

IN THE MATTER OF : BEFORE THE
SABINO AMAYA : HOWARD COUNTY
Petitioner : BOARD OF APPEALS
 : HEARING EXAMINER
 : BA Case No. 10-022C

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DECISION AND ORDER

On June 20, 2011, 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 Sabino Amaya for a conditional use for a Structure Use Primarily for Religious Activities in an R-20 (Residential: Single-Family) Zoning District, filed 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.

The Petitioner was not represented by counsel. Sabino Amaya and Ana Amaya testified in support of the petition. Eunice Vizay translated for Sabino Amaya and Ana Amaya. Geneva Williams Sanders and Brenda Williams testified in opposition to the petition.

FINDINGS OF FACT

Based upon the preponderance of evidence presented at the hearing, and considering the Technical Staff Report (TSR), which is part of the record, I find the following facts:

1. Property Identification. The subject property is located in the 6th Election District on

the east side of Old Columbia Road about 2,700 feet south of the MD 32/US 29 intersection and is also known as 7085 Old Columbia Road and it is part of the Forest Ridge Subdivision (the Property). The Property is referenced as Tax Map 41, Grid 12, Parcel 311, Lot 2.

2. Property Description. The 35,551-square foot, generally rectangular Property has about 106 frontage feet on Old Columbia Road. A 20+-foot driveway on the northwest side of the Property provides access. A one-story residential structure with a two-story rear addition and a deck on the northeast portion lies about 70 feet from the front property line. The front yard is primarily gravel and several shade trees dot the area. A split rail fence is located within a median area in the Property's front. There is a paved area between the house and the south property line with three short walls sloping downward toward the rear section. Beyond this paved area is another gravel area with shade trees. A 100-year floodplain and a 20-foot sewer and utility easement are located in the rear section of the Property.

3. Vicinal Properties. All abutting properties are zoned R-20. To the rear is Lot 1 of the Forest Ridge subdivision and it is improved with a single-family detached structure. Lot 1 gains access to Old Columbia Road via a driveway adjacent to the Property's south side. Record Plat 7799 identifies this driveway as a 20-foot easement for ingress/egress and utilities to Lot 1. Parcel 310 to the north is improved with a single-family detached dwelling. To the rear and north of Parcel 310 are NT (New Town) zoned properties, each of which is improved with a single-family detached dwelling.

4. Roads. Old Columbia Road has two travel lanes within a 60-foot right-of-way. Sight distance to the north is about 250, and about 500 feet to the south from the existing driveway.

Visibility to the north is limited due to vertical and horizontal curvature of the road. According to Department of Public Works data, the traffic volume on Old Columbia Road west of MD 32 was 5898 average daily trips as of March 2005.

5. Water and Sewer. The Property is served by public water and sewer facilities.
6. General Plan. Policies Map 2000-2020 of the 2000 General Plan designates the Property as "Residential." Transportation Map 2000-2020 of the 2000 General Plan depicts Old Columbia Road as a Major Collector.
7. Zoning History. Code Enforcement No. CE 10-012. A zoning violation notice was issued to the property owner for the operation of a religious facility without an approved conditional use and for off-street parking of more than one commercial vehicle on a lot of less than three acres in the R-20 zoning district. The case is open.
8. Proposed Conditional Use. The Petitioner, a pastor, is proposing to operate a religious facility on the Property within the existing religious structure. The TSR makes following comments about the petition and conditional use plan.
 - a. Hours of Operation: Services will be held 7:00 p.m. to 9:00 p.m. services will be held on Monday, Wednesday, Saturday and Sunday.
 - b. Parking. The church would use a 15-passenger van to transport attendees. The last plan submitted (March 29, 2011, the revised plan) depicts a stacked parking layout and a parking calculation based on three religious facility seats per parking space, 15 parking spaces for 45 persons in attendance. Five parking spaces are shown perpendicular to the front of the residence, seven spaces to the south side, and three spaces behind the residence.
 - c. Access. The conditional use plan shows access through the existing residential driveway and rear access through the Lot 1 driveway/easement area on the property's south side.

- d. General Comments. The revised plan does not depict drive aisles, turning aisles, property lines, building restrictions lines or use setbacks.

9. Department of Planning and Zoning (DPZ) Division of Land Development (DLD) Comments (Partial)

- a. Landscape Plan Requirements. The future site development plan for this project must address landscaping requirements.
- b. Parking for religious facilities requires 1.0 space per 3.0 seats in main assembly area or 10.0 spaces per 1,000 square feet in the main assembly area if there are no fixed seats or benches.
- c. A commercial entrance must be provided at the site development plan stage for the proposed non-residential use.
- d. The plan shows a driveway along Old Columbia Road, which has an easement. The Petitioner needs a letter of permission or recorded access to use the driveway.
- e. The proposed setback for parking spaces in the R-20 zone is 20 feet. Please relocate the parking spaces to be outside the 20-foot use setback or a setback variance is required.

