

IN THE MATTER OF	:	BEFORE THE
<b>New Path Reformed Church</b>	:	HOWARD COUNTY
Petitioner	:	BOARD OF APPEALS
	:	HEARING EXAMINER
	:	BA Case No. 19-031C

.....  
 .....

**DECISION AND ORDER**

On February 20, 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 New Path Reformed Church (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 represented by Sang Oh, Esquire. Robert Vogel, Mickey Cornelius and Pastor Taebok Lee testified in support of the Petition. There was no opposition.

Petitioner introduced into evidence the following exhibit:

1. Colorized Site Plan.

**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 south side of Clarksville Pike, approximately 1,300 feet west of Centennial Lane. It is located in the 5<sup>th</sup> Election District, identified as Tax Map 29, Grid 18, Parcel 106 and is also known as 10425 Clarksville Pike, Ellicott City, Maryland (the Property).

2. Property Description. The 1.77-acre Property is irregular in shape, is currently unimproved and has about 123 feet of frontage along Clarksville Pike (MD Route 108). The Property has a mild rise in elevation from 438 feet at the north east corner to 452 feet at the south east corner.

3. Vicinal Properties. All vicinal properties are in the RC-DEO (Rural Conservation) (Density Exchange Option) R-20 Zoning Districts. The properties to the north, south and east are either vacant or improved with single-family dwellings and the property to the west is improved with the Iron Bridge Restaurant.

4. Roads. Clarksville Pike is a Minor Arterial road and has two lanes within a variable width right of way. The posted speed is 45 miles per hour. In 2018, the traffic count on Clarksville Pike was 37,053 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. On March 29, 2012, a Conditional Use for a Nonprofit Club/Lodge was approved for Patmos Lodge #70 (BA 11-035C) This use was never developed or utilized on the Property.

7. The General Plan. PlanHoward 2030 depicts the Property as "Established Community" on the Designated Place Types Map. Clarksville Pike is depicted as a Minor Arterial on the PlanHoward 2030 Functional Road Classification Map.

8. The Requested Conditional Use. Petitioner is requesting approval of a 2,387 square foot sanctuary, a 2,158 square foot fellowship area, offices, and classroom space, all within the proposed 7,972 square foot Religious Facility. The Petitioner proposes to conduct Sunday worship services, including bible classes and fellowship, between 10:00 a.m. – 2:00 p.m. Small group meetings may occur periodically on weekdays between 7:00 p.m. – 9:00 p.m., on Saturdays between 7:00 a.m. – 10:00 a.m., and on Sundays between 2:00 p.m. – 4:00 p.m. Pastors office hours will be on weekdays 9:00 a.m. – 4:00 p.m. The sanctuary will be open weekdays 6:00 p.m. – 7:30 p.m. for informal prayer. Outdoor activities are proposed to be limited to: (a) a small children's playground area located to the rear of the Religious Facility; and (b) 71 parking spaces which exceeds the 46 parking spaces required.

A 240 square foot shed is proposed to be located to the rear of the Religious Facility, primarily to be used for the storing of lawn maintenance equipment. Outdoor lighting will be on 12-foot poles directed downwards to prevent any spillage on adjacent properties and will be the minimum necessary to ensure the safety of visitors.

9. Mr. Vogel introduced Exhibit 1, a colorized rendering of the Conditional Use Site Plan, and testified that the proposed Site Plan complies with County Regulations. Further refinements may occur during the approval process for the required Site Development Plan (SDP).

10. DPZ Recommendation. DPZ recommends the Conditional Use for a Religious Facility be granted. The Division of Land Development advised: (a) that an SDP will be required (including compliance with the Landscaping Manual and Forest Conservation Manual); and (b) an off-site sidewalk may be required.

11. Agency Comments. Agency comments were received from the Bureau of Environmental Health advising that a food license may be required by the Health Department for the proposed kitchen.

### **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 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: 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 request 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 on Sundays between 10:00 a.m. to 2:00 p.m., small group meetings one to two times per week,

and special services during holidays/cultural events. The 1.771-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 Clarksville Pike as a Minor Arterial, which is an appropriate classification for the number and types of vehicles associated with 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**

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. These six adverse impact tests gauge the off-site effects of the proposed conditional use.

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 Zoning District but 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 applicable 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, Petitioner has met its 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.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.**

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.

**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 22 feet in height, the shed will have a maximum height of eight (8) feet, and the fence is six (6) feet tall. The Religious Facility building will be over 180 feet from the closest residence. A Type "A" buffer is proposed along the perimeter of west, east, and south property lines. A Type "B" buffer is proposed along Clarksville Pike.

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 subject 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, the off-street parking requirement for religious facilities is 10 spaces per 1,000 square feet of assembly area. The Petitioner proposes 4,545 square feet of assembly area, which requires 46 parking spaces. The Conditional Use Plan shows 71 spaces, including four handicap spaces.

The parking lot and refuse area are screened from the adjacent properties by a Type "A" buffer and from the public right-of-way by a Type "B" buffer.

**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 estimated sight distance is over 400 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 Clarksville Pike appears to provide safe access with adequate stopping sight distance.

Clarksville Pike 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.B.3.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 approximately 2,000 feet south of the Property. 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-956) is located approximately 175 feet west of the Property. A restaurant is located between the two properties and will obstruct views of the religious facility from the historic site. The Resource Conservation Division reviewed the proposal and commented that no historic resources will be impacted. 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 1.77 acres it exceeds the 1 (one) acre minimum lot size requirement. The proposed lot coverage as shown on the Conditional Use Plan is 0.183 acre (approximately 10.3%) and is below the 25% allowable maximum (0.4428 acre).

**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 maximum 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 22 feet tall, the shed will have a maximum height of eight (8) feet, and the fence is six (6) feet tall.

**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 24-foot-wide asphalt private driveway from Clarksville Pike, 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 26<sup>th</sup> day of February 2020, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

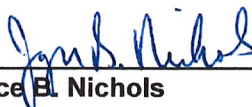
That the Petition of New Path Reformed Church for a Religious Facility Conditional Use in an R-20 (Residential: Single) Zoning District, is hereby **GRANTED;**

**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 (June 2019) and not to any other activities, uses, structures, or additions on the Property.
2. Petitioner shall comply with all agency comments.
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.

**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.