

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, in accordance with the Hearing Examiner Rules of Procedure and the Howard County Zoning Regulations, considered a request from Petitioner NARESH C. DAS, in Board of Appeals Case No. BA 15-024C&V, for an extension of time 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.

#### **A. PROCEDURAL BACKGROUND**

The original petition in this lengthy matter was filed in 2015. The petition was denied by the then Hearing Examiner after a five (5) night hearing during which the petition was opposed by numerous neighbors. The May 5, 2016, Decision and Order denying the petition was primarily based on the conclusion that the use would be overly intense for the neighborhood and that the intensity would cause atypical adverse traffic impacts. The May 5, 2016, Order was appealed to the Board of Appeals and in a June 3, 2016, Decision and Order, the Board of Appeals denied the petition.

After the Board of Appeals' June 3, 2016, denial, the Petitioner filed an action in the U.S. District Court for the District of Maryland claiming federal and state civil rights violations, violations of the federal Fair Housing Act, and violations of the Religious Land Use and Institutionalized Persons Act ("RLUIPA"), 42 U.S.C. Section 2000. In a Consent Order in that case, the parties agreed that the matter would be remanded to the Board of Appeals to consider (1) the applicability of RLUIPA, and (2) whether the use can be denied based on the safety of ingress and egress to the site. In a March 3, 2020, Decision and Order, the Board of Appeals granted the Conditional Use request and stated:

"The Petitioner met its burden of production and persuasion that the proposed 24-foot-wide paved driveway entrance on Millers Mill Road (a low-volume road) will provide safe access with adequate sight distance to the new religious facility. The Petitioner's traffic engineer, Mickey Cornelius, testified that the ingress and egress to the proposed development will provide safe access with adequate sight distance with a sight distance easement and clearing of trees within that easement as agreed to by the adjacent property owner of Parcel 136. Petitioner demonstrated that the proposed driveway meets standard AASHTO guidelines for stopping sight distance and that the proposed sight distance exceeds the sight distance standard for low volume roads. Petitioner submitted evidence that there is 267 feet of stopping sight distance looking northbound from the proposed driveway and 296 feet of stopping sight distance for southbound traffic approaching the Property for an 85th percentile speed of 37 mph. Using the AASHTO standard for low-volume roads, Petitioner exceeds the necessary stopping sight distance for an 85th percentile speed of 42 mph, which is 265 feet. The Board finds that the Petitioner demonstrated that the proposed access to Jagannath Temple on Millers Mill Road satisfies Howard County sight distance requirements, and the access provides safe movements entering and exiting the site. Opposition testimony and evidence failed to persuade the Board that Millers Mill Road is unsafe or that the Petitioner will not be able to provide safe and adequate sight distance for a low volume road on and off the Property as set forth in AASHTO, Guidelines for Geometric Design of Low-Volume Roads (2 ed. 2019). As such, the Board concludes that the ingress and egress drive will provide safe access with adequate sight distance, based on actual conditions, in accordance with Section 131.0.B.3.d. of the Zoning Regulations.

In addition to approval of the Conditional Use, the Board of Appeals *granted five (5) variance requests* in its March 3, 2020, Decision and Order.<sup>1</sup>

The March 3, 2020, Amended Decision and Order was the subject of a Petition for Judicial Review of the Decision of the Howard County Board of Appeals filed in the Howard County Circuit Court on August 16, 2021, and, on December 13, 2021, the Circuit Court dismissed the appeal as untimely. The appellants in that Circuit Court action, on January 13, 2022, filed a Notice of Appeal of the Circuit Court’s dismissal to the Maryland Court of Special Appeals (now the Appellate Court of Maryland). On **March 7, 2022**, the Court of Special Appeals entered an order administratively closing the case after the Circuit Court struck the notice of appeal.

