

IN THE MATTER OF	:	BEFORE THE
HOPE BAPTIST CHURCH, INC.	:	HOWARD COUNTY
Petitioner	:	BOARD OF APPEALS
	:	HEARING EXAMINER
	:	BA Case No. 09-014C

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DECISION AND ORDER

On June 22, 2009, 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 Hope Baptist Church, Inc., to modify the religious facility conditional use approved on the property known as 8801 Stephens Road to include a day care center, nursery school and a private academic school in an R-SC 20 (Residential: Single Cluster) Zoning District, pursuant to Section 131.N.39 of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioner certified that notice of the hearing was advertised and that the subject property was posted as required by the Howard County Code. I viewed the subject property as required by the Hearing Examiner Rules of Procedure.

Andrew H. Robinson, Esquire, represented the Petitioner. Howard Wade and David Adams testified on behalf of the Petitioner. No one appeared in opposition to the petition.

FINDINGS OF FACT

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

1. The subject property is located in the 6th Election District on the east side of Stephens Road about 100 feet north of its intersection with Whiskey Bottom Road (the "Property"). The

Property is referenced on Tax Map 47, Grid 15, as Parcel 141, Lot 1, and is also known as 8801 Stephens Road.

2. The 11.88-acre, irregularly shaped Property has about 380 feet of frontage on Stephens Road. It is improved with has approximately 380 feet of frontage on Stephens Road.

3. It is improved with a 12,600 square foot, two-story, 300-seat, "L" shaped religious facility building lying about 120 feet from Stephens Road and developed in accordance with SDP 00-105. Along the northerly side lot line are two 100-year floodplain areas.

4. The BOA 99-020E Decision and Order approving the religious facility additionally approved a 44' by 44' addition to the south side of the facility and a freestanding gazebo behind the facility, but these structures were not erected. Their approval has since expired.

5. Access to the Property is from Stephens Road via a driveway located approximately 90 feet north of the southern side lot line. Two areas of 100-year floodplain are located along the northern side lot line. The eastern half of the Property, including a 3.9-acre section under a forest conservation easement, is wooded and unimproved. The church is surrounded on three sides by a double driveway/parking lane with 190 parking spaces, including eight disabled spaces.

6. Vicinal Properties.

East Side of Stephens Road. The R-SC zoned, Baltimore Gas and Electric Company owned Parcel 862 to the north is improved with high-voltage transmission line towers and power lines. Hammond Branch flows through this property. To the Property's southeast, are an R-SC zoned townhouse development and several single-family attached dwellings.

West Side of Stephens Road. The R-SC zoned, one-acre± Parcels 551, 870 and 817 across from the Property are each improved with a single-family detached dwelling. Further south,

Parcel 1064 is improved with a single-family detached dwelling development. Beyond these properties is the 52.4-acre open space parcel of the PEC-MXD-3 (Planned Employment Center – Mixed Use) zoned Emerson subdivision.

7. Roads. Stephens Road has two travel lanes with a deceleration and acceleration lane along the Property frontage. The posted speed limit is 30 miles per hour.

8. Water and Sewer Service. The Property is served by public water and sewer facilities.

9. The General Plan. Policies Map 2000-2020 of the 2000 General Plan designates the Property as a "Residential Area" land use. Transportation Map 2000-2020 of the 2000 General Plan depicts Stephens Road as a Major Collector.

The Proposal. The Petitioner is proposing to modify the approved religious facility (the "Church") through the addition of a Child Day Care Center, Nursery School, and a Private Academic Elementary School. The Conditional Use Plan depicts a 75' by 45' (3,375 square feet) proposed addition to the south side of the existing Church building. The Child Day Care Center and Nursery School and Private Academic School would be operated within the existing Church and the proposed expanded Church building. A 40' by 40' foot playground is proposed to be located to the parking lot's rear, about 185 feet to the Church's east. The playground will comprise updated playground equipment with a surrounding mulched area and a perimeter fence. There are no proposed changes to the sanctuary area of the Church, access points, or the parking lot. The proposal would be implemented in three phases.

Phase I, Child Day Care Center Use Startup. During Phase I, the Petitioner would begin operating the Child Day Care Center facility, which will be housed initially within a portion of the lower level of the existing Church.

