse effects of the proposed use at the proposed site may not consider a reasonable selection or representative sampling of other sites within the same zone throughout the district or jurisdiction, taking into account the particular characteristics of the areas surrounding those other test sites.

40. The photographs in Opponents' Exhibit 4A-AM are intended to portray the Glenwood area, according to Mr. High. They depict a picture of the area from a resident's home, cyclists biking along McKendree Road, the areas of the trees to be removed (under alternative landscape plan), McKendree Road (4F), Hobbs Road, views of agricultural uses overlooking proposed the site, (4H), area dwellings (4I, J, L, P, R) area churches (4T, U, V, W, X, Y, Z) and lighting (4AM). These photographs are intended to provide an image of the existing community, including houses, roads, trees and small churches, which the community considers to be factors to support Opponents' request that the proposed religious facility be denied.

41. The key for Exhibit 5 indicates the schools, commercial area, local community services, and Baptist churches in a three-mile area that serves the community. It was Mr. High's testimony that the dots indicate the location of Bushy Park Elementary School, Glenwood Middle School, Western Regional Park, a community center, a library and the fire station. The yellow dots indicate commercial structures and two existing Baptist churches (brown dots). This information led Mr. High to conclude that the immediate area has a lot of traffic due to schools, parks, schools, and county structures on a substandard road system. According to Mr. High, Glenelg High School serves all Howard County and school buses cross the community. The religious facility would be better suited near the more commercial centers along MD 32, Clarkesville, the Highlands area, or Fulton. Mr. High further testified that several photographs in Opponents' Exhibit 4 depict two existing Baptist churches in the community, Sharon Missionary Baptist Church on McKendree Road and Gethsemane Baptist Church on Burntwoods Road.

42. Referring to Opponents' Exhibit 6A-C, Mr. High explained they are images from a

Howard County web site and depict the location of various county parks. Western Regional Park is the only park of its size in western Howard County and it brings a lot of traffic to the area during weekends.

43. Mr. High personally objects to the proposed religious facility because the area is rural and the existing road cannot support the use, as might a more central location. Traffic begins early in the morning on weekends and the religious facility will be a serious detriment to the community. The presence of commercial uses should be a factor in denying the religious facility because it would add to traffic and noise in the area. Any removal of trees would decrease his quality of life.

44. On-cross examination, Mr. High testified that Western Regional Park impacts his area, but is not part of his community. It attracts people from all over the county. He did not notice the tall park lights or the size of the parking area when he was there to look for a place to bike. The large, old Bushy Park Farm is across from Western Regional Park. He does not know the square footage of the churches depicted in Opponents' Exhibit 4. He was unaware of other churches in the community, including the facility at Poplar Springs, St. Michael's Church on Hardy Road, Mt. Airy Bible church on Old Frederick and Watersville Roads, St. Louis Catholic Church in Clarksville. He only knows the environment of his immediate community, not areas that may be similar to his community. He does know his immediate community but not Council District 5, although there are other areas in the district like his area. He does not know if the symbols for other places of worship on the district map are actually churches. However, on the day of the continuance hearing, he drove past two churches on Burntwoods Road and knows of

one church up near McKendree and MD 144. In response to questions from the Hearing Examiner, Mr. High testified to not knowing the names of the places of worship depicted on the council map on the photographs, their size, when they were constructed, or whether any of the facilities moved there from a previous site.

45. Heide Gaasch, Stuart Balderson, Marie Balderson, Christie Baehr, Tom Keller, Georgia Lee Moore, Bradley Walsh, Betty Walsh, John Quinn, Cathy Quinn, and Lew Glassmire are opposed to the religious facility for the reasons testified to by those who spoke in opposition.

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 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 requires the Hearing Examiner determine whether 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.

In this case, the Howard County General Plan designates the area in which the Property is located as a Residential Area. The General Plan indicates that "places of worship" are a common component of residential communities (Chapter 5, pg. 168). 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.

As discussed below, the Opposition argued that the proposed use is inappropriate in significant part because it would be too intense, would not serve the community because it would draw members from other parts of the county and beyond, and would be located in an area where land has been put into county and state preservation easements. The Opposition however, has not identified any land use or policy of the General Plan that would be frustrated or preempted by these concerns – nor am I able to find any. Indeed, as discussed below, the Hearing Authority has approved seven petitions for religious facilities in the RR district (and one expansion) since 2001, which reinforces the presumption that such uses are compatible with residential communities. Therefore, the petition complies with Section 131.B.1.b.

