

IN THE MATTER OF	:	BEFORE THE
AL HUDA, INC., T/A DAR-US-SALAAM	:	HOWARD COUNTY
Petitioner	:	BOARD OF APPEALS
	:	HEARING EXAMINER
	:	BA Case No. 13-033C

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DECISION AND ORDER

On March 6, March 20 and April 3, 2014, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the Conditional Use petition of Ah Huda, Inc., t/a Dar-us-Salaam (DUS) for three conditional use requests:

1. A day care facility, submitted pursuant to Howard County Zoning Regulations §131.0.N.13. (Day Care Centers and Nursery Schools, Day Treatment and Care Facilities)
2. A religious facility, submitted pursuant to § 131.0.N.42 (Religious Facilities, Structures and Land)
3. A private academic school, submitted pursuant to § 131.0.N.48 (Schools, Colleges, Universities – Private Academic), including a residential building with six separate dwelling units housing up to six residents per unit for the entire facility, including religious clergy, staff members and caretakers

Petitioner certified to compliance with the notice and posting requirements of the Howard County Code. The Hearing Examiner viewed the subject property as required by the Hearing Examiner Rules of Procedure. Sang Oh, Esquire, represented the Petitioner. Mickey Cornelius and Minhaj Hasan testified in support of the petition. Joan Becker and Paul Skalny, Esquires, represented opponent Residents for Responsible Development of Woodmont (RRDW) and adjacent property owners Robert Manfuso, Gretchen Moberly and Cedar Lane Farm II, LLC. Theodore Mariani testified in opposition to the petition on behalf the Western Howard County

Citizens Association. Also testifying in opposition were Timothy Person, Tim Feaga, Mark J. Haney, David Walter, Dave Yungmann, Robert Manfuso, Nick Stamatakis, Teresa Stonesifer, Diana Cullum, Bird Mobberly, Eric Stonesifer, Melissa Ridgley Covolessky, Corey Risser, John Jenkins, Diane Hawkins and Jodi Lahmannn.

Petitioner introduced into evidence the exhibits as follows.

1. March 6, 2014 letter proposing 16 conditions to the terms of approval
2. Picture of attached dwellings
3. Google Earth image of existing entrance
4. Google Earth close-up image of existing entrance
5. Maryland State Highway, Data Services Division, Annual Average Daily Traffic (AADT) 2006-2012 for MD 144 between MD 97 and MD 32

Opponents introduced into evidence the exhibits as follows.

- 1A-K. Photographs of Chanceland Farm and neighboring residences
2. Howard County Rural Land Preservation Map, January 2013
3. PlanHOWARD 2013 Map 6-3, Sustainable Growth and Agricultural Preservation Act Growth Tiers, 2012
4. 2003 Deed gifting Property from Woodmont Academy, Inc., to Woodmont Educational Foundation, Inc.

FINDINGS OF FACT

Based upon the preponderance of evidence presented at the hearing, the Hearing Examiner finds the following facts:

1. Property Identification. The subject property is located in the 4th Election District and located on the north side of MD 144 (Frederick Road) about 1,000 feet east of McKendree Road. It is referenced as Tax Map 8, Grid 24, Parcel 115 and known as 14196 MD 144 (the Property).
2. Property Description. The 65.6-acre, "Z" shaped Property is accessed from an existing driveway (the main entrance) with separate ingress/egress lanes lying about 810 feet west of the

southeast property corner. There are stream and wetland areas to the east and west of the front portion of the driveway and a small pump house to the driveway's east. Farther into the Property, the driveway becomes a two-lane drive curving to the northwest around the stream and wetlands area and a long stormwater management pond (SMP) to the northwest. Past the SMP, this driveway curves to the southwest, where it connects to a paved parking lot and vehicle circulation area. At the southeast end of this parking lot and vehicle circulation area is a one-story school building (Building 7 on the CUP). To the parking lot's southwest side are five large modular buildings (Modulars 1-5 on the CUP), and in the same general area, several small accessory buildings and playground equipment. To the north, beyond this improved area is an open area rising 30-40 feet in elevation to the rear lot line at the I-70 right-of-way (ROW). The Property is highest in elevation in the northeast corner of the Property, and lowest in the stream areas on each side of the entrance driveway.

3. Vicinal Properties. Adjacent properties are also zoned RC-DEO. To the north is I-70. Parcel 128 to the east is an approximately 60-acre Agricultural Land Preservation Easement horse farm (Cedar Lane Farm II, LLC). In the southern portion of Parcel 128 is a pond, farm buildings, and paddock areas. The northern area is open field. . Further east is a thoroughbred breeding and training facility on an Agricultural Preservation Land Easement. To the Property's south, across MD 144 is Parcel 46, an approximately 130-acre horse Agricultural Land Preservation Easement horse farm (the Mobberly property). The eastern area of the Parcel directly across from the Property is wooded. There are paddocks in the western areas. On Parcel 46 is an historic building site designated HO-117 and known by two names, "Poverty Discovered" and "Dr. William

Bryson House," portions of which appear to date from the mid-18th century. Parcel 168 to the Property's west, is the site of the Howard County Bureau of Highways Cooksville facility. A large, multiple-bay service building fronts on MD 144. To this building's west is a three-bay garage and roofed vehicle storage area and to the north, another roofed building storage area, material storage buildings, outdoor material and equipment storage areas, and a commercial communications facility approved through Board of Appeals Case no 93-20E for an existing tower. To the Property's northwest is the unimproved Parcel 109. To the east, at the southwest corner of MD 144 and McKendree is the HO-192 historic site, known as "Friendship Pines," dating from the late 19th century.

4. Roads. MD 144 has two travel lanes, generally, but at the Property's main entrance; there is a westbound through lane, a westbound right-turn and acceleration lane, an eastbound through lane and an eastbound left turn lane. The ROW width in the area is variable. The posted speed limit is 50 MPH (School area). The TSR reasons sight distance is not an issue at the main entrance, the entrance having been approved through the Woodmont Academy facility. The Conditional Use Plan (CUP) depicts a secondary driveway near the west, side lot line, which the TSR reasons appears to be a right-turn ingress/egress and which would require State Highway Administration (SHA) design and location approval. Per the TSR, the traffic volume on MD 144 east of MD 97 was 3,542 average daily trips based on SHA data.

5. Water and Sewer Service. Private well and septic would serve the proposed uses on the Property. The TSR notes the presence of existing wells in the southeastern are of the Property and further, that the CUP depicts existing and future septic areas in the Property northern area.

The TSR makes the further comment that the Bureau of Environmental Health will determine the adequacy of all water and septic facilities for all development phases.

6. The General Plan. According to the TSR, the Property is designated "Rural Conservation Area" on the PlanHOWARD2030 Designated Place Types Map and "Institutional" on the Land Use Map. The PlanHOWARD 2030 General Plan Transportation classifies MD 144 (Frederick Road) as a Minor Arterial on Map.

7. Zoning History. In BOA Case No. 02-019C, the Board of Appeals on July 17, 2002, granted petitioner Woodmont Academy, Inc.'s request for two conditional uses, a private academic school a retreat center, said uses to be constructed in four phases over a ten-year period.

8. Agency Comments. DPZ, through the TSR recommends approval of the proposed conditional uses subject to two conditions: 1) The Conditional Use shall be conducted in conformance with and shall apply only to the proposed child day care center, religious facility and private school as described in the petition and depicted on the CUP for "Dar-us-Salaam submitted on November 8, 2014 and not to any other activities, uses or structures on the Property, and 2) Petitioner shall provide exterior architectural design information for the Proposed Building 10. The SHA comments states it will require seven copies of the traffic impact study for review and that it will need seven copies of a concept plan. An access permit will be required for any work within SHA ROW. The Howard County Health Department, Bureau of Environmental Health (BEH) has no comment on the proposed conditional use because its site evaluation and design of the on-site sewerage disposal system (OSDS) have not been completed.

Due to the scope of the proposal, the Maryland Department of the Environment (MDE) will jointly review the OSDS, which will require a state discharge permit.

9. The Conditional Use Proposals. Petitioner is seeking approval for three principal uses:

1) a religious facility per § 131.0.N.42, 2) a private academic school per § 131.0.N.48 and 3) a child day care center per § 131.0.N.13. Petitioner is also seeking approval of an accessory residence accommodation for all three uses under § 131.0.N.48.b. According to the narrative supplement to the conditional use petition (the supplement) upon completion there will be 11 buildings on site with a total building lot coverage of 185,150sf and a total building floor area of 275,300sf. The Masjid would be the first constructed in this circular grouping and it will be oriented generally to the southwest, for proper alignment to the Kaaba in Mecca.

Building No.	Use	Footprint (sf)	Floor Area (sf)	Stories Allowed/Proposed	Height Allowed/Proposed (in feet)
1	common/admin	15,000	30,000	3/2	40/30
2	boys elem/mid school	17,075	34,150	3/2	40/30
3	boys high school	13,000	13,000	3/1	40/30
4B	boys athletic center	17,500	17,500	3/1	40/40
4G	girls athletic center	17,500	17,500	3/1	40/40
5	girls elem/middle school	17,075	34,150	3/2	40/30
6	girls high school	13,000	13,000	3/1	40/30
7	KG/preschool	30,000	30,000	3/1	40/28
8	Masjid (prayer hall)	28,000	56,000	3/2	40/40**
9	maintenance	4,000	4,000	3/1	40/25
10	residence	13,000	26,000	3/2	40/35
11***	pump house				
totals		185,150	275,300		

* This information (except building 11 information) appears on the CUP.
 ** The minarets on the Masjid are proposed to be 120' in height and located about 360 feet from adjoining properties, per Section 131.0.N.42 and as evaluated in Part IV.
 *** The CUP does not identify building 11. Based on the building and use setback notes on the CUP, which reference an 80-foot setback for an existing pump house, the existing pump house is building 11, apparently.

b. Phasing. The narrative supplement to the petition (the supplement) state the uses would be constructed in five phases over a 12-year period, as depicted in Tables 2-6.

TABLE 2 PHASE 1 STRUCTURES (EXISTING AND NEW) & PROPOSED USES (YEARS 1-4)	
Structure	Use
E* Modular 1	school offices, classrooms
E Modular 2	elementary school classroom
E Modular 3	religious programs
E Modular 4	child care
E Modular 5	middle school classrooms
N* Modular 6	middle school classrooms
N Modular 7	high school for girls
N Modular 8	high school for boys
E Building 7	school classroom purposes
non-structural	slight enlargement of existing parking for all Phase 1 uses
E* Existing N* New	

TABLE 3 PHASE 2 NEW STRUCTURES AND PROPOSED USES (YEARS 4-7)	
Structure	Use
N Building 8	14,000sf religious facility, the Masjid (mosque or prayer hall) to be constructed about 500 feet north of existing parking lot
N Building 10	residence building comprising six separate dwelling unit, 6 resident maximum per building, 36 total residents
non-structural	additional parking to be added, apparently in the areas adjacent to and east of the Masjid
E* Existing N* New	

TABLE 4 PHASE 3 STRUCTURES AND PROPOSED USES (YEARS 8-9)	
Structure	Use
four modular buildings to be removed	
N* Building 3 or 6	high school building
N Building 2 or 5	elementary/middle school building
N 4,000sf addition to E Building 7	child care moved from E Modular building to Building 7
non-structural	additional parking to be added, apparently in the areas of the modular buildings to be removed
N* New	

TABLE 5 PHASE 4 NEW STRUCTURES AND PROPOSED USES (YEARS 10-11)	
Structure	Use
N* Building 4B	athletic center
N Building 4G	athletic center
N Building 1	administration building
N Building 9	maintenance building
non-structural	expanded parking
N* New	

TABLE 6 PHASE 5 NEW STRUCTURES AND PROPOSED USES (YEAR 12)	
Structure	Use
N* Building 3 or 6	high school
N Building 2 or 5	elementary/middle school
E* modular buildings	remaining 4 modular buildings to be removed
non-structural	remaining parking spaces to be constructed
N* New E* Existing	

c. Parking. A total of 629 parking spaces are proposed throughout the site, with the largest parking areas to be located to the north of Building 7 and east of the multi-building courtyard. Small parking areas would be located next to the recreational courts, playing fields and in specific areas along the internal driveway system. According to the TSR, additional parking associated with the Masjid would be constructed during Phase 2 and the TSR assumes this parking would be in the areas adjacent to and to the east of the Masjid. Additional parking would be added during phase 3, in the modular building area when the modular buildings are removed. Phase 4 would expand the parking. The remaining parking spaces would be added during Phase 5 (TSR, p. 3.)

