

IN THE MATTER OF : BEFORE THE  
**Mounthaven Christian Ministries, Inc.** : HOWARD COUNTY  
Petitioner : BOARD OF APPEALS  
 : HEARING EXAMINER  
 : Case No. BA-21-043C  
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### **DECISION AND ORDER**

On May 19, 2022, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure (“Rules”), heard the petition of **Mounthaven Christian Ministries, Inc.**, Petitioner, for a Conditional Use for a Private School (Academic) (Section 131.0.N.48) (“Petition”). The Petitioner provided certification that notice of the hearing was advertised and certified that the property was posted as required by the Howard County Code. I viewed the property as required by the Rules.

The Petitioner was represented by Christopher DeCarlo, Esq. The following people testified in support of the Petition: Zacharia Fisch, Professional Engineer, FSH Associates; Damian Dolland, Trustee, Mounthaven Christian Academy; and Eric Gorny, President, Beth Shalom Congregation. There was no one in opposition to the Petition.

### **FINDINGS OF FACT**

Based upon the preponderance of the evidence presented at the hearing and in the record, I find the following facts:

A. **Property.** The subject property, located at 8070 Harriet Tubman Lane (the "Property"), comprises 3.79 acres and is in the R-12 (Residential - Single) zoning district. The Property is located at Tax Map 35, Grid 24, Parcel 256. The Property is the site of an existing religious facility and private religious school – Beth Shalom Congregation. The Property

contains a religious facility, two classroom buildings, 109 parking spaces and a fenced playground. The elevation rises from 396 feet in the southeast corner to 408 feet along the northwest corner of the property.

B. **Vicinal properties.** To the south is NT zoned property used for Columbia Association Open Space as the CA community garden. To the north are R-SC parcels used for Single Family Detached residences and a public school. To the west are R-SA-8 and R-20 parcels used for Single Family Attached and Detached residences. To the east are R-20 and R-SC zoned parcels used for Single Family Detached residences and further east there are two cemeteries.

C. **Roads.** Harriet Tubman Lane has two travel lanes and a turn lane within a 40-foot right-of-way. The speed limit is 30 miles per hour. Traffic count data is not available for this section of Harriet Tubman Lane, per the Department of Planning and Zoning Technical Staff Report dated 5/3/22 (“Staff Report”).

D. **Water and Sewer Service.** The Property is within the Planned Service Area for Water and Sewer. The property is served by public water and sewer.

E. **General Plan.** The Property is designated Established Community on the Designated Place Types Map of PlanHoward 2030. Harriet Tubman Lane is a Major Collector.

F. **Zoning History.** There is a long history of zoning actions for the Property:

**BA-91-04E** - Special Exception for a religious facility approved on June 4, 1991.

**BA-93-40E** - Special Exception to expand a religious facility, and for a private religious school, approved on January 25, 1994.

**BA-93-40E** - Board of Appeals Order extending the ten-year time period to complete construction of Phase II of the Special Exception for a religious facility and private religious school until January 25, 2006, approved on October 9, 2003.

**BA-05-001C** - Amendment to Conditional Use to expand a religious facility and private religious school and nursery school, approved on July 18, 2005.

**BA-08-025C** - Conditional Use to expand an existing structure used primarily for religious activities approved on July 21, 2008.

**BA-05-00JC** - Third extension extending the ten-year time period to complete construction denied on August 8, 2013.

**BA-13-015C** - Conditional Use to enlarge an existing religious facility to add a modular classroom use for a religious school, approved on July 22, 2013.

**BA-16-021C** - Conditional Use for expansion of an existing structure used primarily for religious activities with a classroom addition, approved on September 29, 2016.

G. **Current Use.** The Property is currently used for an existing religious facility and private religious school by Beth Shalom Congregation.

H. **Proposal.** Petitioner proposes a private school (K - 8<sup>th</sup> grade) – Mounthaven Christian Academy - within the existing religious facility building. The initial enrollment will be approximately 15 students in kindergarten through second grade. The enrollment is projected to increase to between 80 and 120 students in all grades over the next five (5) to seven (7) years.

Proposed operating hours are:

- Morning drop-off time from 7:30-8:30 am
- Classes Monday through Friday from 8:30 am to 3:15 pm
- Morning drop-off time - 8:00-8:30 am, with early drop off from 7:30-8:00 am
- Dismissal (normal pick-up) time from 3:15 to 3:30 pm
- Aftercare Monday through Friday from 3:30 - 6:00 pm.

