

IN THE MATTER OF	:	BEFORE THE
The Muslim Family Center, Inc.	:	HOWARD COUNTY
Petitioner	:	BOARD OF APPEALS
	:	HEARING EXAMINER
	:	BA Case No. 19-032C

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DECISION AND ORDER

On July 21, 2020, 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 The Muslim Family Center (Petitioner) for a Religious Facility Conditional Use in an R-20 (Residential: Single) Zoning District, filed pursuant to Section 131.0.N.42 of the Howard County Zoning Regulations (HCZR).

Petitioner certified to compliance with the notice and posting requirements of the Howard County Code. The Hearing Examiner viewed the subject property as required by the Hearing Examiner Rules of Procedure. Petitioner was not represented by counsel. Richard Sobbott (Daniel Consultants), Mohammed Rahman, Ehab Hassan, Adil Daudi, Hussein Ezzeldin, Sayad Hassan, Mammen Daniel and Tarek Gebblaoul testified in support of the Petition. Stanley Leon testified in Opposition. As a result of an on the record discussion between the parties during the evidentiary hearing,

Petitioner submitted into evidence on July 31, 2020 the following exhibits, upon receipt of which the record was closed:

1. Revised Site Plan (Sheet 3 of 4) proposing additional landscaping along the northern property line.
2. Planting Alternative

FINDINGS OF FACT

Based upon the evidence of record, the Hearing Examiner finds the following facts:

1. Property Identification. The subject property is located on the southwest side of Waterloo Road, west of Snowden River Parkway. It is located in the 5th Election District, identified as Tax Map 29, Grid 18, Parcel 106 and is also known as 5796 Waterloo Road, Elkridge, Maryland (the Property).
2. Property Description. The 1.1-acre Property is rectangular in shape, is improved with a 2,560 square foot single-family dwelling and a 412 square foot shed, and has about 135 feet of frontage along Waterloo Road. The Property has a mild rise in elevation from 394 feet at the southwest corner to 416 feet at the east property line.
3. Vicinal Properties. Vicinal properties to the north, east and west are in the R-20 (Residential: Single) Zoning District. These properties are either improved with single-family dwellings, are open space, or are in the Waterloo Road right of way. The property to the south is in the NT (New Town) Zoning District and is improved with an assisted living facility and open space.
4. Roads. Waterloo Road is a Minor Arterial road and has four lanes within a variable width right of way. The posted speed is 45 miles per hour. In 2018, the traffic count on Waterloo Road was 12,590 AADT.
5. Water and Sewer Service. The Property is served by public water and sewer and is located within the Metropolitan Area and Public Service Area for water and sewer.
6. Zoning History. There is no record of any prior zoning cases for the subject property.
7. The General Plan. PlanHoward 2030 depicts the Property as "Established Community" on the Designated Place Types Map. Waterloo Road is depicted as a Minor Arterial on the PlanHoward 2030 Functional Road Classification Map.

8. The Requested Conditional Use. Petitioner is requesting approval of the conversion of the existing single-family dwelling into a 2,560 square foot Religious Facility consisting of a 818 square feet prayer hall, a 280 square foot library/prayer hall, a lounge, kitchen, and a two-car garage, all within the proposed Religious Facility. The Petitioner proposes to offer religious classes and services daily between 5:00 a.m. – 7:00 a.m. and 6:00 p.m. – 10:00 p.m. Petitioner anticipates less than 50 attendees and the maximum congregation permitted is 65. 11 parking spaces are required and 12 parking spaces, including 1 handicapped parking space, are provided. There is an existing 412 square foot shed/garage located to the rear of the dwelling which will be retained.

9. Stanley Leon, the adjacent property owner, testified that in meetings with the Petitioner, the Petitioner had agreed to intensify the proposed landscaping along the north side of the Property to buffer Mr. Leon's deck, which is at a higher elevation than the subject property and would be adversely impacted by the proposed use. Ehab Hassan confirmed this agreement and has provided a Revised Site Plan (Sheet 3 of 4) and Planting Alternative to provide the additional landscape buffering.

Mr. Leon objected to the parking lot at its current location and asked the Petitioner to move it to the rear of the existing garage. Mr. Sobbott testified that due to environmental issues, including slopes, water run-off and maintenance issues, it was not environmentally or financially feasible to move the parking lot from its current proposed location to further towards the rear of the property,

Mr. Leon also testified that the property was being poorly maintained and cars were being parked in the yard and on the sidewalk.

10. DPZ Recommendation. DPZ recommends the Conditional Use for a Religious Facility be granted with one condition which has been incorporated in the Order.