TABLE 7 PARKING			
Use	Phase 1	Phase 2-5	total
elem/middle school (400 students)	67	34	101
high school	34	34	68
day care	9	8	17
prayer hall		144	144
residence		14	14
total required	110	234	344
total proposed	110	519	629

d. Additional Use Information

- The religious facility use. The Masjid building will be used for five daily prayers, religious services, studies, or other small gatherings. On Friday, what the Hearing Examiner understands to be a congregational or communal prayer is held from 1:00 p.m. to 2:00 p.m.
- The supplement states only those individuals who are close and convenient to the Property are expected to attend the five prayer services. The TSR (p. 5) reasons the 2,000 maximum attendance is most likely to occur only on days of special religious significance.
- The private academic school use. A three-bus school bus service is proposed for all school levels.

- The residences. Residence accommodations are proposed for religious clergy, staff members and caretakers for all three facilities. The residence building will comprise six separate dwelling units housing up to six residents.
- The day care center. The 4,000sf addition to the day care center proposed to be constructed during Phase 3 will create an outdoor playground courtyard in the middle of the structure. The center will be served by a large parking area with a drop off/pick up area at the entrance to the structure. On-site circulation and parking areas are designed to minimize vehicular and pedestrian conflicts and provide safe areas for drop off/pick up.

e. Setbacks. All structures will meet the 75-foot front setback, the nearest structure being the pump house, which sits 80 feet from the front lot line, and the 50-foot side setback.

f. Populations.

TABLE 8 POPULATIONS (ALL USES)	
Use	Total no. of Persons (Maximums)
private academic school	Phase 1: 400 elem./middle school, 100 high school Phases 2-5: 200 additional elem./middle school, 100 additional high school total student body: 800
child care	100
religious facility	2,000 (including students, teachers and staff)
staff for all three uses	100
residence	36

g. Hours of Operation

TABLE 9 HOURS OF OPERATION (ALL USES)	
Use	Days/Hours
private academic school (all grades)	Monday-Friday 7:30 a.m. to 3:45 p.m. , with after school programs (no times proposed)
child care	No days specified 6:30 a.m. to 6:00 p.m.
religious facility	Five daily prayer times. Prayer times vary throughout the year depending upon the sun's position. Main service: Friday, 1:00 p.m. to 2:00 p.m.

h. Outdoor uses. Athletic fields and courts are principally accessory to the private school use are not proposed to be have outdoor lighting.

i. Outdoor sound amplification. No sound amplification is proposed in the petition or discussed in the supplement.

j. Lighting. The CUP states appropriate lighting will be proposed with the Site Development Plan (SDP). The supplement states outdoor lighting will comply with the Zoning Regulations and will be directed downward and shielded to minimize and impacts on adjacent properties, and further that the play fields would not have outdoor lighting at this time.

k. Visual impact, buffers, screening, views. The petition includes a site elevation analysis. The CUP key map shows two section locations, A and B. Section A begins at a point in the front of the religious facility (Building 8) to a point northeast of the common lot line with Parcel 128 (Cedar Lane Farm). The attendant Section A graphic shows the Building 8, its height, the access road, tennis courts, the existing grade and proposed berm infill above the grade line and proposed vegetation. The proposed berm infill is called out is a separate graphic. According to this graphic, the berm infill will range in height. It also calls for fencing along the highest point along the berm. The fence graphic shows a six-foot high composite fence to match the texture and color of the existing on-site wood fence. Section B begins at a point east of Building 2 and runs, apparently, to an existing residence to the east. A red horizontal line indicates what the Hearing Examiner believes is a red elevation line, with a 590± foot elevation at Building 2 and a 598± foot elevation at the existing residence on a neighboring property.

The key map also references four images (I1-4). I1 depicts the current view east and southeast from Building 2. I2 depicts the current view from the proposed parking spaces to the east of Building 2 to the northeasterly property line. I3 depicts the current view north from the P2 view of easternmost location of these proposed spaces. All three photographs show a line of vegetation and trees along the common property line. Lastly, I4 is a panoramic image centered on the courtyard within the circular building grouping, looking east and encompassing the views to the northeast corner of the Property by I-70 and to the southeast, toward the stormwater management pond on the eastern side of the main driveway. This panoramic is intended to show how the proposed vegetated berm would screen adjacent property from the proposed on-site parking and how proposed vegetation will provide future screening for adjacent residences.

RRDW OPPOSITION TESTIMONY

Testimony of Timothy Pearson

10. Timothy Pearson testified to residing at 3959 Hunt Valley Drive and appearing to testify on behalf of RRDW, which community members concerned about future development on the Woodmont property formed in 2013. RRDW's intent is to limit development on the Property because the proposed uses are too intense. From 2006 through 2008, he had three children at Woodmont and the 2007 yearbook indicates there were 324 students through 8th grade. There was an outdoor club but no athletics. The retreat center was never constructed. In the mornings, traffic sometimes backed up on MD 144. He is concerned about the intensity of the three uses, including the number of persons planned to be on site, which he believed to be about 2,000

people. At Woodmont, there were 1,800 students and faculty proposed in phases, no evening or weekend use, and everyone was gone by 4:00 p.m.

Testimony of Theodore Mariani

11. Theodore Mariani testified to representing the Concerned Citizens of Western Howard County as a board member. He is a professional engineer, registered architect and land planner. CCWHC's believes the proposed uses will change the character of the RC zoning district Tier IV designation. Properties so designated are typically farms or limited residential, and Tier IV legislation limits residential development to four residences per property. Other issues include the utilization of the mosque for religious worship, which separates men and women, so it will be larger. These people will be coming by car and he cannot imagine 2,000 cars descending on the site, so he is concerned about attendance at the mosque. He is also concerned about the 26,000sf residential structure, which he considers more like a multi-family structure than a single-family dwelling permitted under Tier IV. The septic system is another issue, as he does not understand how approval can be granted without understanding what the underlying utilities will be. He believes it is erroneous for the project to go forward without some kind of BEH report about environmental impacts. Mr. Mariani is also concerned about the absence of any traffic analysis for the project. On cross-examination, Mr. Mariani agreed that the new Tier IV legislation pre-dated comprehensive zoning and that its purpose is to protect the bay by preventing large subdivisions with septic systems unable to remove nitrogen that could pollute the bay and other waterways. He also agreed that a project of this size would require a pre-treatment system to remove nutrients. It was also his opinion that the proposed uses would have a tremendous

environmental impact, a tremendous drain on water supply and effluent treatment. Concerning the proposed residential accommodation, Mr. Mariani testified to having participated in the comprehensive rezoning process and supporting multi-plexes only on B-2 land in the rural west. The residential component is out of place, as the RC zone allows only cluster and large lot residences. Additionally, the TSR is not clear as to who would reside in the residences and there is no reference to students residing on campus.

Testimony of Tim Feaga

12. Tim Feaga testified to residing on Frederick Road and having lived in Howard County his entire life, some 40+ years. He is a land developer in western Howard County. Most of his business is in western Howard County, so he has a lot of experience with well and septic. Mr. Feaga is familiar with the Property and viewed the Conditional Use Plan briefly. A well is located just west of the current access, and a second well, to the east abutting the old farm to the east. His primary concern with the proposed conditional uses is that DUS is not addressing well and septic issues before seeking conditional use approval. He travels MD 144 every day and is concerned about 1,000 cars traveling on the road on Fridays at 1:00 p.m. There will be disasters when the Howard County Fair or other events are held. The combination of the proposed uses and existing uses will conflict. Referring to the septic areas (possible percable areas) depicted on the CUP, he testified there are three areas shown close to I-70. Some areas failed, but other areas passed. He believes some septic areas depicted on the plan are compromised because the soil has been disturbed, possibly by bulldozing. He presumes some six feet has been excavated, putting the entire system in jeopardy based on the proposed location of the buildings. .

13. On cross-examination, he explained that he reached his conclusion about the septic area having been disturbed simply from driving down I-70, from which, apparently, the area is visible. Additionally, the county's historical aerial photographs depict changes to these areas. He does not recall actually seeing bulldozers in the perc area, but it is evident on the aerials. He agreed the amount of building allowed is dependent on the amount of adequate septic capacity that can be provided—that the amount of building would be proportionate to septic capacity. However, he has serious doubts that the law will be enforced in the future. When the Hearing Examiner asked about his professional experience with the conditional use process in Howard County, Mr. Feaga responded that he has none, his business being 100% based on existing zoning.

Testimony of Mark J. Haney

14. Mark J Haney testified to residing on Route 97 across from Glenwood Community Center and Glenwood Library, north of Carrs Mill Road. He has lived there for 4 years, and before that, he lived at Riggs Meadow Drive 1998-2010. He has two traffic concerns. First, he now waits 4 minutes or more to exist from his driveway onto MD 97 and the traffic from the proposed uses may increase the wait. Second, he is a cyclist and rides with groups of 20-30 riders who drive right by the Property after 5:00 p.m. and MD 144 has areas with no shoulders. He believed the speed limit near the Property was 45 MPH, but learned through questioning that it is actually 50 MPH. On cross-examination, he testified that one bike group meets at Glenelg High School, and he does not use MD 144 for meetups with this group. However, he rides or runs past the Property, since all bike routes use MD 144 in 40+ mile bike trip. When questioned by the Hearing Examiner about whether Western Regional Park affects his biking, he explained that the western Howard County

group meets at the community center next to park and sometimes comes back from rides on MD 144. He also admitted to having problems driving near the park and schools because he coaches soccer at the park in the evening and you have to be careful driving.

Testimony of David Walter

15. David Walter testified to residing some 20+ years on MD 144, about one mile east of the Property's entrance. He can tell if there is an incident on I-70 or near Mt. Airy by the increased traffic on MD 144. He could tell when the Woodmont school began and let out. He is concerned about the county's responsibility to assist DUS if its potable water runs out (by failing). He would want the county to make Petitioner "stick to" the arrangements "logged in" for water and sewer expansion. With respect to traffic, Mr. Walter testified to the great increase in traffic with Woodmont. Some of the folks whose children attended Woodmont lived in the vicinity and others did not. He understands a large volume of potential users will be coming from College Park and the DC area and will not be familiar with traffic early on. It is quite a distance to travel. He is concerned about traffic problems on MD 144. If you are not used to the area, there can be many problems. On cross-examination, he agreed that traffic problems would be reduced over time.

Testimony of David Yungmann

16. David Yungmann testified to residing on Addison Way for about 13 years. His home is about one mile west of the Property and he travels along MD 144 every day. He believes the proposed conditional uses and number of students on Tier IV property is ludicrous, contradictory to county land use processes and completes overdevelopment. He is aware of other facilities in

the area, like the library and community center, which have caused a minor increase in traffic. Currently, morning traffic at MD 144 and MD 97 backs up and at night backs up to Mark Hanney's house. He is a realtor and his contracts for properties not served by water generally include water and sewer contingencies. He is unaware of any other sites in the west with a school, daycare center, and religious facility. He also believes Woodmont should never have been approved.

17. On cross-examination, he acknowledged being one of the RRDW leaders and that RRDW has publicly taken the position that as long as DUS and its program is at or below what was approved for Woodmont, it would not oppose the petition. Nonetheless, he believes that Woodmont should not have been approved and that the current petition and hearing would not be happening but for Woodmont. RRDW acknowledges that Woodmont did exist and in the interest of fairness, it decided not try to turn back the clock because of Woodmont's failure and agreed to live with any new development that stayed below Woodmont, which the DUS proposal does not, there being more people going in and out of the site. Woodmont had a fifty percent busing requirement, so people living in the community could do busing, but he has no idea of how many DUS members live in the community or would live in the community. Although the annual Howard County Fair and additional events at the fairgrounds site increase traffic along MD 144, these events are an integral part of existing community and serve the community. Area churches also serve the agricultural community.

