

IN THE MATTER OF

FIRST EVANGELICAL

LUTHERAN CHURCH

Petitioner

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BEFORE THE

HOWARD COUNTY

BOARD OF APPEALS

HEARING EXAMINER

BA Case No. 21-026C

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**DECISION AND ORDER**

On January 13, 2022, 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 First Evangelical Lutheran Church (Petitioner) for a Conditional Use for a Child Day Care Center and Nursery School in a R-20 (Residential-Single) Zoning District, filed pursuant to Section 131.0.N.13 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. Cathy Rice and Mike Louia (Petitioner) testified in support of the Petition. No one appeared in opposition.

Petitioner introduced into evidence the following Exhibit:

1. PowerPoint Presentation

**FINDINGS OF FACT**

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

1. Property Identification. The subject property is located in the southwest quadrant of the intersection of Chatham Road and Frederick Road. It is located in the 2nd Election District, identified as Tax Map 24, Grid 10, Parcel 135, Lot 1 and Parcel 570, Lot 2 and is also known as 3604 Chatham Road and 3625 Underoak Road, Ellicott City, Maryland (the Property).

2. Property Description. The 7.057-acre Property is roughly rectangular in shape, is improved with an existing religious facility which includes a 8,360 square foot Child Day Care Center and Nursery School, a 1,600 square foot outdoor play area, and two single family detached dwellings utilized as parsonages. The existing Child Day Care Center and Nursery School serves a maximum of 66 children, ages two (2) to four (4) and has 10 employees. This use is grandfathered as a nonconforming use as it was approved by the State Fire Marshall in 1967, prior to the adoption of the requirement for approval of a Conditional Use for a Child Day Care Center and Nursery School.

The Property consists of two parcels (135 and 570) which total 7.057 acres. Parcel 135 is 6.3 acres and is improved with the religious facility, a single family detached dwelling utilized as a parsonage, and the outdoor play area. Parcel 135 has vehicular ingress/egress on both Frederick Road and Chatham Road. Parcel 570 is 0.75 acre and is improved with a single family detached dwelling also utilized as a parsonage for the religious facility. The Property has a rise in elevation from 496 feet in the southwest corner to 524 feet along the northern property line.

3. Vicinal Properties. Vicinal properties to the north, south, east, and west are in the R-20 Zoning District and improved with single family detached dwellings.

4. Roads. Chatham Road has two travel lanes within a 45-foot right-of-way. The posted speed limit is 25 miles per hour. There are no traffic counts available for Chatham Road. Frederick Road has four travel lanes within a 65-foot right-of-way. The posted speed is 35 miles per hour. Traffic count data is not available for this portion of Frederick Road.

5. Water and Sewer Service. The Property is located within the Metropolitan District Planned Service Area for water and sewer and is served by public water and sewer.

6. Zoning History.

Case No. BA-86-05E

Request: Special Exception for an addition to a Religious Facility

Action: Approved June 11, 1986

Case No. BA-94-24E

Request: Modify a condition of approval of BA-86-05E

Action: Approved August 16, 1994

7. The General Plan. PlanHoward 2030 depicts the Property as an Established Community on the Designated Place Types Map.

8. The Requested Conditional Use. Petitioner is requesting approval of a Child Day Care Center and Nursery School consisting of a 8,360 square foot area within the existing religious facility, a 1,600 square foot outdoor play area, and a 6,500 square foot outdoor educational area which will be enclosed by a fence. The Center will serve a maximum of 66 children, ages two (2) to four (4) and have 10 employees. The hours of operation are 9:00 am until 3:00 pm Monday through Friday. The proposed outdoor educational area will be used approximately 60 minutes per day by three different groups consisting of 10-15 children each. All uses have existed since 1967; the only addition being proposed is the outdoor educational area. Handicapped access will be provided to the outdoor educational area via the driveway accessing the parsonage currently occupied by Mike Louia.

10. Department of Planning and Zoning. DPZ found that the Petition is in compliance with statutory requirements for a Conditional Use for a Child Day Care Center and Nursery School.

11. Agency Comments. The Division of Land Development provided three advisory comments which will be evaluated during the Site Development Plan review process.

The Department of Fire and Rescue Services commented:



No objection to this request. Fire will need to review fencing and access prior to permit issuance.

Agency comments were received from the Department of Recreation and Parks and the Development Engineering Division 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 request for Child Day Care Center and Nursery School. Childcare and nursery school 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 Child Day Care Center and Nursery School will consist of an 8,360 square foot area within the existing religious facility, an existing 1,600 square foot outdoor play area and a proposed 6,500 square foot outdoor educational classroom. The 7.057-acre site exceeds the one-acre lot size requirement, and the proposal complies with all bulk regulations and conditional use

criteria. The religious facility's parking lot is approved for 182 spaces, the majority of which will be available during the daytime for drop off/pick up of children.

The Functional Road Classification Map of PlanHoward 2030 depicts Frederick Road as a Minor Arterial and Chatham Road as a Local Road. Both roads are an appropriate classification for the number and types of vehicles associated with the proposed uses.

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.