During those months when Howard County Public System Schools ("HCPPS" or "Howard County Schools") are open, the Child Day Care Center will provide before and after-school child care programs. The before-school care program would operate between the hours of 6:30 a.m. and 9:00 a.m. and the after-school care program would operate between the hours of 2:30 p.m. and 6:00 p.m. During a two-three week portion of the summer months when Howard County Schools are closed, the Child Day Care Center will from as a full-time summer program 6:30 a.m. through 6:00 p.m. The Child Day Care Center will not operate on weekends.

Mornings, parents or guardians will drop off the children in the before-school program at the rear of the Church, for later pick up and transport by Howard County School buses to the respective schools. Howard County School buses will also drop off children in the after-school program at the same location, for later pickup by parents/guardians. During the summer, the children will remain on the Property until they are picked up by their parents/guardians in the evening. The drop-off/pick-up area is depicted on Exhibit A of the petition as being located at the rear entrance of the Church. Hilton Wade agreed that as a condition of approval, the Church would install a sign at the driveway entrance directing cars to make a left hand turn so that children being dropped off at the rear entrance will be let out on the Church side of the circular driveway.

An approximately 2,280 square foot room (47'6" by 48') located on the lower level of the Church will be utilized as the central area for the proposed Child Day Care Center. Two "breakout" rooms totaling 987 square feet will be used as needed. A 235± square foot room in the Church's lower level will be dedicated office space and a 294-square foot area of the existing

neighboring pantry area will be used for storing snacks. The total area to be utilized for the Child Day Care Center within the existing Church will be approximately 3,796 square feet.

The Petitioner anticipates a maximum enrollment of 40 children ranging in age from 5 to 11 years and a staff consisting of one to two staff members for every 15 children.

With the beginning of the 2010 academic school year, the Petitioner proposes to operate the Child Day Care Center program full-time, from 6:00 a.m. through 6:00 p.m. Monday through Friday in conjunction with the before and after-school program, with a 40-child maximum for both uses.

Phase II, Education Wing. The Petitioner will construct an expansion wing comprising a 45' by 75', two-story addition to the Church's south side (the "Education Wing"). Substantial construction of the Education Wing is anticipated to be completed within three years of the granting of the Conditional Use. The Education Wing will comprise a general assembly room/all-purpose room (approximately 60 percent of the total Education Wing space) and several office and classroom spaces (approximately 15 percent of the total Education Wing space). Upon completion of the Education Wing, the Petitioner will also utilize the general assembly room in part for the Child Day Care Center.

Phase III, Nursery School and Private Academic (Elementary) School. The Petitioner lastly proposes to operate a Private Academic School program at the start of the 2014 academic school year. The school would operate on a full-time basis from 6:00 a.m. to 6:00 p.m. Monday through Friday. The Private Academic School would be limited to the Kindergarten grade level and will not exceed a maximum enrollment of 20 children. Parents/guardians will drop off the kindergarten students during the same morning hours as the before-school program, and the

student will remain on the Property until picked up in the evening. The Kindergarten operation will utilize the classroom spaces of the Education Wing (approximately 10-15 percent of the total Education Wing space) and portions of the existing Church.

The combined maximum enrollment in the Child Day Care Center (the before and after school program and the full-time program) and Kindergarten operations will not exceed 60 children at one time.

CONCLUSIONS OF LAW

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

I. General Criteria for Conditional Uses (Section 131.B)

A. Harmony with the General Plan. Section 131.B.1 requires me to evaluate whether the proposed modification of the approved conditional use plan will be in harmony with the land uses and policies indicated in the Howard County General Plan for the district based on in which it is located. In making this evaluation, I am required to consider:

a. 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; and

b. If a conditional use is combined with other conditional uses or permitted uses on a site, whether the overall intensity and scale of uses on the site is appropriate given the adequacy of proposed buffers and setbacks.

The Howard County General Plan designates the area in which the Property is located as a "Residential Area" land use. The 11.18-acre Property would adequately support the increased intensity of the use and the location of the Property on a Major Collector road will ensure harmoniousness with the land uses and policies indicated in the General Plan for the district in which it is located. The acceleration/deceleration lane will facilitate traffic safety. The proposed

modifications will be buffered from vicinal residential uses by distance and topography and by existing landscaping. The proposed addition and playground will be buffered by wide setbacks and existing landscaping.

B. Adverse Impacts. Unlike Section 131.B.1, which concerns the proposed use's harmony or compatibility with the General Plan, compatibility with the neighborhood is measured under Section 131.B.2's four "adverse effect" criteria": (a) physical conditions; (b) structures and landscaping; (c) parking areas and loading, and; (4) access.