Testimony of Robert Manfuso

18. Robert Manfuso testified to residing some 25 years at 1975 McKendree Road, the 191-acre Chanceland Farms, which is in the county farm preservation program. The county farmland

preservation program imposes certain conditions on his property. It cannot be subdivided. Mr. Manfuso testified to his operation requiring a rural environment and to purchasing the property because neighboring properties were also subject to agricultural easements. Chanceland Farm is a breeding farm and equestrian operation that bring horses up and develops them for racing. Depending on the time of year, there are 50-80 horses on the property. At this time of the year, there are brood mares on site. There are several brood farms in the county and his is probably one of the largest in the county.

19. Referring to Opposition Exhibits 1A-K, Google aerial images, he described them as depicting his property, which is split by McKendree Road. They show his horse breeding and training facility, including a track, training barn, residence, broodmare barn, horse fields, an equine therapy pond and a farm manager's tenant house. His residence is on a separate lot. Referring to Opponents Exhibit 2, he identified it as the Rural Preservation Map dated January 2013. He believes the proposal would change the character of the area.

20. He is also concerned about traffic, as his operation has trailers on MD 144 4-5 days a week. One reason he located where he did was access to decent vet facilities, which is important for emergencies. Mares foal about mid-January to mid-May; in these months foals may need vet care 4-6 times. You never know what will spook a young horse in training, like a noise or bright light and they may need a vet very quickly. Sometimes an emergency will require immediate attention. You also want a peaceful environment for horses. He can hear I-70 from his property and there can be issues when there is a traffic accident or traffic is stalled. He believes the proposed program will make it incredibly difficult to continue in the thoroughbred business.

21. On cross-examination, he acknowledged the preservation program is a voluntary program and that the person who put his property into preservation was compensated. He therefore bought the property at a price that did not reflect the full development potential of the property. He further stated that the easement reflects an understanding that the area would be maintained in a certain environment and that the farm was developed on the basis on an understanding that it would not be subject to massive city activities such as proposed for the Property. He also testified that persons in the county told him that the area west of Route 32 would be developed for agricultural activities and that the well and septic limitation would limit the explosion of an urban area. He acknowledged that churches and schools are permitted in the west, as are private schools and day care centers.

22. Regarding his testimony about the proposed conditional use changing the character of the area, Mr. Oh reviewed Opponents Exhibit 2 with him. The red star is the Property. To its west and north of MD 144, the properties are not shaded (not subject to any easement). On further cross, he agreed that the purchase of his property, being subject to a preservation easement, should not encumber other persons who had not taken the option of putting their land into preservation.

23. Concerning his testimony about emergencies, where Mr. Manfuso testified that vets come to his property for emergencies and they may tell him his animal needs attention at a vet center, Mr. Manfuso clarified that the proposal would affect his ability to care for his horses, if approved. Concerning his testimony about light and noise spooking his horses, Mr. Manfuso recalled no occasion when noise or light from the Woodmont Academy use spooked them. The

noises that might bother his operation include noise erupting from parking and the general nature of the uses. He suspects traffic will be doubled at the Property, at a minimum, which will cause pressure on the road. When asked by the Hearing Examiner if the highway facility affected his horse operation, he testified that it has not seriously affected it. He does not hear it. He also acknowledges that the cell tower on the facility has a light. On cross-redirect, Mr. Manfuso testified to it being difficult to determine how often emergencies occur, but that they do.

ADDITIONAL OPPOSITION TESTIMONY

Testimony of Nick Stamatakis

24. Nick Stamatakis testified to residing on Old Frederick Road. Because he has children in three different schools, Bushy Park Elementary, Glenwood Middle School and Glenelg High School, he and his wife travel along MD 97 some six times a day. In recent years, traffic lights have been changed at MD 97 and MD 144, including left turn lanes at 97 and 144 and a traffic light at MD 97 and Old Frederick Road, all due to increased traffic. The proposed use of the Property would add traffic to these intersections, causing strain. The left turn onto MD 97 from MD 144 has a 15-car backup about the time schools let out. Two thousand persons will add hundreds more cars. People driving will initially be coming from Washington, D.C. or College Park using MD 97. Concerning the TSR, he noted several inconsistencies. Regarding the secondary entrance, he testified to it having been shut down and in his opinion it is an unsafe entrance because it sits high and has a blind spot. There are no acceleration or deceleration lanes at this entrance. If this entrance is eliminated, the sole entrance for all uses will be a single driveway, which he believes violates a regulation against uses sharing a driveway. He does not believe the

scale and intensity of the proposed uses are in harmony with PlanHOWARD 2030 and that any nonagricultural use must be reviewed. He also believes the proposed uses should be reviewed for compliance with scenic byway regulations.

25. On cross-examination by Ms. Becker, Mr. Stamatakis testified that when his son attended Woodmont, the secondary driveway was the sole means of access and left turns were difficult. Woodmont later opened up the main (current) entrance, and shut down the old driveway. Referring to Opponents Exhibit 3, which he identified as being PlanHOWARD map 6-3 Tier IV, he explained the Tier IV legislation is more restrictive than RC zoning. When cross-examined by Mr. Oh as to whether he had any belief that the proposal would not comply with scenic road legislation, he explained that it was important to have a picture because things may change. He also acknowledged that he has never seen an accident along this part of MD 144.

Testimony of Teresa Stonesifer

26. Teresa Stonesifer testified to 12864 MD 144 about ¾ miles away and being a farmer owner whose family has farmed the county for over two hundred years. Her farm is in preservation and in order to continue farming she must be able to get equipment up and down rural roads. She is concerned about what will happen when thousands of persons who share no interest in the farming community drive along the roads or have to deal with loose livestock or other animals. Traffic will be a mess with some 2,000 people and area roads will be inundated. She believes the use should not be compared to the one-week fairgrounds activities, where police control traffic. There needs to be adequate infrastructure to serve a project of this size, so it should be located where there is public sewer, water, and adequate roads.

Testimony of Diana Cullum

27. Diana Cullum opposes the size of the development and believes the use would increase traffic. She bought her property so she could have horses. Most churches in the area are small to medium size and the proposed religious facility will be more than twice the size. She also opposes the proposed residence accommodation. She is unaware of any site with a school, church, and religious facility in the area.

Testimony of Bird Mobberly

28. Bird Mobberly testified to residing on MD 144, across from the Property. She opposes the petition because of the number of people, the number of buildings on the small site and the traffic. She is concerned injured horses will not be able to get to a vet or that a vet will not be able to get to the horse. She has horses and boards hunter/jumper horses, which are transported to her farm and the future growth would make the traffic situation worse. Racehorses do not like noise and their reaction is to either fight or flight. In this situation, the horse and buyer can get hurt. With so much land preservation around her, there are about 300 acres for riding. She does not want the lights shining on her at night. The landscape does not fit in with the area. Most homes are colonial looking.

29. On cross-examination by Mr. Oh, Ms. Mobberly explained the noise she is concerned about is related to proposed outdoor sporting events. She is also worried about light trespass from night uses and parking lights onto her property. By landscaping, she meant the buildings and the Islamic features. When asked if she would be opposed to a residential accommodation that looked like the dwellings depicted in Petitioner's Exhibit 2, she answered affirmatively,

because of the amount of people. On cross-examination by Ms. Becker, Ms. Mobberly explained she has only one means of ingress/egress, which she uses for tractors, horse trailers, vets, and horse boarders and there are no shoulders at this location. She is also concerned about noise from the playground. In her opinion, the landscaping will not mitigate her concerns about viewing the proposed use.

Testimony of Eric Stonesifer

30. Eric Stonesifer testified to having built a house on the family farm. He works for Howard County Public Works, sometimes out of Dayton by MD 32 and sometimes at the Cooksville shop. His work requires him to travel a lot on MD 144. Public Works employees who try to pull out of the Cooksville Shop driveway next to the secondary entrance on the Property cannot see to the left, even in taller trucks He is also concerned the traffic generated from the use might cause traffic problems like those caused by a religious facility on MD 108.

31. On cross-examination by Mr. Oh, Mr. Stonesifer testified that he and his co-workers had more problems during work hours when people were dropping off or picking up children at Woodmont. County employees once used the secondary lane to access a former facility in the back and it was a pain getting in and out of the secondary entrance, which was once the only means of access to Woodmont. About 30 employees use or frequent the Cooksville Facility, School Board members park there, and there is an impound lot in the back as well as a surplus lot. Sign employees park there and police fuel up there, as may anyone with a county vehicle.

Testimony of Melissa Covolessky

32. Melissa Ridgley Covolessky testified to being a partial property owner of Springmeadow Farms on MD 97 and the High's store on MD 97. Her family's property off MD 97 backs up to the Mobberly property. Two family members were hit while driving agricultural vehicles on MD 97. She is also serves on the Howard County Fair Board of Directors. The purpose of the Fair is to promote and sustain Howard County agriculture and during Fair week. The Fair pays some \$36,000 during Fair week for traffic control (access into the Fairgrounds) and security, but this does not include traffic control on the roads, which the county and state handles. Events are held throughout the year, including a sheep and wool festival and a multiple-day auction. Concerning the scope of the use (the size of the project), she testified the school, religious facility, daycare and residential uses would bring massive amounts of people in an already overburdened area. She is also concerned about potential pollution to the Middle Patuxent River from the uses.

33. On cross-examination by Mr. Oh, Ms. Covolessky testified that 187,000 persons attended the last fair, and about 3,000 went to the wool and sheep festival/auction. The auction occurs twice a year, begins early mornings on weekends and ends around 3:00 p.m. On cross-examination by Ms. Becker, Ms. Covolessky testified that exhibitors arrive at the fair between 6:00 a.m. and 8:00 a.m. Families generally attend between 9:00 a.m. and 2:00 a.m. There is a second push from 4:00 p.m. to 10:00 p.m. Her 185-acre farm is in county preservation and she can ride and fox hunt on all contiguous preservation parcels.

Testimony of Corey Risser

34. Corey Risser testified to residing at 14000 MD 144, Cedar Lane Farm, which adjoins the Property to the east. He purchased his property about 4 years ago, thinking the area was protected from being built up. The property sits higher than the Property, so he can see the existing buildings and lights shine onto his home all night, except by the lower part of his property. His business model includes stables and boarding horses, and people will be riding horses. Because most of his business will involve new riders, like 10-year olds on first lessons, quick noises from cars or loudspeakers or gatherings of persons will cause accidents. When Woodmont operated, cars lined the driveway and backed up into the deceleration lane. Additionally, most of his customers are young women who drive pickup trucks or horse trailers and will have trouble accessing his operation. He strongly disagreed with the TSR determination that the use will not affect his property— it will destroy his business and he is about to break ground on a new barn. He is concerned about prayer times being announced over amplified speakers, having spent time in the Middle East. He described a wetlands runoff/drainage system on his property by the pond, apparently, noting the whole bottom portion holds about inch of water when it rains. Stormwater is diverted to an underground drain below MD 144. He believed the amount of parking proposed would cause erosion problems. He also testified that one of the proposed septic areas is backfill and will not perc.

35. During cross-examination by Mr. Oh about the conditions of approval proposed, Mr. Risser testified that Woodmont had told him they were not going forward with the plans and that the lights are currently on 24/7. On cross-examination by Ms. Becker, he testified that the ball

fields would come up to his border. Even with landscaping, he will hear the noise and it will affect his horse operation. Additionally, the current buffer is a thin tree line. On re-cross by Mr. Oh, Mr. Risser conceded that kids playing on ball fields was not his real objection. He is apprehensive that the project size will destroy to this property and business.

Testimony of John Jenkins

36. John Jenkins testified to residing on Frederick Road and being concerned about the catastrophic effect of traffic from the use on MD 144. He owns a small horse farm, a landlocked parcel in land preservation and located between the Mobberly and Ridgley properties and directly across from the state maintenance facility. His house sits high relative to others and he can see Woodmont. He leases the property for soy and winter wheat crops, which requires major equipment. He guesstimated that 700+ cars would need 7-10 acres with shopping center type lighting, which would adversely affect his home. He is also concerned about 36 condominium residents on the Property and pointed out that the residence (Building 10) is proposed to be two stories, 26,000sf in size, with a 13,000sf footprint. The footprint on the plan, however, is about half the footprint size it should be. On cross-examination by Ms. Becker, Mr. Jenkins testified that the footprint shown is about 7,500sf.

Testimony of Diane Hawkins

37. Diane Hawkins testified to living on MD 97 and about six miles from MD 144. She is concerned about traffic, living on a two-lane, 50 MPH road. There have been two serious accidents out to MD 97.