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 RR 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 key argument of Opponents is that the proposed facility is too big and intense for the site. From this premise, they contend adverse effects of an inordinate degree will flow from the use, including traffic hazards, noise, light, and fumes. Put otherwise, when is a religious facility too big or intense such that it will create atypical or non-inherent operational characteristics? Importantly, as noted above, the adverse impact test for a religious facility requires an objective comparison of a proposed conditional use with similarly situated uses in the same zoning district. Hence, if the size and intensity of the proposed religious facility is greater than the size and intensity of other religious facilities generally found elsewhere in the zone—and approved by the Hearing Authority--the Hearing Examiner must reasonably infer the resulting adverse effects will also be greater.

In this case, the preponderance of evidence establishes that the proposed religious facility and parking lot would not result in a facility that is larger and more intense than other

approved religious facilities in the RR zone.⁴ The Petitioner is proposing to construct a one-story, 13,800 square-foot religious facility at a maximum height of 34 feet, with 350 seats and 120 parking spaces. Additionally, the proposed lot coverage is 3.16 percent of the 10.02-acre Property, which is significantly less than the permitted 25 percent maximum lot coverage, as discussed below.⁵ A comparison of the seven religious facilities (and one expansion) approved by the Hearing Authority in the RR district since 2001 reinforces the conclusion that the proposed religious facility is not a more intense use.

RELIGIOUS FACILITIES AND RELATED USES IN THE RR ZONING DISTRICTS (2001- November 1, 2011)						
BA Case No., Petitioner Location, Zoning	Square Footage	Height	Seats	Parking Spaces	Acres	Coverage
BA 01-065C&V Good Hope Reformed Presbyterian Church 12131 Scaggsville Road RR-DEO	11,088	40	125	42	10.47	3.7
BA 02-001C Mt. Zion United Methodist Church 12426 Scaggsville Road RR-DEO	21,316	32	552	253	10.31	4.8
BA 02-027C Our Sheppard Lutheran Church South side of Highland Road, 1500 feet west of MD 216 RR-DEO	Phase 1 : 3,800 and 3,800 basement (facility) Phase 2, 12,000 addition to facility	Phase 1: 22 Phase 2: 28	Phase 1: 220 Phase 2: 146 added	Phase 1: 74 Phase 2: 49 Total: 123	6.3	=<3.2 Phase 1: 1.4-1.8, (4-5000 sq. ft.) Phase 2: (8-9,000 sq. ft.) final- 3.0 average
BA 02-033C&V Grace Community Church 11425 Scaggsville Road RR-DEO	42,000	40	See BA03-087C	691	34.06	4.3
BA 03-030C Christ Evangelical Lutheran Church 12580 Clarksville Pike RR-DEO	5,000	28	180	63	4.2	3.9

⁴ In this case, the Opponents argued that other "area churches" are less intense, but presented no objective information as to their size, intensity and number of parking spaces or that they had been approved through the conditional use petition process.

⁵ Zoning Regulations Section 103.119 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."

BA Case No., Petitioner Location, Zoning	Square Footage	Height	Seats	Parking Spaces	Acres	Coverage
BA 03-078C Grace Community Church 11425 Scaggsville Road RR-DEO	Facility: 66,791 and 6,200 balcony Youth Ministry Building: 5,333 Later additions: 25,626 total Total square footage of structures and parking : 114,000	40' *	495 seats added, 1,318 total	Phase 1: 442 Phase 2: 227 (for all Uses)	34	8.5
BA 04-011C * St. Louis Roman Catholic Congregation 12599 MD 108 RR-DEO	Phase I: 31,000 sanctuary 2,500 maintenance shed Phase II: 4,052 addition to school building	60**	1,3500	502 for both uses	17.18	12.5 both uses
BA04-007C Church of Jesus Christ Latter Day Saints 6020 Ten Oaks Road RR-DEO (2 adjoining properties subject to agricultural land preservation easement)	17,029 facility	28	254	169	12	3.2
BA07-039C Roman Catholic Archbishop of Baltimore 8300 Old Columbia Road (south of MD 216) RR-DEO	Phase 1: 22,000 for faith formation center, Phase 2: 28,000 addition to religious facility Phase 3: 3,660 balcony		1,200 total	unknown	12.47	12 for all uses
<ul style="list-style-type: none"> • Not included in averages because approved use included a private religious facility ** Increased heights are permitted with additional setbacks						

As the above table demonstrates, the average number of known parking spaces for a religious facility in an RR zone is 287.⁶ The Petitioner's 120 proposed parking spaces are well below the average. Compared to the sizes of other approved religious facilities, the 13,800 square foot facility is a reasonable size. This is borne out by the fact that the 3.7 percent lot coverage of the proposed religious facility is less than the 5.5 percent average.

