

IN THE MATTER OF : BEFORE THE
COLUMBIA ASSOCIATION, INC. : HOWARD COUNTY
Petitioner : BOARD OF APPEALS
: HEARING EXAMINER
: BA Case No. 13-034C

.....

DECISION AND ORDER

On March 25, 2014, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the conditional use petition of Columbia Association, Inc. (Petitioner) to expand a Child Day Care Center and Community Hall in an R-20 (Residential: Single Family) Zoning District pursuant to Sections 131.0.N.13 and 131.0.N.37 of the Howard County Zoning Regulations (the "Zoning Regulations").

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

Counsel did not represent the Petitioner. Richard Sobott and John Brunnett testified in support of the petition. No one appeared in opposition to the petition.

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 2nd Election District on the south side of Columbia Road about 800 feet east of Hallowed Stream. It is referenced as Tax

Map 24, Grid 21, Lot 146, and is also known as 4649 Columbia Road.

2. Property Description. The 10.39-acre irregularly shaped Property is Open Space Lot of the Dorsey Hall subdivision and the site of the Dorsey Hall Neighborhood Pool. There is a one-story building in the center front area of the Property and this building sits more than 100 from Columbia Road, 180 feet from the west side lot line and more than 300 feet from the east side lot line. Two driveways off Columbia Road provide access and lead to 60 total parking areas on the building's north and east sides. A landscaped berm lies between the two entrances. To the building's south and southwest are two swimming pools. In the Property's southeast area, there is a basketball court, volleyball court and playgrounds.

3. Vicinal Properties. The eastern R-12 (Residential: Single Family) zoned properties are each improved with single-family detached dwellings fronting Maydew Mews Way and Old Dragon Path. The R-SC (Residential: Single Cluster) zoned properties to the south and southwest are each improved with single-family detached dwellings.

4. Roads. Columbia Road has two travel lanes within an 80-foot right-of-way in the Property's vicinity. The posted speed limit is 30 MPH.

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

6. General Plan. PlanHOWARD2030 designates the Property as "Established Community" on the Designated Place Types Map of PlanHOWARD 2030.

7. Zoning History. The Board of Appeals in BOA Case No. 02-015C granted the Columbia Association, Inc. a conditional use for a Day Care Center for approximately 12 children and a Community Building on July 9, 2002.

8. The Proposal. Petitioner seeks approval to expand the existing day care center and community hall with a 760-s.f. addition to the rear of the 1,805-s.f. building. The one-story building contains a bathhouse, the day care center and meeting rooms. The day care center was originally approved for 12 children and 4 staff members, and under this proposal, the use would expand to 30 children and 10 staff members. The days and hours of the day care center would remain unchanged (Monday-Friday, 6:00 a.m. to 6:30 p.m.). When the building is not in use as a day care center, it may be used for meeting space and social events from 7:00 a.m. to 11:00 p.m. A new spa pool would be constructed behind the addition. (This pool is not subject to conditional use approval.) As originally proposed, the spa pool would accommodate up to 12 persons, but the Hearing Examiner understands it has been redesigned for up to eight persons. The existing parking lot will support all uses. Five additional, striped spaces will be provided through restriping and minor curb adjustments. During pool season, three spaces next to the meeting rooms will for reserved from 5:00 a.m. to 6:00 a.m. for day care pick up.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the Hearing Examiner concludes as follows:

I. GENERAL CRITERIA FOR CONDITIONAL USES (SECTION 131.0.B)

Sections 131.0.B.1-3 requires the Hearing Authority to evaluate whether the proposed Conditional Use will be in harmony with the land uses and policies indicated in the Howard County General Plan for the district in which it is located through the application of three standards.

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.

PlanHOWARD2030 designates the Property as "Established Communities" on the Designated Place Type Maps. The community pool, day care center is a long-standing use and the building addition/expanded uses are presumptively compatible in Established Areas absent specific Plan policies that they are inharmonious.

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 proposed expansion of the child care center and community hall for a maximum of 30 children is a modest increase in intensity of use. Increased activities will occur indoors, for the most part. Even when combined with the swimming pool use, the overall intensity and size of the site is appropriate.

3. The proposed use at the proposed location will not have adverse effects on vicinal properties above and beyond those ordinarily associated with such uses. In evaluating the proposed use under this standard, the Hearing Authority shall consider whether or not:

a. 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.

Unlike §§131.0.B.1 and 2, which concerns the proposed use's harmony or compatibility with the General Plan, compatibility with the neighborhood is measured under §131.0.B.3's four "adverse effect" criteria": (a) physical conditions; (b) structures and landscaping; (c) parking areas and loading, and; (4) access.

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 has determined to be inherent in the use. Thus, the question in the matter before the Hearing Examiner is not whether the proposed use would have adverse effects in an R-20 district. The proper question is whether there are facts and circumstances showing the particular uses proposed at the particular location would have any adverse effects above and beyond those inherently associated with such a special exception [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 County*, 107 Md. App. 1, 666 A.2d 1253 (1995).

For the reasons stated below, and as conditioned, the Petitioner has met its burden of presenting sufficient evidence under §131.0.B.3 of the Zoning Regulations to establish the proposed uses will not have adverse effects on vicinal properties beyond those ordinarily associated with a child day care center and community hall in the R-20 zoning district.

There is no evidence of record regarding atypical adverse effects on vicinal properties from dust, fumes, and odors, intensity of lighting or hazards. Although some noise associated with the day care use is to be expected, presumably through playground use, there is no evidence of any inordinate noise effects and the any such noise will be buffered by existing and proposed landscaping and distance.