Testimony of Jodi Lahmann

38. Jodi Lahmann testified to living about 4½ miles south of the Property on MD 97. Her son was a student at Woodmont when only the old entrance was used. When the second entrance opened she passed the entrances, made a U-turn and then cued up.

PETITIONER REBUTTAL TESTIMONY

Testimony of Mickey Cornelius

39. Mickey Cornelius testified to being a registered engineer and senior vice president of the Traffic Group. He prepares development traffic studies, including studies for many large projects in Howard County. Mr. Cornelius analyzed the access safety of the two proposed entrances. Referring to Petitioner Exhibits 3 and 4, Google earth images, Mr. Cornelius explained they depict the existing 500-foot deceleration lane, the 400-foot acceleration lanes and the left turn lane for the main entrance. The divided driveway seen in these images shows a one-lane ingress and a two-lane egress, which allows drivers to make either a right or left turn onto MD 144. The existing entrance was designed in accordance with SHA requirements and provides excellent access to the Property. A field inspection shows it has been laid out for maximum safety.

40. With respect to the secondary access, Mr. Cornelius explained the CUP shows it as a right-in, right-out only access with proposed acceleration and deceleration lanes. He does not know if Woodmont had an SHA access permit for it and it would likely require an SHA access permit. Sight distance is not a problem if acceleration and deceleration lanes are provided. If SHA denies the secondary access, the existing entrance can accommodate the use.

41. With respect to concerns about cueing along MD 144, Mr. Cornelius testified that the proposed driveway is much longer than most schools and allows stacking on-site. Based on efficient pickup practices and patterns, the existing configuration will accommodate Phase 1 development. With Phase 2 development, there will be more queuing areas and parking to accommodate vehicles. Because later phases will be constructed farther into the lot, and provide more parking, queuing along MD 144 will not occur.

42. Concerning congestion along MD 144, Mr. Cornelius reviewed SHA traffic volume information and ran a preliminary traffic count data, leading him to conclude traffic backups will not be an issue. The entrance is just short of a mile from MD 97 and about 250 cars would have to queue up. Petitioner Exhibit 5 depicts annual average daily traffic (AADT) information for MD 144 between 97 and MD 32 from 2006 to 2012. This information shows daily traffic volumes have not changed very much, about 3,500 vehicles a year, including years when Woodmont Academy was operating. Based on this information, he reasons the proposed uses will not overwhelm MD 144.

43. Mr. Cornelius also compared the AADT for this segment of MD 144 to that of MD 108, where the Tar Al-Taqwa mosque is located, explaining that the queuing and backup associated with the latter use results in part from the high traffic volumes on MD 108, some 20,000 AADT. He also reviewed SHA reported traffic accident data for the Woodmont Academy entrance, which data showed no accidents from the time it was constructed to the time it closed. Lastly, concerning scenic roads, Mr. Cornelius testified that scenic road regulations would be addressed at the SDP phase, when the county would decide what it wanted.

44. On cross-examination, Mr. Cornelius testified that the access study was premised on students arriving at 7:30 a.m. and leaving at 3:45 p.m. Based on state highway counts, traffic is most intense between 7:00 a.m. and 8:00 a.m. On Fridays between 1:00 p.m. and 2:00 p.m. the traffic volume is about 200, which is about half of the morning rush hour traffic. The site has 629 parking spaces and if 2,000 people were attending, all the spaces would be utilized. If all cars exit at the same time, given traffic volumes at that time, he guesstimated it would take about 15 minutes and the SHA data includes all school traffic. With respect to the secondary entrance, he explained the TSR mistakenly believed it lacks acceleration and deceleration lanes, which are actually shown in gray on the CUP, including a driveway "pork chop" island. The acceleration would provide additional room for the county facility.

45. During cross-examination, RRDW counsel introduced into evidence Opposition Exhibit 4, a deed for the Woodmont Property. Mr. Cornelius read into the record the deed reference to "an easement for the use in common with Howard County of a gravel driveway passing through Tract C as shown on a survey by Navarro & Wright dated August 28, 2002."

46. On redirect, Mr. Cornelius testified that even without the secondary entrance, traffic flow would not be a problem, there being no difference in exiting traffic than other private schools, which tend to have long driveways, including nearby Glenelg Country School. He also noted the CUP depicts the proposed secondary access point 20-30 feet further to the east than the old access. In response to the Hearing Examiner's question, he explained that in the absence of available ROW for an acceleration lane, Petitioner would need to purchase land from the county, who is not obligated to sell it. Additionally, the SHA is not subject to county scenic road

regulations. Lastly, as phases are built out, queuing adjustments could be made by starting earlier on other parking lots to store additional vehicles.

Testimony of Minhaj Hasan

47. Mr. Hasan testified to being a Dar us Salaam board member. He testified that in traditional Muslim majority societies, there is outdoor amplification calling people to prayer. However, in the United States, people use prayer timetables and their watches. There is a call to prayer inside the prayer hall, but no outside broadcast. Concerning the proposed residences, Mr. Hasan testified that staff members and children for the school would reside there, and that he would agree that the Imam, or even a possible resident scholar, would not dwell there.

48. On-cross examination, Mr. Hasan testified that there might be outdoor services twice a year during a picnic or sports event, when a portable amplifier and microphone would call people to prayer. In the past, the services have attracted between 700-1000 persons. The sporting events would be the same as other schools.

CONCLUSIONS OF LAW

I. Background Issues

As a rule, the Hearing Examiner addresses specific issues within the evaluations required by §131.0.B and the pertinent § 131.0.N conditional use category. In some cases, I have reversed this order when clarity necessitates it. In more complex cases I take a third tack, as do I here, resolving certain background issues prior to evaluating the petition for compliance with the requisite standards.

Background Issue No. 1. Petitioner Exhibit 1: Conditions of Approval

At the outset of the March 6, hearing, Petitioner introduced into evidence a letter on Petitioner's behalf proffering 16 items for the Hearing Examiner's consideration as conditions of approval, which conditions were said to have arisen out of unsuccessful discussions with RRDW about the number of persons using the site on a daily basis. In the event that the Hearing Examiner would approve the petition, the conditions would constitute amendments to the petition.¹ Having reviewed the proposed conditions the Hearing concludes first that several

¹ The proposed conditions are:

- 1) Condition the Approval on the maximum total square footage of all structures to be constructed on the subject property (the "Property or Site") to being no more than 275,300sf (square feet);
- 2) Condition the Approval on the maximum number of people being allowed on the Site as set forth on the conditional use application (2000);
- 3) Condition the Approval on the Petitioners not petitioning Howard County for an expansion of the maximum square footage of 275,300 sf and/or an expansion of the total number of people allowed on the property (2000) for a term of 20 years from the date of approval of the conditional use OR, in the alternative, acknowledge that the Petitioners have represented to the Hearing Examiner that they will not petition Howard County for an expansion of the aforementioned maximum square footage or the aforementioned total number of people for the terms of 20 years from the date of approval of the conditional use;
- * This condition/representation shall not be interpreted to preclude an application from the Petitioner during the aforementioned 20 year time-frame for a modification of the numbers of the various categories of uses, i.e. more/less private school students than 800; more/less worshippers than 1200 and/or more/less day care students than 100, provided, however, that the maximum number of people allowed on the Property shall not be increased above the total number of 2000.
- 4) Condition the Approval on the requirement that other than certain recurring events ("Recurring Events"), to wit: Friday worship services, 2 annual Eid Prayers, services during Ramadan and one annual fundraising event), the maximum number of people that may be on the property on Saturdays and Sundays shall be 1000 people – with the exception, however, that six (6) non-recurring events ("Non-Recurring Events") shall be allowed per year in which the entire maximum population may be allowed on the Property;
- 5) Condition the Approval on the requirement that operations for the school on the Property on Monday through Friday will end no later than 4 p.m. After 4 p.m., a total of 600 people may be on the Property (30% of the maximum number of people);
- 6) Condition the Approval on the residential building not exceeding 26,000sf and no more than six (6) separate dwelling units with no more than six (6) beds per dwelling unit;
- 7) Condition the Approval on the Masjid not exceeding 56,000sf and the prayer portion of the Masjid not exceeding 14,400 sf;
- 8) Condition the Approval of all structures on the Property having the heights as indicated on the conditional use plan, which shall not exceed two (2) stories;
- 9) Condition the Approval on the height of the proposed minarets being reduced to seventy-five feet (75');

conditions are redundant, since they replicate existing information in the petition or CUP plan. These include conditions 1, 2, 6, 7, 8, 10 and 11.

With respect to the remaining conditions, the Hearing concludes they constitute potential amendments to the petition/CUP because they modify several aspects of the petition, including hours of operation, numbers of persons on-site, lighting, outdoor amplification and new non-recurring events. Because the list includes items that would potentially add new operational components to the proposed program, Hearing Examiner Rule 9.4 obliged Petitioner to introduce Exhibit 1 evidence as an amendment to the plan. Having not done so, the Hearing Examiner may not consider them. The Hearing Examiner consequently evaluates Petitioner's conditional use proposals based only on the petition, the narrative supplement the CUP, the site elevation analysis, the TSR and relevant opposition testimony and evidence.

Background Issue No. 2. The Proposed Residence Accommodations

"Private academic schools, colleges, universities" is a conditional use category authorized under § 131.0.N.48 (see Conclusions of Law, Part V below). Section 131.0.N.48.b authorizes

10) Condition the Approval on no commercial vehicles being parked on the Property than is reasonably necessary for the driver to perform the business function to which the commercial vehicle relates.

11) Off-site parking shall be prohibited;

12) Lighting shall be shielded from the south and east, and shall be directed toward the Howard County maintenance property to the west and Interstate 70 to the north;

13) No accent lighting shall be used for, or on, any building on the Property;

14) Install landscaping in accordance with the proposed conditional use plan including berms along the southern and eastern border of the Property, which shall be constructed to shield views to/from properties to the east and Route 144 to the south. In addition, DUS shall plant evergreen trees to shield views for Route 144 to the south;

15) Petitioner agrees to make athletic field available for community use, when not otherwise in use by Petitioner, under terms and conditions acceptable to Petitioner;

16) No outdoor amplification systems will be used, except in use with sporting events being played on Petitioner's athletic fields and at the 2 annual Eid prayers, in accordance with applicable noise ordinances.

"residence accommodations" subject to certain criteria, and defines such "residents" as potentially including "students, staff members, caretakers and their families who reside on site." A residence accommodation is therefore an accessory use, a use incidental to the principal use, the private school.²

Petitioner proposes to construct a residence building (Building 10) during Phase 2. The supplement states residence accommodations are proposed to serve a maximum of 36 religious clergy, staff members and caretakers for all three facilities. As stated in the CUP site data section addressing required parking, the residence accommodations will comprise six dwellings. The TSR further describes each dwelling as having 6 residences and 36 total residents for the overall facility and recommends the Petitioner provide exterior architectural design information for the building. At the outset of the March 6, 2014 hearing, Petitioner's counsel proffered the proposed residence would not have Islamic architectural characteristics but would look like a typical residence. Petitioner counsel subsequently introduced into evidence Petitioner Exhibit 2, which

² While rare in Howard County, "residence accommodations," are standard accessory uses to private school land uses in many zoning codes. The Hearing Examiner is aware of only one private school with residence accommodations approved through the conditional use process, the nearby Glenelg Country School, which is located in the RR zoning district. A 1995 Board of Appeals decision and order (BA 95-046E) approving the school's requested expansion references a headmaster's residence, described as a two-story, colonial style building.

The Zoning Regulations define "residence" as a "building or part of a building containing dwelling units, including single-family or two-family dwellings and apartments. Residences do not include: a. Such transient accommodations as hotels, motels, or country inns; or b. Dormitories, fraternity or sorority houses; c. In a mixed use structure, that part of the structure used for any non-residential uses, except accessory to residential uses; d. Recreational vehicles.

The Hearing Examiner is familiar with numerous zoning codes where the residence accommodations language parallels the wording of § 131.N.48.b. In others, the accommodations are specifically limited to student dormitories or caretakers. The Hearing Examiner's broader, informal survey of Maryland codes as they provide for institutional housing as an accessory use to private educational uses and religious activities (places of worship) produced one local zoning code (the Town of Chesapeake Beach in Calvert County) expressly limiting such housing to single-family dwellings and only for places of worship that provide housing for religious personnel.