The assessment of a proposed conditional use under these criteria begins with the realization that virtually every human activity has the potential for adverse impact. Zoning recognizes this fact and, when concerned with conditional uses, 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 me is not whether the proposed use would have adverse effects in an R-20 district. The proper question is whether those inherent adverse effects are greater at the proposed site than they would be generally elsewhere within the R-20 district. *Schultz v. Pritts*, 291 Md. 1, 432 A.2d 1319 (1981); *Mossburg v. Montgomery County*, 107 Md. App. 1, 666 A.2d 1253 (1995).

For the reasons stated below, the Petitioner has met its burden of presenting sufficient evidence under Section 131.B.2 of the Zoning Regulations to establish this proposed use will not have adverse effects on vicinal properties beyond those ordinarily associated with a structure used primarily for religious activities in the R-20 district.

a. Physical Conditions. The impact of adverse effects such as noise, dust, fumes, odors, lighting, vibrations, hazards or other physical conditions will be greater at

the subject site than it would generally be elsewhere in the zone or applicable other zones.

The testimony and evidence indicate the proposed facility will not generate inordinate noise, significant outdoor lighting, or other physical effects detectable within the neighborhood. The new uses will be conducted predominately indoors, and the proposed improvement will comply with all setback requirements. The proposed playground is more than 400 feet from the nearest dwelling. No new lighting is proposed. Consequently, I conclude the Petitioner has adequately shown that any noise, lighting, or other physical conditions generated by the proposed use will not be greater than that which is ordinarily associated with a day care center, nursery school and private academic school associated with an existing religious facility.

b. Structures and Landscaping. 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 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 zone or applicable other zones.

Based on the evidence, I conclude the Petitioner has met its burden of demonstrating the proposed use complies with Section 131.B.2.b. The location and height of the proposed addition will comply with all bulk regulations and will be set back the same distance from Stephens Road as the church. The nearest residence (to the south) is 100 feet from the south lot line and at least 130 feet from the nearest residence. Importantly, the dense buffer along the south lot line and the existing vegetation will screen the use.

c. Parking and Loading. Parking areas will be of adequate size for the particular use. Parking areas, loading areas, driveways and refuse areas will be properly located and screened from public roads and residential uses to minimize adverse impacts on adjacent properties.

No new seats for the religious facility are proposed and the 190 current spaces are adequate for the additional uses. No changes to the parking area/driveway are proposed. The existing landscaping will provide the necessary screening and buffering from public roads and residential uses. The proposed use complies with Section 131.B.2.c.

d. Access. 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.

The existing access driveway, acceleration and deceleration lanes along the property frontage have provided safe access for almost 7 years and will likely continue to do so. I conclude the Petitioner has met its burden of demonstrating the proposed use complies with Section 131.B.2.d.

II. Specific Criteria for Structures Used Primarily for Religious Activities (Section 131.N.39)

Because the original structure is being modified to accommodate an addition, the petition must be reviewed for compliance with Section 131.N.39.

a. Lot coverage shall not exceed 25 percent of lot area.

The total estimated lot coverage with the addition is 9,675 square feet, or about .2 percent of the total lot area, in accordance with Section 131.N.39.a.

b. Structures used primarily for religious activities 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 proposed building will be less than the 34 feet permitted maximum height for the zoning district. The petition complies with Section 131.N.39.b.

c. 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 subsection 133.B.4.D of the parking regulations by being separated from the religious facility by a 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 times(s) of the use of the 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.

Section 131.N.39.c does not apply because the petition does not proposed parking facilities on a separate lot.

III. Specific Criteria for Child Day Care Centers and Nursery Schools, Day Treatment and Care Facilities (Section 131.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.

As a condition of approval, the area of the driveway used for dropping off and picking up passengers shall be closed off and the circulation area (including the entrance driveway) will be denoted by traffic cones and/or signage, in accordance with Section 131.N.13.a.

b. For child day care centers or nursery schools in industrial or commercial districts, outdoor play areas shall be fenced, screened and located to minimize exposure to noise and other emissions from roads, parking areas, and industrial activities.

This section does not apply.

c. The minimum lot size for child day care centers shall be 500 gross square feet of lot area per child.

Because the Property is 11.18 acres in size and no more than 60 children will attend the combined uses, the proposed uses comply with Section 131.N. 13.c.

d. 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 playground will be located to the rear of the religious facility. As a condition of approval, the play or activity area shall be fenced and the walkway from the facility to the playground shall be marked. The proposed use complies with Section 131.N. 13.d.

e. Parking areas shall be located and landscaped to minimize their visibility from roads and adjacent residential properties.