I. **Testimony.**

**1. Mr. Zacharia Fisch, Professional Engineer, FSH Associates.** Mr. Fisch is a professional land planning engineer with many years of experience in Howard

County and is familiar with the requirements for conditional uses found in the Howard County Zoning Regulations. His firm prepared the Conditional Use Plan dated December 20, 2021 (“Plan”). Mr. Fisch testified that the proposal complies with the zoning regulations and specifically to those related to religious and private school uses. He stated that there will not be any new construction. He testified that the vicinal residences are buffered from the Property by distance or existing vegetation. He stated that the maximum number of students will be 120, and that only one of the two existing portable classrooms will be used (the northernmost portable is within the fifty foot setback and will not be used for this proposed use). He testified that there are sufficient parking spaces already on the Property.

**2. Damian Dolland, Trustee, Mounthaven Christian Academy.** Mr.

Dolland testified about the plans for the school. He stated that early on, there will be only about 15 students, but that the plan was to reach a capacity of 120 student. The school will use the existing facility which is underutilized.

**3. Eric Gorny, President, Beth Shalom Congregation.** Mr. Gorny testified

that there will not be overlap of activities between the existing use by Beth Shalom Congregation and the proposed use by Mounthaven Christian Academy.

**J. Exhibits.**

The following exhibit was entered into the record:

**Exhibit 1** – Aerial of Property and surrounding parcels

## CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, I conclude as follows:

**A. General Criteria for Conditional Uses (Section 131.0.B of the Howard County Zoning Regulations).**

- 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.**

As stated in the Staff Report, Howard County General Plan policies do not directly address Conditional Use requests for private schools, but the proposed use is compatible in character with the surrounding residential area. There is already an existing private religious school on the Property and no new construction is being proposed.

*Thus, the proposed use will be in harmony with the Howard County General Plan and PlanHoward 2030.*

- 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 nature and intensity of the proposed use will continue to be appropriate given the private school will operate from within the existing religious facility building and use the existing outdoor playground. The existing religious facility, Beth Shalom Congregation, does not conduct services or religious school in the building during the week so there will be no overlap in use. The Property is 3.79 acres, which exceeds the one-acre lot size requirement. The Functional Road Classification Map of PlanHoward 2030 depicts Harriet Tubman Lane as a Major Collector, which is appropriate for the types and number of vehicles associated with a private school.

*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 is appropriate for the site.*

- 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 not be greater at the proposed site than it would generally be elsewhere in the same zoning district or other similar zoning district.**

The private school will operate from within the existing religious facility building and use the existing outdoor playground during recess and aftercare time. There was no testimony or evidence of atypical 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.

The proposed use at the proposed location will not have adverse effects on vicinal properties above and beyond those ordinarily associated with such uses. To the extent such impacts may exist, those impacts will not be greater at the subject site than they would generally be elsewhere in the applicable zones or applicable other zones. The closest residence is over 200 feet from the Property and existing landscape buffers have proven to be effective at screening the proposed use from that residence.

*Therefore, the impact of adverse effects will not be greater at the proposed site than it would generally be elsewhere in the R-20 zoning district.*

- 4. 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 location, nature and height of structures, walls and fences, and the nature and extent of the landscaping on the site are such that the proposed conditional 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 zoning district or applicable other zones. This is particularly true in light of fact that the private school will operate from within the existing religious facility building and use the existing outdoor playground during recess and aftercare time.

*Therefore, the use will not hinder or discourage the development and/or use of adjacent land and structures more at the subject site than generally elsewhere.*

- 5. 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.**

Section 133 of the Zoning Regulations require the following: School Use: 1 space per 6 students; 120 students/6 = 20 spaces required). This criterion is fulfilled because 109 spaces are currently provided for the existing religious facility and private religious school. Because the Mounthaven Christian Academy use will not overlap with the existing religious facility or private religious school already in existence, 109 spaces will continue to be sufficient. (The Mounthaven Christian Academy private religious school will end by 6PM each weekday and will not operate on the weekends. The existing religious facility, Beth Shalom Congregation,

conducts services beginning at 7PM on Friday nights and on Saturdays and does not conduct religious services during the weekdays.

The existing and proposed parking areas will be of adequate size for the particular uses. In addition, parking areas, loading areas, driveways and refuse areas will continue to be properly located and screened from public roads and residential uses to minimize adverse impacts on adjacent properties.