See <http://www.ecode360.com/documents/CH3001/CH3001-290a%20Table%201%20Land%20Use%20Class.pdf>. Site visited April 24, 2014.

depicts a grouping of attached dwellings. DUS board member Minhaj Hazan testified to Petitioner's interest in providing residence accommodations for the DUS imam or a resident scholar, but would agree that such persons would not reside in Building 10. Opponent John Jenkins testified that the size of the proposed accommodations that the CUP footprint for the residence accommodation appears to have 7,500sf footprint and not the 13,000sf area noted on the CUP (See Table 1).

Based on the evidence of record, the Hearing Examiner is compelled to deny the proposed residential accommodations for the following reasons. First, such accommodations are intended to provide housing solely for private academic school personnel and families, not for religious facility or day care center personnel and family. Mr. Hazan's rebuttal testimony notwithstanding, there is no efficient mechanism to ensure compliance with the requirement via a condition of approval limiting the proposed accommodations to school staff members and caretakers. An unenforceable condition is no condition. Second, Petitioner's proffer that the building would have certain residential characteristics has no evidentiary weight. Lastly, there is credible, substantive evidence that the residence accommodation footprint represented on the CUP is about 50 percent smaller—7,500 sf instead of 15,000sf—than stated in the site data section.

Background Issue No. 3. The Proposed Secondary Entrance

Subject to SHA access permit approval, Petitioner is proposing to use an old driveway running generally along the westerly common lot line with the county facility as a secondary ingress/egress with a right turn in and a right turn out. As depicted the CUP and based on the testimony of Mickey Cornelius, the old driveway has been relocated some 20-30 feet further east.

An approximately 525-foot deceleration lane and an approximately 410-foot acceleration lane are depicted on the CUP.³ In addition to providing a second means of ingress/egress, the secondary driveway appears to serve a 20-space parking area for the residence accommodations.

Opponents Exhibit 4 is a copy of a 2003 Deed gifting the Property from Woodmont Academy, Inc., to Woodmont Educational Foundation, Inc. The deed references "an easement for the use in common with Howard County of a gravel driveway passing through Tract C as shown on a survey by Navarro & Wright dated August 28, 2002," RRDW has presented an arguable claim that this gravel driveway is the proposed secondary driveway. Bolstering this claim is opponent testimony about the actual historic use of this driveway, including that of Eric Stonesifer, who sometimes works out of the adjacent county facility, and persons whose children attended Woodmont Academy when the old driveway was the sole means of access.

Section 131.0.N.42.c of the specific criteria for religious facilities, etc., mandates that access to the facility shall not be on a driveway or private road shared with other uses. This language does not distinguish between a primary or secondary access, with the effect that the plain language of this prohibition extends to any shared access. Consequently, as a condition of approval, and prior to submission of a site development plan, the Hearing Examiner is requiring Petitioner to demonstrate to DPZ's satisfaction that the Property is not subject to a use in common driveway. Alternatively, Petitioner shall demonstrate to DPZ's satisfaction that any such

³ The TSR finds it unlikely that SHA would issue a permit for the access as designed because it lacks acceleration and deceleration lanes. The Hearing Examiner also was unable to discern these lanes without the assistance of Mr. Cornelius, who directed attention to them during his rebuttal testimony.

easement has been extinguished and further, that a document to that effect has been recorded in the Land Records of Howard County. The SDP shall contain a note stating that the Property does not share a use in common driveway by easement with Howard County, or, alternatively, that the use in driveway easement has been extinguished, citing to the effective document recorded in the Land Records of Howard County.

Background Issue No. 4. Comparison with Woodmont Academy

The Petitioner, the TSR and opponents to the proposed conditional uses have all invoked the prior Board of Appeals Hearing Examiner's BA Case No. 02-19C decision and order (July 19, 2002) granting Woodmont Academy's conditional use petition for a private academic school and retreat center on the Property in support of their respective positions. The Hearing Examiner appreciates Petitioner's position, as she understands it, that the combination of proposed uses are no more intense in size, scale and effect, and in some regards less, than what BA 02-19C approved for Woodmont. As reflected in the record of this case, the Hearing Examiner also appreciates RRDW's initial position that it would not oppose the petition as long as the DUS program remains at or below the approved Woodmont program. The Hearing Examiner likewise appreciates the TSR's reliance in some limited part on the BA 02-19C decision and order to support its recommendation that the Hearing Examiner approve the BA 13-033C petition.⁴

⁴ The Hearing Examiner implies no negative inference from the BA 13-013 TSR references to the BA 02-19C decision and order. It is standard operating procedure for a TSR to incorporate findings and conclusions of law from a prior Hearing Authority decision and order concerning the same property or use.

All the same, the Zoning Regulations mandate an independent appraisal of the three proposed conditional uses, as the Hearing Examiner often explained in dicta throughout the three-night hearing. These independent appraisals are made below in the Conclusions of Law Section. An additional consideration is that BA 02-019C approved two requested conditional uses, a private school facility and a retreat center, with programmatic characteristics different from those proposed in this case. In the Hearing Examiner's view, any reliance on the rationale of a previous grant of a conditional use for the same property would require a finding that the proposed uses are substantially identical in program and impact. Cf. *Moseman v. County Council of Prince George's County*, 636 A.2d 499, 99 Md. App. 258 (1993) (quoting *Aspen Hill Venture v. Montgomery County Council*, 265 Md. 303, 317-18, 289 A.2d 303 (1972) (in zoning case involving denial of commercial use on sole ground of lack of need for such use, subsequent grant of commercial use to a nearby tract is admissible for the limited purpose of determining whether the administrative body acted arbitrarily.)

II. General Criteria for Conditional Uses (Section 131.0.B)

Note 1: In the interest of quasi-judicial efficiency, the three proposed conditional uses are referenced in Part II as the "daycare facility," the "religious facility" and the "private school facility."

Note 2: The Hearing Examiner must evaluate a conditional use petition operating at full capacity. For this reason, the assessments in Parts II, III, IV and V are reviewed under based on full build-out, unless otherwise noted.

Sections 131.0.B.1-3 requires the Hearing Authority to evaluate whether a proposed Conditional Use through the application of three standards, harmony with the General Plan, overall intensity and scale of use, and adverse impacts.

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.

The "in harmony with" the General Plan conditional use standard was in recent years a much contentious issue in the planning and "dirt" law community, owing to the Court of Appeals decision in *Trail v. Terrapin Run*, 943 A.2d 1192, 403 Md. 523 (2008) (upholding the Allegany County Board of Appeals grant of a special exception to develop an extensive planned residential development in an area zoned for agriculture, forestry, mining and conservation.)⁵ The Terrapin Run Court ruled that a special exception (conditional use in Howard County), coupled with the "in harmony with" language, does not mandate a special exception's compliance or conformity with a general plan, which is a guide in the development process unless an ordinance provides otherwise. Much displeased by the Terrapin Run decision, the State of Maryland, through its Department of Planning, introduced legislation known as the Smart, Green, and Growing – Smart and Sustainable Growth Act of 2009, which the General Assembly passed through Senate Bill 280 and House Bill 297. The legislation provides in pertinent part a definition of "consistency" and makes plain that charter counties like Howard County must enact zoning ordinances, including special exception provisions, consistent with the General Plan.⁶

⁵ The proposal included condominiums, single-family homes, multiple family dwellings, an equestrian center, a community building, and a retail area. The development would have its own water system and wastewater treatment plant. The Board granted the special exception, stating that appellants had not met their burden of demonstrating that the requested special exception use would cause an adverse effect upon the surrounding properties more severe or different in kind from the effect that it would have elsewhere. The Board of Appeals also found that the applicable standard for determining whether to grant special exceptions was whether the exception was "in harmony with" Allegany County's comprehensive plan, as opposed to whether it was "in conformity with" that plan, as argued by appellants.

⁶ Consistency of ordinances with the local comprehensive plan in charter counties was required in the 1992 Growth Act and had to be implemented by July 1, 1997.

In Howard County, as with the majority of Maryland jurisdictions, the General Plan is a guide to development, as no ordinance mandates otherwise. Consequently, when Howard County adopted the 2013 Comprehensive Zoning Plan, it did so subject to the "consistency" mandate that the conditional use provisions under § 131.0 be consistent with PlanHOWARD 2030 policies. This mandate is reflected in the modified language of § 131.0.B.1, where the "harmony with the General Plan" standard is clarified to mean that the evaluation of a conditional use plan under the "in harmony with" the General Plan standard shall be premised on land uses and policies that can be "related to the proposed use."

PlanHOWARD2030 designates the Property as "Rural Resource" on the Designated Place Type Maps. Day care, religious and private school facilities are presumptively compatible in Rural Resource Areas absent specific Plan policies that such institutional or assembly uses in a Rural Resource Area inharmonious. The TSR evaluates the CUP under this standard by initially noting the absence of any PlanHOWARD 2030 policy that can be associated with private institutional uses in rural areas. It next reviews the CUP under a more generally related policy, Policy 4.5, the purpose of which is to "[r]efine the Rural Conservation (RC) and the Rural Residential (RR) zoning regulations to provide greater flexibility for the agricultural community as well as appropriate protections for rural residents." The TSR goes on to explain that Policy 4.5 has two implementing actions: 1) examine and amend where appropriate the list of accessory and conditional uses in the RC and RR districts and refine uses and standards for approval, and 2) review use designations (permitted by right, by permit, and conditional) in each Rural West zoning district, and determine whether amendments are needed to make some uses less or more restrictive. According to the

TSR, these Implementing Actions were realized as part of the 2013 Comprehensive Zoning Plan, when the county reevaluated the entire Conditional Use section of the Zoning Regulations and "quite a number" of revisions were proposed and approved. Still, the 2013 Zoning Regulations as adopted by the County Council (effective October 6, 2013) made no significant revisions having the effect of reducing the general acceptability of institutional uses locating in the Rural West. The TSR therefore concludes the petition complies with § 131.0.B.1 because the proposed uses are not disharmonious with any specific policy or land use, and also DPZ considers the proposed uses to be a continuation of the former institutional use found to be in harmony with the previous General Plan and consequently approved in BA 02-019.

The Hearing Examiner concurs with DPZ's conclusion that the proposed uses are not disharmonious with any specific land use or policy in PlanHOWARD 2030, but finds inapposite its conclusion that they are a continuation of a former institutional use found to be consistent with the previous General Plan in BA 02-019. The instant standard requires a finding of harmony with the current plan. Nor does she find relevant the TSR's statement that the Property is depicted as an Institutional Use on DPZ's Land Use Map, a (working) map that does not appear in PlanHOWARD 2030, to the best of the Hearing Examiner's knowledge. For the same reasons, the Hearing Examiner finds irrelevant, for the purposes of this standard, Opponents Exhibit 2, a January 2013 Rural Land Preservation Map, which also does not appear to be a PlanHOWARD.

Where the General Plan stands silent, the use will be found to be harmonious, able to co-exist with the plan's recommendations. *Richmarr Holly Hills, Inc. v. American PCS L.P.*, 117 Md.

App. 607, 701 A.2d 879 (1997). If the use comports with the specific conditional use criteria, as do the three proposed uses, they are by law harmonious with the General Plan.

Finally, concerning opposition testimony that the proposed uses will change the character of the RC zoning district Tier IV designation and that the number of students on Tier IV property is ludicrous and contrary to county land use processes, the Hearing Examiner concludes the opposition failed to root these concerns in any specific PlanHoward2030 policy or land use frustrated by the proposed uses.⁷ Importantly, these concerns relate not to the proposed uses' harmony with the General Plan, but to the intensity and scale of use test under § 131.0.B.2 and the adverse impacts test under § 131.0.B.3, to which we now turn.

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.