All these facts establish that the circumstances of the proposed use and the proposed location would have no atypical adverse impact. I therefore conclude that these circumstances will result in the following typical adverse effects.

⁶ The number of parking spaces approved in BA 07-039C is unknown, so the average number of parking spaces is actually higher.

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 primarily indoors. Although there will be an outdoor playground it will be screened and buffered by area residential uses by the church building, by distance, by existing vegetation, and by proposed landscaping. Additionally, as a safety caution, the Hearing Examiner is requiring the playground to be fenced, which will help buffer any noise.

The parking lot and driveway will be paved to reduce dust. The uses will not generate an inordinate amount of noise, dust, fumes, odors, vibrations, hazards or other physical conditions. The Hearing Examiner therefore concludes that any of these inherent operational adverse effects resulting from the proposed conditional use will not be greater at the subject site than elsewhere in the zone or applicable other zones, in accordance with Section 131.B.2.a.

The Petitioner proposes pole lighting about 18 feet in height with 250-watt metal halide full cutoff light fixtures located evenly throughout the parking lot. This open-air parking lot lighting is intended to provide for uniform lighting throughout the facility with no dark patches or pockets. A timer will turn the fixtures off at 9:15 p.m.

With respect to Opponents' concerns about the general visibility of the lighting from their homes and properties, the Zoning Regulations require only that there be no light spill, light from a lighting installation that falls outside of the boundaries of the property on which it is located and usually results in obtrusive light. Zoning Regulations Section 134.C therefore requires the installation of fully shielded lights or partially shielded lights in such a manner that

either no light or a small percentage of light be projected above a horizontal plane through the lowest part of the lamp. The Amended Conditional Use Plan depicts a representation of the type of lighting proposed and the location of the lights, which are intended to comply with Section 134.C.

The Zoning Regulations notwithstanding, during the hearing I acknowledged one of the community's consistent concerns--the nighttime visibility of the parking lot lights in winter months because of foliage loss and the higher elevation of the site. As I explained, 18-foot high lights are typically proposed for parking lots, even though alternative lighting poles types might be used. However, without informed knowledge of lighting alternatives (such as low illumination, motion sensitive lights or Dark Skies lighting), it would not be appropriate for me to suggest, much less require it.⁷ Nonetheless, while the night visibility of the proposed parking lot lights is not an atypical impact, due to its importance to the community, it is reasonable for the Hearing Examiner to require the Petitioner to landscape the perimeter of the parking lot with evergreen trees. Subject to this condition, the Hearing Examiner necessarily concludes that any inherent operational adverse effects resulting from the proposed conditional use will not be greater at the subject site than elsewhere in the zone or applicable other zones, in accordance with Section 131.B.2.a.

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

⁷ The International Dark Skies Association has prepared a model lighting ordinance. The Petitioner in BA Case No. 10-023C proposed to use Dark Skies lighting to ensure its lighting would not interfere with nearby Howard Astronomical League programs.

adjacent land and structures more at the subject site than it would generally in the zone or applicable other zones.

At a maximum height up 34 feet, the proposed one-story religious facility is the maximum building height permitted in the RR district, and as evident from the above table, a reasonably sized structure with a 3.7 percent lot coverage, less than the 5.4 percent average. Presumably, the additional height is for a roof, but to ensure that only the first floor will be occupied, the Hearing Examiner is conditioning approval of the religious facility on there being no active use of any area above the first story.

The religious facility will comply with the structure setback from the Hobbs Road right-of-way, and greatly exceed all other setback requirements. Current vegetation and proposed landscaping will buffer the religious facility from area residences, which are located several hundred feet from the proposed facility. Opponents expressed concern that the structure would be visible in winter months, due to a loss of foliage, but as discussed about the mere visibility of a structure does not rise to the level of an atypical adverse impact. Indeed, religious facilities are highly visible landmarks throughout the RR zoning district. Although the facility would be most visible to the residential use on Parcel 44 across McKendree Road and Parcel 189, the existing vegetation, even with a loss of foliage in the winter, will buffer the uses. Petitioner also proposed an alternative landscape plan facility to improve the screening from Parcel 108 across Hobbs Road. No walls or fences are proposed.

The Petitioner has therefore met its burden of presenting sufficient evidence to establish the proposed religious facility structure 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, in accordance with Section 131.B.2.b.

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.