Based on the 7,848-square footage to be used by the two uses, 24 parking spaces are required. Even with the 94 spaces required for the religious facility, the 194 existing spaces will provide more than sufficient parking. The existing parking area to the rear and side of the religious facility and abundant landscaping will minimize the addition's visibility, in accordance with Section 131.N.13.e.

f. 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 addition is an appropriate size for the Site, and will be compatible with the existing facility. The outdoor play area will be buffered from adjoining residential properties by the existing landscape buffer, in accordance with Section 131.N.13.f. All uses are well buffered.

g. For facilities in residential districts 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 the effective date of Council Bill No. 11-2001 are permitted.

The proposed use fronts on and has access to a Major Collector, in accordance with Section 131.N.13.g.

(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 Hearing Authority may reduce this setback to no less than 20 feet or the minimum setback required by the zoning district, whichever is greater, if:

(a) The adjoining land is committed to a long term institutional or open space use that provides an equivalent or better buffer for vicinal residential development; or (b) The petition includes detailed plans for screening, consisting of a combination of a solid fence or wall and landscaping, or an equivalent combination, that presents an attractive and effective buffer for neighboring residential properties.

(3) At least 20 percent 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 addition and all outdoor activity used for the proposed day care center will be sited at least 100 feet from adjoining residentially-zoned property. About 68 percent of the 11.18-acre Site is used as green space, in accordance with Section 131.N.13.g.

IV. Specific Criteria for Structures Used Primarily for Schools, Colleges, Universities – Private Academic (Section 131.N.46)

- a. 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 proposed private academic school on the 11.8-acre Site will be restricted to the Kindergarten level with a maximum enrollment of 20 students, in accordance with Section 131.n.46.a.

- b. In addition to meeting the area requirements of Section 131.N.54.a, 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.**

This section is inapplicable as no residential accommodations are proposed.

- c. 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 proposed Education Wing will not exceed the R-SC district height limit, in accordance with Section 131.n.46.c.

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

Parents or guardians will drop off and pick up the Kindergarteners. As no bus service is proposed, this section is inapplicable.

- e. 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 play area will be located to the religious facility's rear and fenced. It will be well separated by distance and buffered by landscaping from adjoining residential properties. The petition complies with Section 31.n.46.e.

f. 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 Hearing Authority may reduce this setback to no less than 20 feet or the minimum setback required by the zoning district, whichever is greater if:

(1) The adjoining land is committed to a long term institutional or open space use that provides an equivalent or better buffer for vicinal residential development; or

(2) The petition includes detailed plans for screening, consisting of a combination of a solid fence or wall and landscaping, or an equivalent combination, that presents an attractive and effective buffer for neighboring properties.

All buildings, parking areas, and outdoor activities used for the proposed private academic school will be located at least 100 feet from adjoining residentially zoned properties, in compliance with Section 131.n.46.f.

g. At least 20 percent 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.

About 68 percent of the 11.18-acre Site within the building envelope will be used as green space, in compliance with Section 131.n.46.g.

h. 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 the effective date of Council Bill No. 11-2001 are permitted.

The Property fronts on and has direct access to Stephens Road, a major collector, in compliance with Section 131.n.46.h.

ORDER

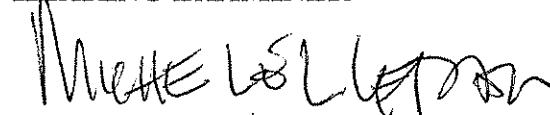
Based upon the foregoing, it is this 29th day June 2009, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the request of Hope Baptist Church, Inc., to modify an approved Structure Used Primarily for Religious Activities Conditional Use, with a Child Day Care Center and Nursery School and a Private Academic School in an R-SC Zoning District is hereby **GRANTED;**

Provided, however, that:

1. The conditional use shall be conducted in conformance with and shall apply only to the religious facility and uses described in the petition and depicted on the Conditional Use Plan, and not to any other activities, uses, or structures on the Property.
2. The playground shall be fenced and the walkway from the facility to the playground shall be marked.
3. During the hours of operation of the nursery school, the day care center, and the kindergarten, the Petitioner shall physically close off the drop-off area. The Petitioner shall also install a sign or otherwise indicate to all motorists to make a left hand turn so that children will be dropped off safely and let out on the Church side of the circular driveway.
5. The Petitioner shall comply with all applicable federal, state, and county laws and regulations.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**



Michele L. LeFaivre

Date Mailed: 7/1/09

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.