3. The proposed use at the proposed location will not have adverse effects on vicinal properties above and beyond those ordinarily associated with such uses. In evaluating the proposed use under this standard, the Hearing Authority shall consider whether or not:

a. 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 be greater at the proposed site than it would generally be elsewhere in the same zoning district or other similar zoning districts.

b. 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.

c. 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

⁷ Concerning opponent claims that the proposed uses, including the proposed residence accommodation, violate the Tier IV requirements of PlanHOWARD 2030, the Hearing Examiner explained throughout the hearing that the development limitations grafted onto the RC zoning district through Tier IV designation apply only to residential subdivisions and prohibit major subdivisions on septic in the Tier. The Tier IV designation has no applicability to non-residential development.

buffered or screened from public roads and residential uses to minimize adverse impacts on adjacent properties.

d. 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

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

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

With regard to 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, the Hearing Examiner makes the preliminary observation that this standard is an *on-site* test. Concerning the pertinent on-site aspects of the use, the TSR reasons, and the Hearing concurs, that the overall intensity of use is moderate based upon the Property's size and with no need for variances, finding the proposal would continue the institutional use of the Property, that the uses are predominately indoor uses, excepting the recreational courts, playing fields in the northern area, and the Hearing Examiner would add, the daycare facility playground, which would be enclosed with the addition to the daycare facility in Phase 3). The existing main entrance, designed for the Woodmont institutional use, is very appropriate, and located on MD 144, a minor arterial with a relatively low traffic volume overall, based on Petitioner's Exhibit 5, which shows the SHA, 2006-2012 annual Average Daily Traffic for MD 144 between MD 97 and MD 32, as having what appears to be the second lowest traffic count of the approximately 50 state highway segments on the list.

Unlike the first two standards, which test for harmony with the general plan, compatibility with the neighborhood is measured under §131.0.B.3's six "adverse effect" criteria: (a) physical

conditions; (b) structures and landscaping; (c) parking areas and loading, (d) access, (d) environmentally sensitive areas and (e) historic sites. As shown in Tables I-II, Petitioner is proposing to use or construct 11 buildings with a total building floor area of 275,300sf and an 185,150sf building footprint for the three uses. Building 1 is a common administration building. Buildings 1-6 would be used for the private school facility. Building 7 would house the daycare facility. Building 8 is the religious facility. Building 9 is a maintenance structure, and Building 11 is the existing pump house. All buildings will meet required setbacks and maximum height requirements. Petitioner is proposing to provide 629 parking spaces (629-14=615 less residence) for all three uses. At final build-out, the proposed maximum populations for all three uses (minus the residence accommodations), as set forth in Table 8, includes an 800-student body, 100 children in the child care facility, and 2,000 persons using the religious facility, including all students, teachers and staff. Attendance at the religious facility for religious services would be highest on Friday, between 1:00 and 2:00 p.m., for what the Hearing Examiner understands is communal or congregational prayer. Tables 2-5 present this program as being developed in five phases over a 12+ year period. For the reasons set forth in the below adverse impact subsection tests, the TSR reasons, and the Hearing Examiner concludes, the proposed conditional uses will have no unusual or uncharacteristic adverse impact on vicinal properties.

The opposition has a different take, arguing through RRDW counsel's line of questioning and opposition testimony for the evaluation of adverse impacts under two different methods. Under the first method, opposition contends uncharacteristic adverse impacts will flow from the sheer size and scale of the three land uses, individually or in combination, i.e., the very presence

of the uses will overwhelm the community, threatening the stability of the farming and residential community.

A former hearing examiner characterized this method when raised by opposition to the proposed First Baptist Church religious facility in an R-12 (residential: single family) zoning district as begging the question—"how big is too big?" See Board of Appeals Case No. 03-02C&V (2003). That hearing examiner declined to take the bite, the oppositions' approach being subjective. In the instant case, the Hearing Examiner likewise declines to take a subjective analytic leap and evaluate the petition under a "just too big" method. The BA 03-02C&V hearing examiner opted instead to apply a different test, evaluating the adverse impacts of the proposed religious facility and associated uses through an objective comparison of the proposed use with similarly situated uses in the same zoning district (the "First Baptist" test).⁸ Finding the scale and intensity of the proposed use was greater than the size and intensity of similar uses generally found elsewhere in the zone, he denied the petition concluding the totality of all adverse effects would also be greater.

The opposition also argued for the application of the "First Baptist" test as a second method of testing the petition for adverse impacts. To this end, RRDW counsel queried several persons testifying in opposition about their knowledge of any use in the western county that combines a school, religious facility and daycare center (and on occasion a residence

⁸ The Hearing Examiner applied the "First Baptist" test in Board of Appeals Case No. 11-009C (decided November 10, 2011) in relation to testing for intensity of use and adverse impacts for a proposed religious facility in the RR (Rural Residential) zoning district, finding the intensity of use was unexceptional, as were the adverse impacts.

accommodation), all of whom replied they knew of none, including, when the Hearing Examiner asked, the facility on Old Frederick Road.⁹ Still, we may not broadly conclude from the relative absence of such combination of uses on RC zoned property, that the totality of adverse impacts flowing from the uses constitute inordinate adverse impacts. Such conclusion would be arbitrary and capricious. For the proper framework for evaluating the petition under § 131.0.B.2, we must return to *Schultz v. Pritts*, 291 Md. 1, 432 A.2d 1319 (1981) the bell weather case on the adverse impacts test to be applied to special exceptions (conditional uses) by boards of appeals.

Schultz held that "the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have *any adverse effects above and beyond those inherently associated* with such a special exception use irrespective of its location within the zone." Schultz, 291 Md. at 22-23. (Emphasis added.) In *People's Counsel for Baltimore County v. Loyola College in Maryland*, 406 Md. 54, 956 A.2d 166 (2008) ("Loyola"), the high court engaged in a sustained exegesis of the case law informing the Schultz decision and the subsequent and significant case law weighing in on the interpretation of the Schultz test. Interestingly, two Schultz progeny cases—the phrase is Judge Harrell's—discussed in Loyola involve disputes about adverse impact evaluation methods made in relation to areas zoned for agriculture, with considerable property

⁹ The facility is the Mt. Airy Bible School. In Board of Appeals Case No. BA 09-032 (decided November 23, 2009), the Hearing Examiner granted petitioner's request to enlarge a private school in a complex that also includes a religious facility and a daycare facility.

in agricultural preservation, rich in historic buildings and with active or potentially active horse industries. The courts' considerations of how the parties and boards of appeal applied the Schultz test are instructive.

The first case, *Hayfields, Inc. v. Valleys Planning Council, Inc.*, 716 A.2d 311, 122 Md. App. 616 (1998), concerned a Baltimore County Board of Appeals decision on appeal to grant petitioner's special exception for a country club, public golf course, driving range, target greens, tennis and swimming facilities, clubhouse, public restaurant, banquet hall and limited overnight accommodations. The proposed location was an historic farm site (Hayfields Farm) important to county agricultural and built environmental history and a gateway site to two National Register Historic Districts, Western Run—Belfast Road and Worthington Valley. The Board heard testimony from Valley Planning Council (VPC) expert witnesses and county staff on the country club's potential adverse impacts on the Cockeysville Marble aquifer, an important source of water for wells in the area, which these persons contended was vulnerable to contamination in the Hayfields Farm area, with resultant greater potential adverse health or safety impacts associated with the golf course at the proposed site. VPC also contended the use would cause potential harm to the Western Run—Belfast District, a premiere agricultural site in the county because of its agricultural history. VPC further claimed the Schultz adverse impact test required the board to have considered on-site adverse impacts to important agricultural and historic aspects of the Hayfields farm.

Applying the Schultz test codified in the zoning code as an adverse impacts standard, the Board found it was debatable whether the Cockeysville marble was more or less susceptible to

contaminations near the site, the same formations being found elsewhere in the zone, and concluded there was insufficient evidence that these potential effects would be greater at the instant site than elsewhere in the zone. The Board further found the country club would not have greater adverse effects on the Western Run--Belfast Road National Register Historic District than elsewhere, because the site lay at the edge of the county urban/rural demarcation line and was bounded by I-83 to the east, which sees substantial large-scale commercial development at elevations much higher than the existing site. The Board declined to consider on-site adverse impacts.

On final appeal by VPC to the Court of Appeals, the court remanded the case to the Board to make a site-specific finding comporting with Schultz as to whether the Board believed the proposal posed a threat to water quality (an atypical adverse impact) in the area because the site was above Cockeysville marble. It affirmed the lower court's decision upholding the Board's conclusion that the country club at the proposed site would not have a greater adverse impact on the general welfare of the surrounding historic vicinity, where the Board found the use would have greater impacts elsewhere in the agricultural zone, and where the effects of increased traffic, impact of views and other natural opportunities would be far greater than the proposed location. Lastly, the court expressly found that the Schultz adverse impact test mandates the evaluation of off-site impacts only.

In the second case, *Lucas v. People's Counsel*, 807 A.2d 1176, 147 Md.App. 209 (2002), the Court of Special Appeals affirmed the circuit court's decision upholding the same board's denial of a special exception for an airport, which the property owner sought for the decades-old

helicopter landing pad on the property, an 87-acre tract (Helmore Farms) on which thoroughbred horses were raised, bred and trained. Helmore Farms was in the county agricultural preseservation program, zoned for agricultural use and located in the Greenspring National Register Historic District. The Court concluded the board properly applied the Schultz test to find the use would have a greater negative impact upon the smaller Greenspring National Register Historic District than if located elsewhere in the vast R.C. 2 zone acreage in the county. The court emphazied the considerable weight the Board gave to testimony of three expert witnesses concerning the the unique potential adverse effects of the airport on the land around Helmore Farm, on the horse industry in the area, on the historic district and on Greenspring Valley, including the Board's finding that the impact of the proposed airport would be greater than elsewhere in the R.C. 2 zone, where the thoroughbred horse industry was less developed and the proposed airport operations would be of considerably diminished proportion.

With these two cases as backdrop, we return to oppositions' arguments about adverse effects as they impact vicinal properties. Opposition offered the following testimony about the neighborhood/vicinal properties to support its claims. The Property is located in an area where some 300 acres of RC zoned properties are subject to an agricultural preservation easement. On this acreage, property owners can ride and fox hunt. There are horse farms on adjoining or adjacent properties and a thoroughbred farm one property over from the site. The use has the potential to interfere with farming operations and veterianary access, especially emergency access for the horse farms, and specifically for the thoroughbred farm (Chanceland). The

proposed use is located on a two-lane road. High traffic from the use will contribute to such interference.

There was also testimony and evidence that properties to the west and south are not subject to any agricultural preservation easement. To the Property's immediate west is a county highways facility with an impound and surplus lot. This facility is also used by county police and other county personnel and is the site of a cell tower with a FFC required light. Further west along MD 97 are Bushy Park Elementary School, Glenwood Middle School, the 190-acre Western Regional Park with a large number of lit and unlit sport fields and courts and other amenities, including new features under construction and planned, the Glenwood Community Center within the park (shared by the Departments of Recreation & Parks, Health and Police, and the Office on Aging), and next to the community center, the Glenwood library. There is also a High's store on MD 97 next to one of the agricultural easement properities forming part of the 300-acre preservation land area. To the north is I-70. To the east is the Howard County Fairgrounds, which one week a year is the site of the county fair. Last year some 187,000 persons attended the fair and about 3,000 persons went to the wool and sheep festival/auction. County and state handle traffic control on the roads. Beyond the Fairground is a pizzeria (near MD 32). Furthermore, the Woodmont Academy BA 02-019C decision and order granting the private academic school and retreat center conditional uses "run with the land." Although most of the four planned development phases were never achieved, the current and any future property owner has a property interest in whatever was developed (structures and uses) before the owner's property rights were extinguished through what the Hearing Examiner understands to have been a lapse

of the phasing plan requirements under § 130.0.3.b.¹⁰ There is, then, the permitted institutional use of the Property to be factored in, which institutional use is depicted on the DPZ Land Use map, as referenced by the TSR.

