IN THE MATTER OF	:	BEFORE THE
CHESAPEAKE CONFERENCE OF SEVENTH DAY ADVENTISTS	:	HOWARD COUNTY
	:	BOARD OF APPEALS
Petitioner		
	:	HEARING EXAMINER
	:	BA Case No. 08-053C

DECISION AND ORDER

On February 2, 2009, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of the Chesapeake Conference of Seventh Day Adventists for a structure used primarily for religious activities, including a church, ten religious education classrooms and a nursery, in an R-20 (Residential: Single) Zoning District, pursuant to Section 131.N.39 of the Howard County Zoning Regulations (the "Zoning Regulations").

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

Thomas Meachum, Esquire, represented the Petitioner. Silvio Pionatto and Patrick Richardson testified on behalf of the Petitioner. No one appeared in opposition to the petition.

FINDINGS OF FACT

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

1. The subject property, 8414 Leishear Road, is located in the 6th Election District on the west side of Leishear Road, about 1,100 feet south of Scaggsville Road (the "Property"). The Property is referenced on Tax Map 46, Block 12, as Parcel 18.

2. The 3.99-acre, irregularly shaped Property rises in elevation from about 326 feet in the northwest corner to about 366 feet near the center of the south property line. It is improved with a residential dwelling sited on the Property's high ground. A paved driveway located about 85 feet from the Property's southwest corner provides access. The driveway curves up the steep hillside to the north and east and continues past a large parking pad in front of the dwelling to end at the garage.

3. Vicinal Properties. All vicinal properties are zoned R-20 and most are improved with single-family detached dwellings. The dwelling located on Parcel 318, Lot 14 lies about 300 feet from the existing dwelling on the Property. The dwelling on Parcel 366 to the south lies about 140 feet from the closest corner of the proposed Church. The dwelling on Parcel 20 lies about is located approximately 175 feet from the closest corner of the proposed Church.

4. Roads. Leishear Road has two travel lanes, a variable pavement width, and a right-of-way which ranging between 50 feet and 75 feet in width along the Property frontage. The Leishear Road median extends approximately 150 feet southward from MD 216. MD 216 has two travel lanes in each direction and dedicated turn lanes near Leishear Road. The posted speed limit is 45 miles per hour. The MD 216/Leishear Road intersection is signalized.

5. Sight Distance. Visibility from the proposed driveway entrance on Leishear Road will be acceptable, with estimated sight distance of approximately 300 feet to the northern intersection

and approximately 500 feet to the south. Precise sight distance measurements may only be determined through a detailed sight distance analysis, however. According to data from the Department of Public Works, the traffic volume on Leishear Road north of MD 216 was 5,725 ADT (average daily trips) as of January 2006. According to data from the State Highway Administration, the traffic volume on MD 216 east of US 29 was 20,110 AADT (average annual daily trips) for 2007.

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

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

8. The Proposal. The Petitioner is proposing to remove the existing dwelling and garage and to construct and operate a religious facility (the "Church") on the Property. The Petitioner would also operate a religious school with 10 classrooms and a nursery school as accessory uses to the religious facility. The proposed 50-feet by 80-feet (20,000 square feet), one-story church would be located about approximately 120 feet from the rear property line, the west side of the Property, 148 feet from the north property line, 77 feet from the south property line, and 128 feet from the Leishear Road front property line. An approximately 50 feet by 60 feet fenced play area is proposed to be located at the west end of the Church.

The pastor's office will be part of the Church. Worship services will be held on Saturdays from 9:30 a.m. to 11:00 a.m.; Saturday choir rehearsal will be held from 4:00 p.m. to 7:00 p.m.; and prayer meetings will be held Tuesday, 8:00 p.m. to 9:30 p.m. An office with two employees

will be open Monday through Thursday, from 9:00 a.m. to 5:00 p.m. There will be some board or committee meetings in the evenings. Youth meetings will be Friday 7:00 p.m. to 10:00 p.m. The existing residential structure would be utilized for non-religious assembly during the construction of the Church, which is anticipated to take two to three years.

A 30-foot wide driveway off Leishear Road will provide access. This driveway, which will have one ingress lane and two egress lanes, will be situated about 110 feet from the southwest corner of the Property, or about 25 feet north of the existing driveway.

All parking will be located in the front of the Church. Nineteen parking spaces will be located to the south of the driveway entrance, and 15 spaces will be oriented parallel to Leishear Road at a distance of 40 or more feet from the road. A total of 120 parking spaces are provided on the Site, including six disabled spaces.

9. During the proceeding, I stated that I am extending the time to obtain a building permit up to three years, in light of the current, extraordinary economic climate.

CONCLUSIONS OF LAW

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

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

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

> **a. The nature and intensity of the use, the size of the site in relation to the use, and the location of the site with respect to streets giving access to the site; and**
>
> **b. If a conditional use is combined with other conditional uses or permitted uses on a site, whether the overall intensity and scale of uses on the site is appropriate given the adequacy of proposed buffers and setbacks.**

The Howard County General Plan designates the area in which the Property is located as a "Residential Area" land use. The 3.99-acre Property adequately supports the proposed use and the location of the Property with respect to streets providing access is such that the religious facility will be harmonious with the land uses and policies indicated in the General Plan for the district in which it is located. The Property is located at the intersection of a Minor Collector and an Intermediate Arterial. The proposed development is buffered from vicinal residential uses by distance and topography, and will be buffered by proposed landscaping.

