

IN THE MATTER OF : BEFORE THE
NARESH C. DAS : HOWARD COUNTY
Petitioner : BOARD OF APPEALS
 : HEARING EXAMINER
 : Case No. BA 15-024C&V
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ORDER

The undersigned, serving as the Howard County Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure and the Howard County Zoning Regulations, in Case No. BA 15-024C&V, considered Requests for Reconsideration filed by Todd Arterburn, Rachel Mullinix, and Jon and Terri Minford, of the March 28, 2024 Order granting an extension of the time period to obtain building permits and substantially complete all required improvements in connection with a conditional use approval of a religious facility and related variances, which was granted by the Board of Appeals in an Amended Decision and Order dated March 3, 2020.

Under Section 130.0.I.3.a. of the Howard County Zoning Regulations, “a Decision and Order approving a Conditional Use shall become void unless a building permit conforming to the plans for which the approval was granted is obtained within two years, and substantial construction in accordance therewith is completed within three years from the date of the decision.” Under Section 130.0.I.3.c. of the Howard County Zoning Regulations, “[t]he Hearing Authority may grant as many as two extensions of the time limits given above. The extensions shall be for a period of time not to exceed three years each, and may be granted in accordance with the following procedures:

- (1) A request for an extension shall be submitted by the property owner prior to the expiration of the Conditional Use approval, explaining in detail the steps that have been taken to establish the use.
- (2) The property owner shall certify that a copy of the request for an extension has been sent by certified mail to adjoining property owners and to the addresses given in the official record of the Conditional Use case for all persons who testified at the public hearing on the petition.
- (3) The Hearing Authority shall provide opportunity for oral argument on the request at a work session if requested by any person receiving notice of the request. *If no response is received within 15 days of the date of the written notification, a decision on the request may be made by the Hearing Authority without hearing oral argument.*
- (4) The Hearing Authority may grant the request if it finds that establishment of the use in accordance with the approved Conditional Use plan has been diligently pursued. If oral argument is presented on the request, the Hearing Authority may deny the request if any of the oral arguments allege that changes have taken place in the circumstances which led to the original decision to approve the Conditional Use.”

On or about March 6, 2024, and in accordance with Section 131.0.I.3.c.(1) of the Howard County Zoning Regulations, the petitioner requested extensions to obtain building permits and to achieve substantial construction. Under 131.0.I.3.c.(2) the Petitioner certified as follows: “I certify that this permit extension request letter is sent to the temple neighbor and who testified at the public hearing on the petition by certified mail.”

Unfortunately, the rule does not require a stated format or that the list of persons who were sent notice be listed in the certification filed by the owner. Nor does the rule require that the recipients be given notice that they may oppose the request and seek to be heard at a work session under 131.0.I.3.c.(3). Accordingly, I accepted the statement in Mr. Das’s letter as compliance with 131.0.I.3.c.(2).

Because no responses to the extension request were received within 15 days of the March 6, 2024, letter, I rendered a decision on the request without scheduling a work session to hear oral argument and issued a March 28, 2024, Order granting the extension

request. After the March 28, 2024, Order was issued, Rachel Mullinix & Jon and Terri Minford, via email dated March 29, 2024, requested reconsideration of the March 6, 2024, Order, and stated:

“While we did receive a letter from the petitioner which I have attached, the letter does not indicate a date/time for the hearing as required by 2.203 of the Boards rules. Had our community known of the date/time, I assure you we would have all attended. I checked with two other neighbors who also participated in the initial hearings and they too never received information containing a date/time or even a phone number to call for more information.

Additionally, there was no notice posted on the property as required by the public notice, section 4.1 under Article IV of the Rules of Procedure.

On April 2, 2024, Todd Arterburn also requested reconsideration of the March 6, 2024, Order, and echoed the comments of the Mullinix/Minford request.

The persons requesting reconsideration state that they never received a date and time for a hearing under the Board’s rules, and that there was no notice posted in the property as “required by the public notice, section 4.1 under Article IV of the Rules of Procedure.”

That rule, however, applies to hearings on petitions. Under 131.0.I.3.c., there is no requirement of a hearing on a request for an extension. Rather, the Hearing Examiner is required to hold a work session at which oral argument will be presented as to why an extension shall not be granted, but only if a response to the extension request is “received within 15 days of the date of the written notification” of the extension request. As of March 28, 2024, no responses to the extension request had been received and thus under 131.0.I.3.c. the Hearing Examiner was empowered to issue a decision without hearing oral argument.

Even though the March 28, 2024, Order was properly issued under 131.0.I.3.c., there is understandable confusion about the requirements for notifying individuals about the extension request as well as the rights of individuals receiving notice of the extension request.

Accordingly, I will grant the requests for reconsideration of the March 28, 2024, Order, and schedule a work session to allow those who oppose the extension request to appear and provide oral argument as to why the extension shall not be granted. The work session is NOT a hearing and there is no required public notification or posting. The work session is also not an opportunity to oppose the underlying conditional use approval – the only issue to be considered is whether the Hearing Examiner should grant or deny the extension request under 131.0.I.3.c.(4):

“The Hearing Authority may grant the request if it finds that establishment of the use in accordance with the approved Conditional Use plan has been diligently pursued. If oral argument is presented on the request, the Hearing Authority may deny the request if any of the oral arguments allege that changes have taken place in the circumstances which led to the original decision to approve the Conditional Use.

WHEREFORE, it is this 5th day of April 2024, by the Howard County Hearing Examiner, **ORDERED**:

- A. That the March 29, 2024, and April 2, 2024, requests for reconsideration of the March 28, 2024, Order shall be and hereby is **GRANTED**;
- B. That the Hearing Examiner shall hold a work session on the March 6, 2024, request by Petitioner for extensions of the time periods to obtain building permits and substantially complete all required improvements in connection with a conditional

use approval of a religious facility and related variances, which was granted by the Board of Appeals in an Amended Decision and Order dated March 3, 2020.

- C. The work session shall be scheduled for a date and time when the Petitioner, Todd Arterburn, Rachel Mullinix, and Jon and Terri Minford are available;
- D. The March 28, 2024, Order shall be stayed until the work session is held and a further order issued;
- E. At the work session, the Hearing Examiner will hear argument on the limited issues of whether establishment of the use in accordance with the approved Conditional Use plan has been diligently pursued, and if changes have taken place in the circumstances which led to the original decision to approve the Conditional Use; and
- F. Notice of the date and time of the work session shall be provided by email to the Petitioner, Todd Arterburn, Rachel Mullinix, and Jon and Terri Minford, and shall be indicated on the website of the Hearing Examiner, but no publication or posting shall be required.

HOWARD COUNTY HEARING EXAMINER

Katherine L. Taylor

Date Mailed: _____