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.

As represented in the Conditional Use Plan, the 760-s.f. addition will be constructed to the rear of the existing building, which is some distance from all property lines and buffered from area residences by the swimming pools. There is no evidence that the proposed uses and structures would 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.

c. 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.

According to the TSR and the petitioner, the Health Department will allow a maximum of 482 persons in the existing pools, apparently, and the proposed spa would add 8 (or 12) persons. Zoning Regulations § 133.0.D requires one space per 7 persons for the pool use. For up to 494 persons, 71 parking spaces are required. Section 133.0.D.6.i requires 16 spaces for assembly use and five spaces would be required for the 1,505-s.f. building as expanded. In all, up to 87 spaces would be required, depending on the number of persons associated with the spa pool use.

The TSR reasons this number is excessive, given the non-simultaneous nature of the uses and the probability that the meeting space would not always operate at full capacity and

concludes the 65 proposed spaces are adequate, subject to a shared parking analysis (per § 133.0.F.1.a) at the site development plan stage.

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.

The daycare center and community hall have utilized the same driveways for many year with no apparent safety concerns and there is no shared driveway access. Sight distance appears to be adequate.

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

There are no known environmentally sensitive areas in the vicinity. This section is inapplicable.

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

There are no identified historic sites in the vicinity. This section is inapplicable.

II. SPECIFIC CRITERIA FOR CHILD DAY CARE CENTERS AND NURSERY SCHOOLS, DAY TREATMENT AND CARE FACILITIES (SECTION 131.0.N.13)

a. On-site circulation and parking areas shall be designed to minimize vehicular/pedestrian conflicts and to provide safe areas for dropping off and picking up passengers.

Children will be picked up at a reserved area by the building and the site provides safe vehicular and pedestrian circulation patterns, in compliance with § 131.0.N.13.

b. The minimum lot size in the RC and RR Districts shall be three acres and the minimum lot size in the R-ED, R-20, R-12, R-SC, R-SA-8, R-A-15, R-APT, R-VH, HO or HC Districts

shall be one acre, except that uses approved prior to October 6, 2013 shall not be subject to this criteria.

The use was approved prior to October 6, 2013. This section is inapplicable.

c. Outdoor play areas or activity areas shall be fenced, located to the side or rear of the principal structure, and buffered from adjoining residential properties by landscaping or adequate distance or both.

As the Hearing Examiner understands the petition, the day care center may make use of the playgrounds. This area is buffered from adjoining residences by landscaping, in accordance with §131.0.N.13.c.

d. Parking areas shall be located and landscaped to minimize their visibility from roads and adjacent residential properties.

The existing parking lots are separated from Columbia Road by a berm and from residential properties by distance, in accordance with § 131.0.37.d.

e. The design and massing of proposed structures or additions to existing structures shall be generally compatible in scale and character with residential properties in the vicinity of the site, as demonstrated by architectural elevations or renderings submitted with the petition. Additional setbacks from property lines and landscape buffering shall be required if necessary to make the appearance of the site compatible with surrounding residential properties.

According to the petition, the addition represents a 42 percent increase in heated floor space. The addition will complement the existing structures in design and massing and it will be separated by distance from property lines. The proposed addition complies with §131.0.N.13.e.

f. For facilities with a capacity of more than 30 children or adult clients at one time, the following standards apply:

(1) 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.

(2) Buildings, parking areas and outdoor activity areas will be at least 50 feet from adjoining residentially-zoned properties other than public road right-of-ways.

(3) At least 20% of the area within the building envelope shall 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.

This section does not apply because the maximum number of children is 30.

III. SPECIFIC CRITERIA COMMUNITY HALLS (§ 131.0.37)

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

All buildings, parking areas and outdoor areas are more than 50 feet from adjoining residentially-zoned properties and Columbia Road.

b. At least 20% of the area within the building envelope shall not be used for buildings, parking areas or driveways. The building envelope is formed by the required structure and use setbacks of the Zoning Regulations for the zoning district and the Subdivision and Land Development Regulations.

Only a very small portion of the building envelope is use for buildings, parking and driveways, in compliance with § 131.0.37.b.

c. Outdoor uses will be located and designed to shield residential property from noise or nuisance. The Hearing Authority may set the days and hours of operation for outdoor uses.

No outdoor uses are proposed. This section is inapplicable.

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

The Property fronts on Columbia Road, a major collector, in compliance with § 131.0.37.d.

e. In the RC and RR Districts, the minimum lot size is three acres. In the R-ED, R-20, R-12, R-SC, R-SA-8, and R-H-ED Districts, the minimum lot size is one acre.

The R-20 zoned Property is 10.4 acres, in compliance with § 131.0.37.e.

ORDER

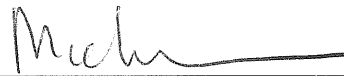
Based upon the foregoing, it is this **3rd Day of April 2014** by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the petition of Columbia Association, Inc. (Petitioner) to expand a Child Day Care Center and Community Hall in an R-20 (Residential: Single Family) Zoning District is **GRANTED**.

Provided, however, that;

1. The Conditional Use shall be conducted in conformance with and shall apply only to the Conditional Use for an expansion of a Child Day Care Center and a Community Hal as described in the petition and not to any other activities, uses, or structures on the Property.
2. Shared parking adjustments shall be addressed at the site development plan stage, pursuant to § 133.0.F.1.a.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**



Michele L. LeFaivre

Date Mailed: _____

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 calendar 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.