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:

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<sup>1</sup> The section under which the variances were granted (Section 130.0.B.2 of the Howard County Code) states that the approvals lapse within 2 years if no permit is obtained or 3 years if substantial construction has not been achieved. That section does not provide for an opportunity for the applicant to request an extension of variances but states that the lapsing will not occur if plans are being actively processed under Title 16, Subtitles I and II of the Howard County Code (Subdivision and Site Development). Because the section relating to Conditional Use approvals allow the applicant to request an extension, and because the variances are conditioned on and relate directly to the establishment of the Conditional Use, I believe any variance extensions are subsumed within the Conditional Use extensions and I will treat those variances as such.

- (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 131.0.1.3.c. of the Howard County Zoning Regulations, the petitioner requested extensions -- for an additional three (3) years -- to obtain building permits and to achieve substantial construction. While the request for an extension was submitted by the property owner on March 6, 2024, long after the initial expirations of the Conditional Use approval, which would have happened on March 3, 2022 (for building permits) and March 3, 2023 (for substantial completion), I accepted the March 6, 2024, written extension request as timely because the lengthy appeal process ended on March 7, 2022. Thus, I measured the requisite time periods from March 7, 2022, rather than March 3, 2020.

In its March 7, 2024, request, Petitioner stated that it has been diligently pursuing its plans and permits but has been delayed primarily because of funding difficulties caused initially by the pandemic and also by the lengthy appeals. Petitioner stated in that request that it has made changes to bring the existing building structure to code and that, after a

series of back-and-forth communications, a certificate of occupancy was issued in June 2023 for the existing structure in which the Consent Order allowed worship to take place pending the construction of a new structure. Petitioner also stated in its March 7, 2024, request that it has cleared the area where the new building will be constructed and has contacted both civil engineering firms and architectural firms to begin the development process.

Under 131.0.I.3.c.(2), the Petitioner certified in its March 7, 2024, request 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.” The rule does not require a stated format for notification and does not require that the person requesting the extension list all persons who were sent notice. 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 which stated:

- (1) The Petitioner’s written request explained the steps that have been taken to establish the use.
- (2) The property owner certified that a copy of the request for an extension was sent by certified mail on March 7, 2024, 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) I need not provide opportunity for oral argument on the request as no response has been received within 15 days of the date of the written notification and thus a decision on the request could be made without hearing oral argument.
- (4) Establishment of the use in accordance with the approved Conditional Use plan had been diligently pursued.

After the March 28, 2024, order was mailed, the Council Boards Administrator was contacted by people who had opposed the original petition and who had testified at the hearing on the Conditional Use request before the Board of Appeals. Rachel Mullinix & Jon and Terri Minford, via email dated March 29, 2024, requested reconsideration of the March 28, 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 28, 2024, Order, and echoed the comments of the Mullinix/Minford request.

The persons requesting reconsideration stated that they never received a date and time for a hearing under the Board’s rules, and that 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.” That rule, however, applies to hearings on petitions and not to the situation in

this matter involving a request for an extension. 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 was 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, in an April 5, 2024, Order, I granted the requests for reconsideration of the March 28, 2024, Order, and scheduled 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.

After the April 5, 2024, Order was issued, Petitioner filed a Motion to Reinstate the Extension Order and Dismiss the Work Session for Oral Argument. At the work session on July 10, 2024, I denied the Motion to Reinstate. Thus, the work session went forward.

At the work session, Petitioner was represented by Christopher DeCarlo, Esq., of Whiteford, Taylor & Preston LLP. The following people presented arguments supporting the request: Naresh Das; Barry Mehta; Kirk Berry of Curo Construction, LLC; Sujit Mishra; Amrish Patel; and others. The following people presented arguments opposing the extension request: Todd Arterburn; John Minford; Michael Williams; Charles Dorsey; Colin Ward;

Rachel Mullinix; and Tracey Wheeler Williams.