#### **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, 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 Child Day Care Center and Nursery School 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.**

The Child Day Care Center and Nursery School is located within the existing religious facility building and utilizes an existing outdoor play area on the property. The proposed outdoor educational classroom will be enclosed with a fence and will contain a minimal amount of moveable outdoor equipment. 10-15 children will use the outdoor educational classroom for approximately 20 minutes per day per group. Children may use the outdoor classroom on Sundays between 10:00 am and 1:30 pm and during church meetings that are held quarterly from 5:00 pm to 7:00 pm. 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 Property than generally elsewhere in the R-20 Zoning District.

**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.**

No new structures are proposed except for an open fence less than six feet in height surrounding the perimeter of the outdoor educational classroom. The existing play area is fenced, located at the rear of the Property, and is separated from residential areas by distance and landscaping. Shrubs will be provided along the perimeter of the outdoor educational classroom.

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 in the R-20 Zoning District.

**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 1 space per 3 seats thus the existing religious facility requires 167 parking spaces. Section 133.0 requires off-street parking for day care centers to be three (3) parking spaces per 1,000 square feet; thus, the instant Child Day Care Center and Nursery School requires 26 spaces. The Conditional Use Plan shows 182 parking spaces.

Religious services will occur on Sundays and there will be quarterly evening meetings from 5:00 pm to 7:00 pm. The Child Day Care Center and Nursery School will operate Monday through Friday from 9:00 am to 3:00 pm. The existing parking lot will provide ample vacant parking during weekdays and proposes to utilize these spaces to meet the 26-space requirement for the Child Day Care Center and Nursery School. No changes are proposed to the parking and refuse areas.

**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.**

The ingress/egress drives were approved through SDP-89-165. No changes are proposed to the existing and approved vehicular access. The access driveway will not be shared with any other properties.

**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 and floodplain located approximately 450 feet northwest of the Property, which exceeds the required environmental buffers. The only proposed change to the property is the outdoor educational classroom. 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 is located over 900 feet east of the Property. The Property is not visible from the historic site as it is screened by multiple residential properties located between the Property and the historic site. Therefore, the proposed use will not have a greater potential for diminishing the character and significance of historic sites in the vicinity of the Property than elsewhere.

**2. Specific Criteria for Child day Care Centers and Nursery Schools (Section 131.0.N.13)**

**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.**

There will be designated drop off/pick up lanes and a traffic circulation plan for the preschool. The religious facility's parking lot was approved by SDP-89-165 for 182 parking spaces, the majority of which will be available during the weekday for drop off/pick up of children and pre-school staff. Church services will be on Sundays and quarterly evening meetings from 5:00 pm to 7:00 pm. The Child Day Care Center and Nursery will operate Monday through Friday 9:00 am to 3:00 pm.

**Section 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 Property is in the R-20 Zoning District and is 7.057 acres.



**Section 131.0.N.13.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.**

The outdoor play/educational areas are located to the rear of the principal structure, comply with the 20-foot use setback, and will be buffered by proposed landscaping and a fence.

**Section 131.0.N.13.d. Parking areas shall be located and landscaped to minimize their visibility from roads and adjacent residential properties.**

The religious facility's parking lot, which was approved by SDP-89-165, will also serve the proposed use. No changes to the parking lot are proposed.

**Section 131.0.N.13.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.**

The proposed use will occur within the existing religious facility building which was approved in SDP-89-165. No new structures, except an open fence around the outdoor educational classroom, are proposed. Therefore, this criterion does not apply.

**Section 131.0.N.13.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.**

The Child Day Care Center and Nursery School will serve a maximum of 66 children. The Property has frontage on and direct access to Frederick Road which is classified as a Minor Arterial.

- (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.**

The closest adjoining residentially zoned property is approximately 70 feet from the buildings, parking areas and outdoor activity areas.

- (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.**

The child day care use will be located within the existing religious facility and no new buildings or pavings are proposed. The Property has over 30% green space which should be noted on the Conditional Use Site Plan.

**ORDER**

Based upon the foregoing, it is this 18th day of January, 2022, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

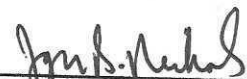
That the Petition of First Evangelical Lutheran Church for a Child Day Care Center and Nursery School Conditional Use in a R-20 (Residential-Single) Zoning District, is hereby **GRANTED;**

**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 (August, 2021) and not to any other activities, uses, structures, or additions on the Property.
2. A redline to SDP-89-165, if Sheets 1 and 9 of the Conditional Use Site Plan are deemed insufficient, prior to the issuance of any grading and building permits.
  - (a) Show the location of the outdoor classroom and proposed fence.
  - (b) Add a detail of the proposed fence.
  - (c) Indicate the handicapped access to the outdoor classroom area.
  - (d) Provide the % of green space.
3. The proposed landscaping screening shall meet the requirements of the Landscape Manual to effectively screen the proposed outdoor classroom from neighboring properties and roadways. DPZ may require landscape plantings of at least one (1) tree per 60 linear feet or one (1) shrub or vine per 10 linear feet to be reviewed with the redline submission.
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.

First Evangelical Lutheran Church

7. The Property shall be well maintained and the condition of any structure or hardscape shall not be permitted to deteriorate.
8. All development shall comply with the Forest Conservation Act, per Subtitle 12 of the Howard County Code, prior to redline approval.
9. Building plans shall be reviewed by the Department of Fire and Rescue to ensure adequate safety features for the Child Day Care Center and Nursery School.

**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.