10. Mr. Amaya, a pastor, testified that the church use was there for years and that no one complained until the County notified him of the violation. He further testified that he has never complained about the use of the adjoining property, especially racing cars on the property. There are also dangerous items on the adjoining property and he has six children. He has always gotten along with the mother and father and prayed for the father when he died. He is no longer using the property for services and is considering renting space elsewhere.

11. Geneva Williams Sanders testified that her mother lives next door. After her father's recent death, she began to spend considerable time at the family home and heard noises and people gathering for services, sometimes late at night. There was a church sign on

the Amaya property.

12. Brenda Williams testified to filing a zoning complaint because of the uses on the property.

13. The Hearing Examiner explained to the Petitioner that she could deny the petition based on the TSR. During the proceeding, the Hearing Examiner reviewed the TSR's analysis of the proposed religious facility and its recommendation that the petition be denied with the Petitioner.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the petition, the conditional use plan, and the TSR, the Hearing Examiner concludes 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 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 factors to be considered in evaluating the petition under these criteria, according to the TSR, are the increased intensity of the proposed use over the existing residential use, safe

ingress and egress, and the adequacy of proposed parking, which is discussed in Part II. The TSR notes the revised plan does not appear to be drawn to scale nor does it depict a true plan view. Additionally, the revised plan does not accurately note property lines and building restrictions lines.

A key issue in the Hearing Examiner's analysis of the revised plan is the apparent noncompliance of the proposed parking spaces with the required 20-foot parking use setback. Additionally, the revised plan notes use of an adjoining driveway burdened by an access easement for Lot 1 to access to the rear parking spaces. As the TSR notes, without access to the rear parking spaces via this driveway, it is unlikely the proposed religious facility could meet minimum parking requirements. Based on the depicted conditions and the number and location of proposed parking spaces, the Hearing Examiner necessarily concludes the Site is too small for the use as proposed on the revised plan.

Because the revised plan does not indicate any landscaping for the use, I am unable to determine if there are appropriate buffers and setbacks. For all these reasons, the Hearing Examiner necessarily concludes the proposed religious facility does not comply with Section 131.B.

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.

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 has determined to be inherent in the use. Thus, the question in the matter before me is not whether the proposed uses would have adverse effects in an RC district. The proper question is whether there are facts and circumstances showing that the particular uses proposed at the particular location would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone. *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 County*, 107 Md. App. 1, 666 A.2d 1253 (1995).

For the reasons stated below, the Hearing Examiner necessarily concludes the Petitioner has not met his burden of presenting sufficient evidence under Section 131.B.2 of the Zoning Regulations to establish the proposed use will not have adverse effects on vicinal properties beyond those ordinarily associated with a structure used primarily for religious activities in the RR 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.

While the proposed use will be conducted predominately indoors, the use will be more intense than the residential use and vehicle circulation will increase with a religious facility use.

Without the necessary information on the plan, however, the Hearing Examiner is unable to assess the proposed use for compliance with Section 131.B.2.a.

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.

The height of the existing structure is likely below the 34-foot height maximum permitted in the zone and the residential structure has existed in its current location for years. Without landscaping depicted on the revised plan, the Hearing Examiner is unable to assess the proposed religious facility for compliance with Section 131.B.2.b.

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.

Zoning Regulations Section 133.D.7.h requires one space per three seats in the main assembly area and 10 spaces per 1,000 square feet if there are no fixed seats or benches. Additionally, two parking spaces must be provided for the residential use. The original petition stated there would be between ten and 20 members. The revised plan depicts a total of 15 parking spaces based on three seats per vehicle and 45 persons (apparently attending a religious service). The Hearing Examiner concludes the absence of information about how the Petitioner calculated the number of required parking spaces precludes her from assessing the adequacy of the petition for compliance 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 TSR concludes, and the Hearing Examiner concurs, that the road's curvature limits site distance to the north and south. The Property is located on a two-lane road with no shoulders, a situation that would appear to preclude the potential to provide acceleration and deceleration lanes. Additionally DLD commented that the Petitioner would need to provide a commercial entrance. Although a sight distance analysis would accurately determine the suitability of the use with safe access, the record lacks sufficient information to allow the Hearing Examiner to assess the petition for compliance with Section 131.B.2.d.

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

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

Although the Petitioner did not provide lot coverage information, it appears the petition complies 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.

Section 131.N.39.c does not apply because the petition does not propose any structure higher than permitted and it appears that the existing structure is less than 35 feet in height.

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 propose parking facilities on a separate lot.

ORDER

Based upon the foregoing, it is this 12th day July 2011, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the petition of Sabino Amaya for a conditional use for a Structure Use Primarily for Religious Activities in an R-20 (Residential: Single-Family) Zoning District is **DENIED**.

HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER



Michele L. LeFaivre

Date Mailed: _____

7/12/11

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.