11. Agency Comments. Agency comments were received from the Department of Fire and Rescue Services and from the Resource Conservation District indicating no objection to the instant Petition.

CONCLUSIONS OF LAW

1. **General Criteria for Conditional Uses (Section 131.0.B)**

HCZR Sections 131.0.B.1-3 require the Hearing Authority to evaluate whether the proposed Conditional Use will be in harmony with the landscape uses and policies indicated in the Howard County General Plan for district in which it is located through the application of three standards: harmony with the General Plan, overall intensity and scale of use, and atypical adverse impacts.

A. Harmony and Intensity of Use

Section 131.0.B.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.

There are no policies in the General Plan, PlanHoward 2030, that can be directly related to the proposed Conditional Use requests for Religious Facilities. Religious facility land uses are historically located in Established Communities and are deemed generally compatible with residential areas.

Section 131.0.B.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 Petitioner proposes limited operations consisting of religious service/education daily from 5:00 a.m. - 7:00 a.m. and from 6:00 p.m. – 10:00 p.m. and activities will be within the building. The proposed prayer hall is only 1,089 square feet and occupancy is limited to 65 persons. The 1.1-acre site exceeds the one-acre lot size requirement and the proposal complies with all bulk regulations and conditional use criteria.

The Functional Road Classification Map of PlanHoward 2030 depicts Waterloo Road as a Minor Arterial, which is an appropriate classification for the number and types of vehicles associated with the proposed use.

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 are appropriate for the site.

B. Adverse Impacts (Section 131.0.B.3)

Unlike HCZR Section 131.0.B.1, which concerns the proposed use's harmony or compatibility with the General Plan, or Section 131.0.B.2, which concerns the on-site effects of the proposed use, compatibility of the proposed use with the neighborhood is measured under Section 131.0.B.3's six off-site, "adverse effect" criteria: (a) physical conditions; (b) structures and landscaping; (c) parking areas and loading; (d) access; (e) environmentally sensitive areas; and (f) impact on the character and significant historic sites.

Inherent in the assessment of a proposed Conditional Use under these criteria is the recognition that virtually every human activity has the potential for adverse impact. The assessment therefore accepts some level of such impact in light of the beneficial purposes the zoning body determined to be inherent in the use. Thus, the question in the matter before the Hearing Examiner is not whether the proposed use would have adverse effects in an R-20 Zoning District. The proper question is whether there are facts and circumstances showing 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 zones. *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*, 107 Md. App. 1, 666 A.2d 1253 (1995).

For the reasons stated below and as conditioned, Petitioners have met their burden of presenting sufficient evidence under HCZR Section 131.0.B.3 to establish the proposed use will not have adverse effects on vicinal properties beyond those ordinarily associated with a Religious Facility in the R-20 Zoning District.

Section 131.0.B.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 be greater at the proposed site than it would generally be elsewhere in the same zoning district or other similar zoning districts.

All activities related to the use will occur within the existing building. There is no evidence of 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. Existing exterior lighting fixtures will be replaced by fixtures with motion detectors to mitigate any potential lighting disturbances.

Section 131.0.B.3.b. 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 maximum permitted height in the R-20 zoning district is 34 feet for principal structures and 15 feet for accessory structures. The Religious Facility building is approximately 18.25 feet in height and the shed is 12.2 feet in height. The use will occur within the existing building and no new buildings or additions are proposed. The Religious Facility building will be over 180 feet from the closest residence. A Type "C" buffer is proposed along the perimeter of the north and south property lines. Additionally, Petitioner's Exhibits 1 (Revised Site Plan, Sheet 3 of 4) and 2 (Planting Alternative) exceed the landscaping required along the northern property line by Mr. Leon's deck. A Type "A" buffer is proposed along the property lines that adjoin the open space lot to the west. These vegetative buffers are required and will help screen the Religious Facility from adjacent properties.

The location, nature and height of the structures and landscaping will not hinder or discourage the development or use of adjacent land and structures more at the Property than generally elsewhere.

Section 131.0.B.3.c. The number of parking spaces will be appropriate to serve the particular use. Parking areas, loading areas, driveways and refuse areas will be approximately located and buffered or screened from public roads and residential uses to minimize adverse impacts on adjacent properties.

Pursuant to HCZR Section 133.0 of the Howard County Zoning Regulations, the off-street parking requirement for religious facilities is 10 spaces per 1,000 square feet of assembly area. The Petitioner proposes 1,089 square feet of assembly area, which requires 11 parking spaces. The Conditional Use plan shows 12 spaces, including one handicap space.

The parking lot and refuse area are screened from the adjacent properties by a vegetative buffer and from the public right-of-way by the building/existing trees.