The Petitioner's arguments in favor of granting the extension were originally set forth in Petitioner's March 6 and 7, 2024 extension requests, and I found in the March 28, 2024, Order that establishment of the use in accordance with the Conditional Use plan had been diligently pursued. Petitioner's arguments in favor of extension were supplemented by counsel and witnesses during the July 10, 2024, work session. Generally, the Petitioner showed that it has not sat on its rights. Petitioner filed an application for a permit to use the existing garage building as an assembly hall in or around March 2020. Soon thereafter, the pandemic caused cessation of many government activities. In addition to the appeals to the Board of Appeals and the Circuit Court, as well as the lawsuit filed in U.S. District Court, scarce resources were significantly depleted and there were procedural and administrative delays beyond Petitioner's control. During the 2021-2022 time period, the Petitioner hired an architect to alter the existing building for temporary use (which was allowed under the federal court Consent Order) and was required to make changes to the property to comply with the requests pursuant to the U&O application. The U&O permit was finally issued in June 2023.

The people appearing in opposition to the extension request argued generally that the efforts by the Petitioner to bring the garage up to standards for temporary use should not be considered as efforts to establish the use. However, the temporary use was ordered by the Consent Order and the Petitioner was compelled to establish that use not knowing how long the process to obtain final approval of a Site Development Plan ("SDP") would take. The opposition argued that the Petitioner has taken no steps in furtherance of a final SDP. They



state that the inability of the Petitioner to go forward with its plans is not due to the inability to raise funds, because there has been money spent to pave a new driveway as well as funds spent on other activities. There was argument relating to the overall cost of construction and the ability to get construction completed in general on other unrelated projects, yet those other projects were well funded commercial projects and did not involve religious institutions.

The arguments at the work session do not change my initial conclusion that the Petitioner has diligently pursued establishment of the use in accordance with the approved Conditional Use plan.

There was also argument seeking to show that conditions that led to the Conditional Use decision have changed. There was argument that there is more traffic now than when the Board of Appeals Decision and Order was issued in 2020, and that trees in the line of sight from the road have grown considerably and now interfere with sight distance. There were statements that attendance at events on the property has included more than 50 cars, and statements that the use anticipated by the Board of Appeals is less intense than the current use.

Regarding the growing of the trees along Millers Mill Road, those trees were planted and existed at the time of the Board of Appeals March 3, 2020, Decision and Order. In reviewing sight distance, a traffic engineer would likely consider whether existing trees could grow to reduce visibility. More importantly, there was mention of trees in the 2020 Board of Appeals decision, but only the trees on the directly adjacent lot were mentioned. So, there is no way to determine if the potential growth of trees on a lot adjacent to the

immediately adjacent lot would have been a concern. It is not clear that those trees do not fall within the Millers Mill Road ROW, or that the location of those trees, even if they continue to grow, would impact the new driveway that will provide ingress and egress to the site<sup>2</sup>, as the property on which the trees are planted is separated from the Petitioner's property by a separate parcel of land. Accordingly, these arguments are not sufficient to find that there have been changes in the circumstances that led to the original decision that would justify denial of the extension.

Based on the above, I find that the Petitioner has taken steps that show it has diligently pursued establishment of the use in accordance with the approved Conditional Use plan. I find also that there have been no changes in the circumstances that led to the original decision that would justify denial of the extension requests.

**WHEREFORE**, it is this 26th day of July 2024, by the Howard County Hearing Examiner, **ORDERED**:

- A. that the request of Petitioner, NARESH C. DAS, in Board of Appeals Case No. BA 15-024C&V, for 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, (and which was the subject of appeals concluding on March 7, 2022) shall be and hereby is **GRANTED**;

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<sup>2</sup> Under the Consent Order, the only issues the Board of Appeals was allowed to address related to the safe ingress and egress from the site.

- B. That the time for obtaining building permits and the time for the completion of substantial construction as required by Section 131.0.1.3.c. of the Howard County Zoning Regulations be, and the same hereby are, **EXTENDED** until **March 7, 2027, to obtain building permits** and until **March 7, 2028, to substantially complete all required improvements**, which were approved as part of the Conditional Use; and
- C. The variances approved shall also be extended through March 7, 2028.

**HOWARD COUNTY HEARING EXAMINER**

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Katherine L. Taylor

Date Mailed: \_\_\_\_\_