The Hearing Examiner here makes the preliminary ruling that it is improper to meld the on-site intensity of use test with the adverse impacts test, which as explained in the Hayfields decision is an off-site test. Each test must stand on its own. Assuming *arguendo* the appropriateness of this blended approach, and having parsed the record closely, the Hearing Examiner is not persuaded by oppositions' claim that the very expected adverse impacts, perforce of the intensity of uses, would result in greater adverse impacts (i.e., cumulative adverse impacts) on vicinal properties greater than elsewhere in the RC zone, or that any unusual or uncharacteristic off-site adverse impacts even attend the uses. Although there are some 300 acres in agricultural preservation and an important thoroughbred operation and at least two horse farms in the "neighborhood," this neighborhood is bordered by I-70, developed with a wide range of non-agricultural uses, including the permitted institutional use of the Property, and host to a yearly county fair attracting tens of thousands of attendees. The area is heterogeneous in its land use and character. Were the "neighborhood" more homogenous in land use and character, and the nature of the thoroughbred industry more developed, the total impact of the expected adverse effects arising from the scale and intensity of use may have risen to the level of atypical

¹⁰ Section 131.0.3.b authorizes the Hearing Authority to prove a phasing plan, in which only the first phase of a Conditional Use plan is subject to the time limits in § 131.0.3.a. The approval for future phases become void unless such phases are completed within a time period specified in the Hearing Authority's Decision and Order.

impacts, with a greater impact than in other parts of the RC-zoned western county (in much the same manner as the impact of the proposed airport on the "neighborhood" in Lucas v. People's Counsel). This scenario appears unlikely, though, where the rural preserved property depicted on Opponents' Exhibit 2 suggests there is much more contiguous agricultural acreage preserved and a greater concentration of land areas more homogeneous in use to the west of MD 97, albeit with no indication of the level and significance of horse farms or thoroughbred operations in this area. The Hearing Examiner now makes the requisite adverse effects findings that Petitioner has met its burden of satisfying these requirements based on the petition, the supplement, the CUP and the site elevation analysis and as adduced by the TSR (the governmental agency analysis) and as conditioned.

a. 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 be greater at the proposed site than it would generally be elsewhere in the same zoning district or other similar zoning districts.

The three facilities as proposed are primarily indoor uses. Outdoor uses include the recreational courts and ball fields in the northern area and the outdoor childcare play area, which would be surrounded by the daycare building. There will be some noise as persons enter or leave their cars. Given the Property's size and the location of these uses, any such noise generated by these outdoor uses would not be inordinate and the primary outdoor uses will be close to I-70 and its traffic noise. Existing trees, proposed berms and fencing will buffer these uses. No outdoor amplification is proposed. There is no evidence of greater adverse impacts from dust, fumes, or odors. The driveways and parking areas will be paved and not generate dust.

The CUP states appropriate lighting will be installed and will be proposed with the SDP. The supplement states outdoor lighting will comply with the Zoning Regulations and will be directed downward and shielded to minimize impacts on adjacent properties, and further that the play fields would not have outdoor lighting at this time. The opposition argues Petitioner has failed its burden of proof on this requirement.

Unlike some land uses or conditional use categories, the proposed uses do not require the submission of a detailed lighting plan. Rather the general outdoor lighting requirements of § 134.0 et seq. control off-street parking lighting and light trespass. The lighting provisions do not require that no light be visible from adjoining residences or uses. Section 134.0.B provides that § 134.0 applies to certain locations identified under subsection 3, including outdoor lighting for parking or loading areas of an approved Conditional Use, as well as other areas for which the decision of the Hearing Authority requires that these lighting standards be applied.

There being no information on the CUP about outdoor lighting for parking or for any use, the Hearing Examiner is conditioning approval subject to there being no outdoor lighting anywhere on the site other than lighting for parking areas.¹¹ This condition does not extend to any public safety or similar type of lighting required by the Howard County Code. The Hearing Examiner also concludes there is nothing in the petition, supplement or CUP that would require a finding of more intense, adverse lighting effects at this site than elsewhere in the zone.¹² There

¹¹ Compare this approach to the lighting scheme proposed and approved in BA 11-009C (November 10, 2011), where petitioner Chin Baptist Church amended the CUP to depict a representation of the type of lighting proposed and the location of the lights, which are intended to comply with § 134.0.

¹² The 2013 Comprehensive Zoning Plan made no substantive changes to § 134.0.

is no evidence of hazards, vibrations or other physical conditions. The Petition accords with § 131.B.0.3.a.

b. 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.

All proposed structures will comport with RC district maximum height restrictions, as noted in Table 1. The main portion of religious facility structure (the Masjid) will not be higher than 40 feet, the maximum height limit permitted in the RC-DEO district and the school buildings will range in height from 28 to 40 feet. The two proposed minarets would each be 120 feet in height and lie about 360 feet from the nearest property line. The Masjid and other new buildings would lie about 1,500 feet from the closest residential use on Parcel 128 to the southeast. A buffer fence is proposed along the proposed berm infill and existing and proposed vegetation. Type "C" landscaping is proposed along the eastern Property line, Type "B" along the front property line and Type A along the western lot line. Certainly, the structures and fences may still be visible, even with the existing and proposed landscaping, but this criterion does not require Petitioner to screen them from view. Rather, this requirement is intended only ensure any adverse effects inherent to the use are ameliorated through landscaping. The Petition accords with § 131.B.0.3.b.

c. 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.

Table 7 outlines the proposed parking, which at its maximum would include 629 spaces, an appropriate number for those times when the facilities operate at maximum capacity. These spaces would be interspersed throughout the Property, with two major parking areas. One such area would be located to the east of the circular building grouping and some spaces would sit close to the 50-foot setback. This lot would be sit about 1,500 feet from the closest residential use. The second major area would be located to the north and northwest of Building 10 (the daycare facility). The site elevation analysis and CUP indicates proposed fencing, a berm infill and vegetation along the common property line to buffer the parking areas and driveways and a Type "B" landscape buffer is proposed along MD 144. It is unclear to the Hearing Examiner if the CUP calls out refuse areas, so as a condition of approval, the CUP shall call out the refuse area. The Hearing Examiner concludes parking areas, driveways and refuse areas will be located, buffered and screened from public roads and residential uses to minimize adverse impacts on adjacent properties, in accordance with §131.B.0.3.c.

d. 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.

Petitioner proposes to use the existing SHA approved main entrance for ingress and egress. Mr. Cornelius, a long-time traffic engineer who prepared traffic studies for many large Howard County projects, presented convincing evidence that the 500-foot deceleration and the 400-foot acceleration lane, together with the left-turn lane, would continue to provide safe access with adequate sight distance. If SHA issues an access permit for the proposed relocated

secondary, right-in/out access, and sufficient ROW exists or is acquired from Howard County, Petitioner would be able to provide the deceleration and acceleration lanes depicted on the plan, which lanes would resolve any sight distance issues. He also rebutted the opposition's apprehensions and testimony concerning the proposed uses' traffic impact through a review of SHA traffic volume information and a preliminary traffic count data, leading him to conclude traffic backups will not be an issue.

It is unlikely, though, that any later traffic study would take proper account of the heavy traffic associated with the Howard County Fair. For this reason, the conditions of approval include use restrictions and traffic management requirements during fair week. Subject to these conditions, the petition accords with § 131.B.0.3.d.

The Hearing Examiner here acknowledges opposition concerns about the level of traffic associated with the facilities, and their opinion that such information should accompany the petition or be presented through testimony. In response to these concerns, Mr. Cornelius's rebuttal testimony included an overview of a preliminary traffic study. Nonetheless, since the 1992 adoption of the Adequate Public Facilities Ordinance, or as otherwise required by the Zoning Regulations, consideration of traffic analyses in conditional use cases is addressed at the SDP phase, including level of service and roadway capacity testing. The adverse impact test as it involves traffic is limited to such traffic matters as ingress/egress, traffic lighting, noise and fumes, and sight distance.

e. The proposed use will not have a greater potential for adversely impacting environmentally sensitive areas in the vicinity than elsewhere.¹³

The TSR evaluates the petition with respect to environmentally sensitive areas on the Property itself, the stream and wetlands buffer to each side of the entrance driveway. It does not anticipate any runoff problems during the initial development phases and recognizes appropriate steps may be necessary in later phases to ensure no additional impact from runoff that could potentially be generated by these uses. There also appears to be an afforestation area on southeastern portions of the Property.

However, as codified in this adverse impact standard, and in light of Schultz and its progeny, the adverse impacts test, including any test for adverse impact on environmentally sensitive areas in the vicinity, is not concerned with on-site impact or detriment, as was discussed above in relation to the Hayfields case. There is no testimony of record to which the Hearing Examiner assigns evidentiary weight of any vicinal off-site environmentally sensitive area. The petitioner accords with §131.B.0.3.d.

f. The proposed use will not have a greater potential for diminishing the character and significance of historic sites in the vicinity than elsewhere.¹⁴

There are two vicinal historic sites, the HO-117 historic building site on Parcel 46 (the Mobberly farm) and the HO-192 site to the east, at the corner of MD 144 and McKendree Road. The TSR evaluates the proposed conditional uses under this standard in in terms architectural compatibility and building distance. The TSR reasons there will be "no stark architectural

¹³ This standard was added through the 2013 Comprehensive Zoning Plan.

¹⁴ This standard was added through the 2013 Comprehensive Zoning Plan.

contrast" between the proposed facilities because the main building group will be more than 2,000 feet from the historic building on Parcel 46 and more than 2,700 feet from the HO-192 site.

Architectural compatibility is an evaluative standard for day care centers with vicinal residential properties, of which there are none within the meaning of the Zoning Regulations (see Part III, subsection .d), but it is not the sole test for adverse impact on historic sites. The test for adverse impact on historic sites is whether the "use" will have greater potential for diminishing the character and historic significance of historic sites than elsewhere. The Zoning Regulations define "use" in pertinent point as a) any purpose for which a structure or a tract of land may be designed, arranged, intended, maintained or occupied, or b) any activity, occupation, business or operation carried on, or intended to be carried on, in a structure, or on a tract of land; except that, wells, septic systems and storm water management systems are not considered uses for purposes of these Zoning Regulations.

Howard County has codified the types of adverse impacts generally associated with conditional uses under § 131.0.b.3 and the Hearing Examiner's specific findings on these adverse impacts tests were made in the above subsections. The petition, as conditioned, comports with every test. The question here is whether any of the codified adverse impacts related to the uses, or any other unusual, off-site characteristic of the proposed uses, would have a greater potential to diminish the character and significance of historic sites in the vicinity than elsewhere.

Reviewing the evidence of record, the Hearing Examiner finds the proposed conditional uses have these physical and operational characteristics associated with them: buildings or structures, outdoor play area, traffic to and from the site by parents, caretakers, personnel and

members of the religious facility. The day care center has a drop-off and pick up area. There may be noise from children playing. There are potentially two access driveways, a vehicle circulation area, parking areas and motor vehicle lights at night. As found above, the proposed conditional uses would not generate atypical adverse impacts or unusual characteristics related to these uses and none that may have special impact on the historic sites.

Furthermore, the daycare center building and modular school buildings are several years old and there is no evidence of record that any impact flowing from the use has had an unusual impact on the historic sites. In the Hearing Examiner's view, a 4,000sf addition to the use would not generate an uncharacteristic impact on the two sites.

The other buildings proposed as part of the uses would sit more than 2,000 feet from the historic building on Parcel 46 and more than 2,700 from the HO-192 site. There was testimony from Bird Mobberly, property owner of the HO-117 historic building site on Parcel 46, that she is concerned about noise. She also testified to not wanting the lights shining on her at night. These concerns about noise and light, while certainly important to Ms. Mobberly, are general worries, not explicit impacts tied to the historic site. Ms. Mobberly also believes the buildings (she was referring in main part to the residence accommodation) and Islamic features do not fit into the area, where most homes are colonial looking. The question is, then, whether these aspects of the use have any impacts to which the historic sites are more sensitive. In the Hearing Examiner's view, the evidence of record does not provide a sufficient basis for a determination that these buildings would have adverse impacts that would diminish the character and significance of the HO-117 site. With regard to the architecture of the mosque, which would have 120-foot

minarets, the Hearing Examiner notes first that there is no architectural compatibility standard for religious facilities under § 131.0.N.42, as there is for the daycare facility. Rather, religious facilities may be constructed to a higher height than permitted in the RC if the front, side and rear setbacks are increased one foot for each foot by which such structure exceeds the height limitation. The Masjid meets this standard, the closest minaret being located some 2,000 feet from the historic building on Parcel 46 and more than 2,700 from the HO-192 site. There is no evidence of any potential adverse harm arising from the visibility of the minarets as can be specifically related to any loss of a significant historic vista related to the sites, or compromise of any historic building on either site. The Hearing Examiner finds the conditions associated with the proposed uses do not warrant denial of the petition.

III. Specific Criteria for Child Day Care Centers and Nursery Schools, Day Treatment and Care Facilities (Section 131.0.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.