Section 131.0.B.3.d. 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.

Precise sight distance measurements can only be determined by a detailed sight distance analysis, which is typically conducted during Site Development Plan review. The Petitioner submitted a site distance analysis showing the site distance at 500 feet in both directions. According to the American Association of State Highway and Transportation Officials (AASHTO) guidelines, based on an estimated stopping sight distance of 360 feet for a car going 45 miles per hour, the proposed access point on Waterloo Road appears to provide safe access with adequate stopping sight distance.

Waterloo Road is a Minor Arterial. To verify sight distance for Minor Arterials, AASHTO recommends an intersection sight distance analysis, which will be evaluated during Site Development Plan review.

Section 131.0.B3.e The proposed use will not have a greater potential for adversely impacting environmentally sensitive areas in the vicinity than elsewhere.

The closest environmentally sensitive area is a stream and floodplain area on the west portion of the Property. The proposed Religious Facility is over 100 feet from the edge of the 75-foot stream buffer and floodplain area. Therefore, the proposed use will not have a greater potential for adversely impacting environmentally sensitive areas in the vicinity than elsewhere.

Section 131.0.B.3.f. The proposed use will not have a greater potential for diminishing the character and significance of historic sites in the vicinity than elsewhere.

The closest historic site (HO-439) is located approximately 250 feet northeast of the Property across Waterloo Road. This historic structure is used as an office and is screened from the Religious Facility by existing vegetation. The Resource Conservation Division reviewed the proposal and has no objection to the proposed use. Therefore, the proposed use will not have a greater potential for diminishing the character and significance of historic sites in the vicinity than elsewhere.

2. Specific Criteria for Religious Facilities, Structures and Land Used Primarily for Religious Activities (Section 131.0.N.42)

Section 131.0.N.42.a. 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 Property is in the R-20 Zoning District and at approximately 1.1 acres it exceeds the 1 (one) acre minimum lot size requirement. The proposed lot coverage as shown on the Revised Conditional Use Plan is 0.07 acres (approximately 6.3%) and is below the 25% allowable maximum.

Section 131.0.N.42.b. 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 permitted height in the R-20 Zoning District is 34 feet for principal structures and 15 feet for accessory structures. The Religious Facility building is approximately 18.25 feet tall, and the shed is 12.2 feet tall, both below the maximum height limitation.

Section 131.0.N.42.c. The access to the facility shall not be on a driveway or private road shared with other uses.

Access to the Property will be provided by a 16-foot-wide asphalt private driveway from Waterloo Road which decreases in width to 10 feet, which access is not shared with other uses.

Section 131.0.N.42.d. 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 the 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 time(s) of the use 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.

The standard does not apply, as no parking facilities on a separate lot are proposed.

ORDER

Based upon the foregoing, it is this 2th day of August, 2020, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the Petition of The Muslim Family Center, Inc. for a Religious Facility Conditional Use in an R-20 (Residential: Single) Zoning District, is hereby **GRANTED;**

Provided, however, that:

1. The Conditional Use shall be conducted in conformance with and shall apply only to the uses as described in the Petition and depicted on the Conditional Use Plan (September 2019) and not to any other activities, uses, structures, or additions on the Property.
2. The dumpster shall be relocated to comply with required structure setbacks.
3. Lighting shall be residential in character and oriented away from area residences and in compliance with county lighting regulations.
4. Petitioner shall obtain all required permits.
5. Petitioner shall comply with all federal, state and county laws and regulations.
6. There shall be no parking of vehicles anywhere on the Property otherwise than in the designated parking spaces.
7. The Property shall be well maintained and the condition of any structure or hardscape shall not be permitted to deteriorate.
8. Petitioners Exhibit 1 shall be corrected to indicate the date Sheet 3 was prepared as it is currently dated 10/14/19 but was revised subsequent to the July 21, 2020 hearing. The Site Plan should be revised to correctly indicate that 12 parking spaces are provided.
9. The Petitioner shall plant a double row of 5' to 7' tall container grown Arboretums spaced at 12' feet apart. The two rows shall be parallel and 10 feet apart. The beginning of each

row shall be staggered by 6 feet apart so that the trees in the back row are located midway between the trees in the front row. The back row shall contain 7 trees and be planted parallel to the privacy fence along the northern property line. This row shall be located 5 feet from the fence. The front row shall contain 6 trees and be located 15 feet from the privacy fence. The two rows shall be centered on the line of sight from the center of the deck behind 5717 Brothers Partnership Court and the center of the proposed parking lot.

HOWARD COUNTY BOARD OF APPEALS

HEARING EXAMINER



Joyce B. Nichols

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.