The 350-seat church requires 117 parking spaces and 120 will be provided. The TSR recognizes that additional parking may be required during special events and days of special religious significance, and notes that there is adequate space on site if necessary. The Parking Lot would be located away from area residences and will be buffered by existing vegetation and perimeter landscaping. Additional evergreen landscaping around the perimeter of the parking lot will provide additional screening. The dumpster will be screened, and as a condition of approval, the Hearing Examiner is requiring that servicing be done during weekday business hours and no earlier than 9:00 a.m.

The Petitioner's evidence about the location of the two driveways demonstrates they will be properly located, there being no evidence that their location would have an atypical impact on area residential properties, such as glare from vehicle headlights exiting the Property. The petition and Amended Conditional Use Plan accords with Section 131.B.2.c.

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 traffic impact study indicates that travel speeds along both roads are relatively low and the sight distance study demonstrates the ingress and egress drives will provide safe access with adequate sight distance, provided certain vegetation is removed. The removal of this vegetation will also assist motorists turning onto Hobbs Road from McKendree Road, or vice versa. Additionally, in light of the testimony about the difficulty of making these turns in a safe manner, even with the removal of vegetation, the Hearing Examiner is requiring the Petitioner to install a no-right turn sign at the McKendree Road access driveway and a no-left turn sign at the Hobbs Road access driveway.

With respect to Opposition testimony about the volume of traffic along McKendree and Hobbs Road, the TIA indicates the level of service would meet adequate public facility standards. As to their concern about the potential for accidents by parishioners unfamiliar with these roads, the Hearing Examiner may not consider speculative testimony. Additionally, this concern is not borne out in fact because there are a low number of reported accidents in the area (according to the TIA), where several regional uses—Western Regional Park, a senior center, a library, the middle school—draw large numbers of persons from other parts of the county.⁸ Subject to all conditions of approval, the existing access driveways appear to provide continued safe access, with adequate sight distance, in accordance with Section 131.B.2.d.

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.

⁸ By Opposition testimony, there appears to have been unreported, weather-related accidents along a portion of McKendree Road because of poor drainage and runoff from multiple sites. However, the Hearing Examiner lacks jurisdiction to address this issue.

The lot coverage is 3.16 percent of the 10.02-acre Property and less than 25 percent of the lot area, 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 permitted (34 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.

III. Additional Opposition Testimony

The Opposition also argued the proposed religious facility should be denied because it would be a destination use, does not serve anyone within a ten-mile radius and because the

parishioners do not reside in the area or community but will travel there from other parts of the county and beyond. Because the parishioners do not live in the area, they would be unfamiliar with the roads and would make traffic more unsafe. But as discussed above, the area already accommodates several regional or destination uses and traffic accident rates are low. These uses include the largest park in the county, a senior center, and a library. Western Regional Park itself accommodates or plans to accommodate three additional grass multipurpose fields, a tee ball field, a baseball field, five picnic pavilions, pathways, and nature/horse trails. The park is popular with cyclists. Opponents' Exhibit 6.

Importantly, the Opposition also contends MD 97 or a more central area is a more appropriate location for the use. However, the religious facility conditional use category imposes no such locational requirement. Nor is there any requirement that a religious facility serve only the residential area around the facility. Where the Hearing Examiner to assign weight to these arguments, she would run afoul of the constitutional and statutory protections afforded by the federal Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA), which requires that at a minimum, religious assemblies be treated on equal terms with nonreligious assemblies.⁹ Moreover, in RLUIPA Congress made clear public policy favors permitting churches to relocate to new sites to assembly for worship, subject, of course, to local land use regulations.

⁹ 42 U.S.C. §§ 2000cc to 2000cc-5 (2006)

ORDER

Based upon the foregoing, it is this 10th day of November 2011, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the request of Chin Baptist Church for a Conditional Use for a Structure Used Primarily for Religious Facilities, in an RR-DEO (Rural Residential: Density Exchange Option) Zoning District, is hereby **GRANTED**;

Provided, however, that:

1. The Petitioner shall install the June 7, 2011, alternative landscape plan.
2. The Petitioner shall landscape the perimeter of the parking lot with evergreen trees.
3. No active use shall be made of any area above the first story of the religious facility.
4. The playground shall be fenced.
5. The Petitioner shall install a no-right turn sign at the McKendree Road access driveway and a no-left turn sign at the Hobbs Road access driveway.
6. The dumpster shall be serviced during weekday business hours and no earlier than 9:00 a.m.
7. The Conditional Use shall be conducted in conformance with and shall apply only to the proposed religious facility as described in the petition and as depicted on the Amended Conditional Use Plan dated June 7, 2011 and not to any other activities, uses, or structures on the Property.

HOWARD COUNTY BOARD OF APPEALS

HEARING EXAMINER



Michele L. LeFavre

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.