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

When assessing a proposed conditional use under these criteria, we must begin with the realization that virtually every human activity has the potential for adverse impact. Zoning recognizes this fact and, when concerned with conditional uses, accepts some level of such impact in light of the beneficial purposes the zoning body has determined to be inherent in the use. Thus, the question in the matter before me is not whether the proposed use would have adverse effects in an R-20 district. The proper question is whether those inherent adverse effects are greater at

the proposed site than they would be generally elsewhere within the R-20 district. *Schultz v. Pritts*, 291 Md. 1, 432 A.2d 1319 (1981); *Mossburg v. Montgomery County*, 107 Md. App. 1, 666 A.2d 1253 (1995).

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

a. <u>Physical Conditions.</u> The impact of adverse effects such as noise, dust, fumes, odors, lighting, vibrations, hazards or other physical conditions will be greater at the subject site than it would generally be elsewhere in the zone or applicable other zones.

The testimony and evidence indicate the proposed facility will not generate inordinate noise, significant outdoor lighting, or other physical effects detectable within the neighborhood. The use will be conducted predominately indoors, and the proposed improvements will comply with all setback requirements. The proposed parking lot lighting will be directed down and away from adjoining properties and roads. The Conditional Use Pan notes the lights adjacent to the building would be timed to turn on at dusk and off by 11:00 p.m. and that the remaining lights are to be controlled by a switch. The Property is located in close proximity to major roads and the proposed development would not cause the proposed use to affect vicinal properties adversely. Consequently, I conclude the Petitioner has adequately shown that any noise, lighting, or other physical conditions generated by the proposed use will not be greater than that which is ordinarily associated with a structure used primarily for religious activities in the district.

b. <u>Structures and Landscaping</u>. The location, nature and height of structures, walls and fences, and the nature and extent of the landscaping on the site are such that the use will not hinder or discourage the development and use of adjacent land and structures more at the subject site than it would generally in the zone or applicable other zones.

Based on the evidence, I conclude the Petitioner has met its burden of demonstrating the proposed use complies with Section 131.B.2.b. The location and height of the proposed Church will comply with the R-20 District height and setback regulations. The Church building would be set back approximately 128 feet from the front property line. The Petitioner submitted a landscape plan and landscaping must comply with Landscape Manual requirements at the site development plan stage.

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

Based on a total of 350 seats for the religious facility, and the requisite one parking space per three seats, 117 parking spaces are required for the use and 120 are proposed. The parking areas are adequately sized for the particular use. The required parking use setback is 20 feet and the parking spaces oriented parallel toward Leishear Road are set back 40 feet from the road. The parking area on the west side of the driveway is set back approximately 34 feet. The additional parking setback and the landscaping required by the Landscape Manual will provide the necessary screening and buffering from public roads and residential uses. The proposed use complies with Section 131.B.2.c.

d. <u>Access</u>. 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.

Subject to the condition that the ingress and egress drives shall be configured to achieve maximum safety, I conclude the Petitioner has met its burden of demonstrating the proposed use complies with Section 131.B.2.d.

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

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

The total estimated lot coverage will be approximately 11 percent, in compliance with Section 131.N.39.a.

b. Structures used primarily for religious activities may be erected to a greater height than permitted in the district in which it is located, provided that the front, side and rear setbacks shall be increased one foot for each foot by which such structure exceeds the height limitation.

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

c. The Hearing Authority may approve parking facilities which are accessory to a religious facility, and are located on a separate lot, but do not meet the location requirements of subsection 133.B.4.D of the parking regulations by being separated from the religious facility by a public street, if the Hearing Authority finds that the accessory parking facility complies with the following criteria:
(1) The accessory parking facility is not separated from the lot containing the principal use by an arterial highway of any category.
(2) A pedestrian street crossing connecting the accessory parking facility lot to the principal use lot is provided and is made clearly noticeable to drivers by means of both pavement marking and signs
(3) The pedestrian street crossing is safe, based upon such factors as, but not limited to: traffic volume at the times(s) of the use of the accessory parking facility; practical traffic speeds; sight distance; length of the crossing; and adequate markings and signage.

(4) The entire pedestrian pathway from the accessory parking facility to the principal religious facility is a durable, paved, no-step path.

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

ORDER

Based upon the foregoing, it is this **26th day February 2009,** by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the request of the Chesapeake Conference of Seventh Day Adventists for a Structure Used Primarily for Religious Activities Conditional Use, with ten religious education classrooms and a nursery as accessory uses, in an R-20 (Residential: Single) Zoning District is hereby **GRANTED**;

Provided, however, that:

1. The conditional use shall be conducted in conformance with and shall apply only to the religious facility and uses described in the petition and depicted on the Conditional Use Plan, and not to any other activities, uses, or structures on the Property.

2. The ingress and egress drives shall be configured to achieve maximum safety.

3. The Petitioner must obtain a building permit for of the religious facility within five (5) years of the date of this Decision and Order.

4. The Petitioner must commence the use of all requested conditional use activities within two years after the building permit is issued.

5. The Petitioner shall comply with all applicable federal, state, and county laws and regulations.

HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER

Michele L. LeFaivre

Date Mailed: 3/12/09

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.