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

- 6. 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.**

Sight distance was found to be adequate from the original plan design, which included the construction of acceleration and deceleration lanes. No substantial road improvements have occurred since the plan approval. The proposed conditional use plan does not modify the ingress or egress drives to Harriet Tubman Lane. There are two ingress/egress drives, one of which is shared with the townhouse development to the west. The private school only proposes to use the non-shared driveway.

According to the Staff Report, the estimated sight distance on Harriet Tubman Lane exceeds 300 feet in both directions. According to the American Association of State Highway



and Transportation Official (AASHTO) guidelines, based on a recommended design estimated stopping sight distance of 200 feet for a car going 30 miles per hour, the existing access point on Harriet Tubman Lane appears to provide safe access with adequate stopping sight distance.

*Thus, I find that this criterion has been met.*

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

There are no environmentally sensitive areas in the vicinity – the closest is a stream located over 900 feet to the west.

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

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

There is a single historic structure over 2,000 feet to the northeast – HO-37.

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

**B. Evaluation of Petition according to Section 131.0.N.48 (Specific Criteria for (Schools, Colleges, Universities–Private (Academic)):**

**1. The maximum density permitted is 60 pupils per acre for lots less than three acres, and 100 pupils per acre for lots three acres or greater.**

The Property is approximately 3.79 acres; therefore, 379 pupils are allowed. The maximum proposed enrollment is 120 pupils.

*This criterion is met.*

2. **In addition to meeting the minimum area requirements above, schools with residence accommodations shall provide an additional 500 square feet of lot area per site resident. Residents shall include students, staff members, caretakers and their families who reside on the site.**

The proposed private religious school will not have residence accommodations.

*This criterion is not applicable.*

3. **A private school may be erected to a greater height than permitted in the respective district, provided that no structure is more than three stories in height and the front, side and rear setbacks shall be increased two feet for each foot by which such structure exceeds the height limitation.**

The maximum building height in the R-12 zoning district is 34 feet. The existing religious facility is 30.84 feet.

*This criterion is met.*

4. **Sufficient off-street school bus loading areas shall be provided if bus service is provided for students.**

This criterion is *not applicable* since the current proposal states that there will be no bus service.

5. **Outdoor uses will be located and designed to shield residential property from noise or nuisance. Play areas, athletic fields and similar uses shall be buffered from residential properties by fencing, landscaping, adequate distance or other appropriate means.**

The outdoor playground is over 200 feet from the closest residence and is screened by existing landscaping and the existing building. There was no evidence that the playground activities will cause noise that will be a nuisance to adjacent residences.

*This criterion is met.*

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

The closest building, one trailer, the parking area and outdoor activity area are at least 50 feet from any adjoining residentially-zoned property. The existing trailer within the 50-foot setback will not be used for the proposed private school.

*This criterion is met.*

- 7. At least 20% of the area within the building envelope will 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 Plan depicts the total area of the building envelope as 105,128 SF. The green space totals 46,914 SF or 44.6% of the building envelope.

*This criterion is met.*

- 8. 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 site has frontage on and direct access to Harriet Tubman Lane which is a Major Collector. (See Staff Report.)

*This criterion is met.*

- 9. The minimum lot size in the RC and RR Districts for a new private academic facility is three acres. The minimum lot size in the R-20, R-ED, R-12, R-SC, R-SA-8, R-H-ED, R-A-15, R-APT, R-MH, or R-VH Districts for a new private academic facility is one acre. An existing private academic facility is not required to comply with these criteria.**

This Property meets the minimum lot size for the R-12 zoning district of one acre.

*This criterion is met.*

**ORDER**

Based upon the foregoing, it is this 31st day of May 2022, by the Howard County Board of Appeals Hearing Examiner:

**ORDERED**, that the Petition of Mounthaven Christian Ministries, Inc., Petitioner, for a Conditional Use for a Private School (Academic) (Section 131.0.N.48) shall be and hereby is **GRANTED**;

Provided, however, that:

1. The uses shall be conducted in conformance with, and the conditional use shall apply only to the uses and structures as described in, the Petition filed on or around December 22, 2021, and the Conditional Use Plan dated December 20, 2021, and not to any other activities, uses, structures or additions on the Property; and
2. Petitioner shall comply with all federal, state, and local laws and regulations.

**HOWARD COUNTY BOARD OF APPEALS**  
**HEARING EXAMINER**

Katherine L.  
Taylor

Katherine L. Taylor

Digitally signed by  
Katherine L. Taylor

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.