During Phase 1, the daycare facility will be housed in Existing Modular 4. During Phase 3 (years 8-9), the facility will be relocated to Existing Building 7, upon completion of a 4,000sf addition. Petitioner proposes to use the existing vehicle circulation and parking lot system for Phase 1. This system would be altered slightly when the facility relocates to Building 7. The petition states the use will be served with a drop-off/pickup area at the entrance to the structure.

Even though such drop-off/pick up areas are intended to serve as the primary means of managing the movement of small children in and out of daycare facilities, the Hearing Examiner's

experience with CUPs for these facilities has educated her to the need for clearly denoted pathways or sidewalks between parking areas and building entrances. For this reason, the Hearing Examiner is conditioning the approval of the day care center subject to the condition that the SDP for Phase 3 "call out" clearly marked walkways between the parking area and Building 7 for every phase where the daycare facility area will be modified. Subject to these conditions, the petition complies with § 131.0.N.13.a.

b. The minimum lot size in the RC and RR Districts shall be three acres and the minimum lot size in the R-ED, R-20, R-12, R-SC, R-SA-8, R-A-15, R-APT, R-VH, HO or HC Districts shall be one acre, except that uses approved prior to October 6, 2013 shall not be subject to this criteria.¹⁵

The Property is 66.6 acres, in compliance with § 131.0.N.13.b.

c. 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.

According to the petition, during Phases 1 and 2, the day care facility will use the existing play areas to the side and rear of Existing Modular Building 4. This area will be fenced and adequately buffered from adjoining residential properties by landscaping, other modular structures and distance. Upon relocating to Building 7 during Phase 3, and with a 4,000sf addition, an outdoor play area will be formed within the structures. This building and distance will buffer the uses. The petition accords with §131.0.N.13.c.

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

¹⁵ The three-acre minimum lot size was added during the 2013 Comprehensive Zoning Plan.

During Phase 1, the daycare center would use the existing parking to the northwest of the center. An additional 34 spaces would be added to the same area during Phases 2-5. These parking spaces will be shielded from view along MD 144 by the existing daycare building (Building 7) and the future addition. A type B landscape buffer is proposed along the MD 144 frontage. The petition accords with this component of §131.0.N.13.d.

Regarding the standard as it applies to adjacent residential properties, the Hearing Examiner concurs with the TSR's reasoning that this criteria does not apply here. The TSR distinguishes between a "residential property" and a "residential district." A residential district could be any zoning district listed in the specific definition of the term. "Residential property," however, is defined as "[a] lot or parcel improved with a single-family residence as the principal use." Perforce of this definition, no adjoining property is a residential property. The eastern property and the property across MD 144 to the south are farms. The adjoining properties to the west are a government use and a vacant parcel and I-70 adjoins the Property's northern lot line. Any actual residential properties are some distance from the existing and proposed structures. The petition accords with § 131.0.13.d.

e. 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.

As was explained in the previous standard, there are no vicinal residential properties within the meaning of the Zoning Regulations. Section 131.0.N.13.e is inapplicable.

f. For facilities 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 July 12, 2001 are permitted.

(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.

(3) At least 20% 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.

This section applies because the facility has a capacity for 100 children. The Property fronts on and has access to a Minor Arterial road, MD 144. Although the CUP does not depict the actual distances from residentially zoned properties for Existing Modular 4 or Existing Building 7 (with the addition) and the expanded parking areas and outdoor activities, these structures and uses are undoubtedly more than 50 feet from the adjoining RC zoned properties, which by definition is a residential zoning district. A site data note on the CUP states the required 20 percent green space is 471,352sf and that the green space area provided is 1,424,658sf, 60 percent of the area within the setback lines. The petitioner accords with §131.0.N.13.f.

IV. Specific Criteria for Religious Facilities, Structures and Land Used Primarily for Religious Activities (Section 131.0.N.42)

A Conditional Use may be granted in the RC and RR Districts, on properties that are not ALPP purchased or dedicated easement properties, and in the R-ED, R-20, R-12, R-SC, R-SA-8, R-H-ED, R-A-15, R-APT, R-MH, or R-VH Districts for structures and land used primarily for religious activities provided that:

a. The minimum lot size in the RC and RR Districts is three acres and the minimum lot size in the other districts is one acre, however, existing religious facilities previously approved

as a Special Exception or a Conditional Use are exempted from this requirement. Lot coverage shall not exceed 25% of the lot area.¹⁶

The religious facility Property is 65.6 acres. Although Petitioner has not calculated the actual lot coverage, the 28,000sf building footprint and the area allocated for 144 parking spaces will not exceed 25 percent of the lot area.¹⁷ The petition complies with Section 131.0.N.42.a.

b. Structures 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 main portion of religious facility structure (the Masjid) will not be higher than 40 feet, the maximum height limit permitted in the RC-DEO district. The two proposed minarets would each be 120 feet in height. To comply with this section, they must sit at least 150 feet from the nearest property line and the distance between the closest minaret and a property line is about 360 feet. The petition complies with Section 131.0.N.42.b.

c. The access to the facility shall not be on a driveway or private road shared with other uses.¹⁸

Access is provided through a private driveway not shared with other uses, in compliance with Section 131.0.N.42.c.

¹⁶ The minimum lot size language was added through the 2013 Comprehensive Zoning Plan.

¹⁷ Rarely do Petitioners provide exact lot coverage area data. The Hearing Examiner requires an exact figure when the coverage area is questionable.

¹⁸ This conditional use standard was added through the 2013 Comprehensive Zoning Plan. The Comprehensive Zoning Plan (Zoning Regulations § 103.0) redefined "direct access" to mean "[v]ehicular access from a proposed development or use to a public road where the access is not by way of an easement or a common driveway where the access is shared with other properties or uses." Although perhaps inartfully drafted, the Hearing Examiner takes notice that the § 131.0.N.42.c regulatory bar on shared access repeats in multiple conditional use categories. The intent of this language is to eliminate the extra wear on a shared access that may arise from certain conditional uses. It is not intended to bar multiples uses on one property from sharing direct access to a public road through a shared driveway.

d. 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 Section 133.0.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.

This standard does not apply, as no parking facilities on a separate lot are proposed.

V. Specific Criteria for Schools, Colleges, Universities—Private (Academic) (§ 131.0.N.48.c)

A Conditional Use may be granted in the RC and RR Districts, on properties that are not ALPP purchased or dedicated easement properties, and 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 private academic schools, colleges and universities (not including nursery schools) provided that:

- 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 school facility at full build-out will accommodate 800 students on the 65.6-acre Property. With the proposed student density at slightly more than 12 students per acre, the school facility will be below the student maximum student density, in accordance with § 131.0.N.48.a.

- b. 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.

For the reasons set forth in the above Part I. Background Issues deliberation of the proposed residential accommodations, the Hearing Examiner is denying this accessory use.

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.

All proposed academic facility buildings, including the common/administrative building, denoted in Table 1 (General Data for New Structures) would be no higher than the 40-foot maximum height for the RC-DEO district, in accordance with § 131.0.N.48.c.

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

Petitioner is proposing to transport students on three buses. While there appears to sufficient bus loading areas, they do not appear to be called out on the CUP. Subject to the condition that the SDP "call out" these areas, the petition comports with § 131.0.N.42.d.

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.

As made evident in the above evaluation of the proposed day care facility, a residential property is a lot or parcel improved with a single-family residence as the principal use and none of the adjoining properties are residential properties. Such residential properties are some distance from the existing and proposed structures. The petition accords with § 131.0.N.48.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.

Per the CUP, all building, parking or outdoor activity areas would be located in the northern and eastern sections of the Property and at least 50 feet from adjoining residentially-zoned properties, including Cedar Lane Farm, in accordance with § 131.0.N.48.f.

g. 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.

A site data note on the CUP states the required 20 percent green space is 471,352sf and that the green space area provided is 1,424,658sf, 60 percent of the area within the setback lines.

The petition accords with §131.0.N.48.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 July 12, 2001 are permitted.

The site has frontage on and direct access to MD 144, a minor arterial, in accordance with §131.0.N.48.h.

i. 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 District.¹⁹

The RC district Property is 65.6 acres in size, in compliance with § 131.0.N.48.i.

VI. An Additional Consideration

It is clear from the record that Petitioner is seeking approval for a complex program—three conditional uses comprising 11 buildings with an 185,150sf lot coverage, and a 275,300sf building floor area, and including outdoor playfields, parking spaces, and the removal of modular

¹⁹ The minimum lot size requirement was added through the 2013 Comprehensive Zoning Plan.

buildings. As proposed, this program would be constructed in five phases over 12+ years. Upon consideration, the Hearing Examiner is exercising her quasi-judicial discretion to approve the petition subject to the condition that all three conditional use approvals are specific to Petitioner Dar Us Salaam as the contract property owner and do not attach to or "run with the land." The conditional use approval shall not pass to any successors or assignees or be transferable from one owner to another. These approvals do not invest the current property owner, Woodmont Educational Foundation, Inc., (as stated in the petition) with any property right or interest in the conditional uses granted to Petitioner Dar Us Salaam.

ORDER

Based upon the foregoing, it is this **13th day of May 2014**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the Conditional Use petition of Ah Huda, Inc., t/a Dar-us-Salaam (DUS) for a day care facility, submitted pursuant to §131.0.N.13, a religious facility, submitted pursuant to § 131.0.N.42 and a private academic school, submitted pursuant to § 131.0.N.48, located in the RC-DEO (Rural Conservation: Density Exchange Option) zoning district, is hereby **GRANTED**;

Provided, however, that:

1. All three Conditional Use approvals are specific to Petitioner Dar Us Salaam and do not attach to or run with the land. The conditional use approvals shall not pass to any successors or assignees or be transferable from one owner to another. These approvals do not invest the current property owner, Woodmont Educational Foundation, Inc., (as stated in the petition) with any property right or interest in the conditional uses granted to Petitioner Dar Us Salaam.
2. The Conditional Uses shall be conducted in conformance with and shall apply only to the daycare facility, private school and religious facilities as described in the petition, and depicted on the plan accepted by DPZ on December 16, 2013, excluding the residence accommodation, and not to any other activities, uses, or structures on the Property.
3. The proposed residence accommodations building and use is **DENIED**. There shall be no residence accommodations associated with any use, any residential use of the Property or any residential dwelling constructed in connection with the approved conditional uses.
4. There shall be no overnight visitors or guests, excluding any summer camps. No persons other than maintenance or security personnel or security shall remain on site when the uses cease for the day.
5. No outdoor amplification is permitted.
6. There shall be no outdoor lighting anywhere on the site other than lighting for parking areas. This condition does not extend to any public safety or similar type of lighting required by the Howard County Code.

7. During the week of the Howard County Fair, the following use restrictions and traffic management requirements are imposed. These conditions shall be detailed on the Site Development Plan as notes.
 - a. The day-care, religious facility and private academic school uses shall not hold any non-religious event, including afterschool sports practice or event, any type of meeting, including study groups, clubs, or extracurricular activities.
 - b. Petitioner shall provide traffic management for all uses to assist in ingress and egress from the Property.
 - c. Petitioner shall prepare a traffic management plan to reduce vehicular traffic for Friday afternoon prayer service, or any high-holiday religious event, including alternative methods like busing or ride sharing. Petitioner shall develop a communication system to inform users of these alternatives.
 - d. Petitioner shall identify a coordinator responsible for ensuring compliance with these conditions. Coordinator contact information shall be posted on the Dar Us Salaam website.
8. The Site Development Plan shall call out clearly marked walkways between the parking area and Building 7 for every phase where the daycare facility area will be modified.
9. The Site Development Plan shall call out all off-street school bus loading areas.
10. The Site Development Plan shall detail which modular buildings will be removed and when they will be removed as phases are built out.
11. The Site Development Plan shall note the location of all refuse areas
12. Petitioner shall comply with all development phasing requirements of the Howard County Subdivision and Land Development Regulations.
13. Petitioner shall comply with all Howard County Bureau of Environmental Health and all State of Maryland well and septic requirements, especially as they related to phased development.

HOWARD COUNTY BOARD OF APPEALS

HEARING EXAMINER

MICHELE LEFAIVRE

Michele L. LeFaivre

Date Mailed: _____

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 calendar 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.