

IN RE: PETITIONS FOR SPECIAL HEARING *	BEFORE THE
AND SPECIAL EXCEPTION	
(821 Shawan Road) *	OFFICE OF
8 th Election District	
3 rd Council District *	ADMINISTRATIVE HEARINGS
Hunt Valley Baptist Church, Inc.	
<i>Legal Owner</i> *	FOR BALTIMORE COUNTY
Petitioner	
	Case No. 2014-0190-SPHX

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for consideration of Petitions for Special Hearing and Special Exception filed on behalf of Hunt Valley Baptist Church, Inc. (“HVBC”), legal owner. The Petition for Special Hearing was filed pursuant to §500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit the requirements associated with an approved residential development to be nullified if and when the church is built. A Petition for Special Exception was filed: (1) to permit the property to be used as a church; and (2) to provide Petitioner five (5) years after the date of the Final Order in which to utilize the special exception.

Appearing at the public hearing in support of the requests was Pastor Gus Rodriguez and Ken Wells (a licensed surveyor), whose firm prepared the site plan. Lawrence E. Schmidt, Esquire represented the Petitioner. Numerous community members also attended the hearing(s), and their names are reflected on the sign-in sheets in the file. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations.

Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. The Department of Planning (DOP) ZAC comment dated May 30, 2014,

provided several recommended conditions, and that agency opined that if those conditions were satisfied the use would not be detrimental to the community.

The subject property is approximately 16.6 ± acres and is zoned RC 4. The site is located on Shawan Road, just west of I-83, in northern Baltimore County. The HVBC was formed about 10 years ago, and has about 150 members. The HVBC is presently located on Worthington Heights Road, just a few miles from the subject property. The Church membership is growing, and HVBC proposes to construct a new church on the site, which requires a special exception in the R.C.4 zone.

Five witnesses testified in the Petitioner's case. The first was Gus Rodriguez, a pastor at HVBC. Pastor Rodriguez described in some detail the organization and operation of HVBC, and he stated the church has been at its present location since 2009. He explained HVBC begins its Sunday services with a Sunday school class at 9:30 a.m.-10:15 a.m., followed by a service at approximately 10:30 a.m.-11:45 a.m. There is also a Sunday evening service from 6:00 p.m.-7:15 p.m. During the week, HVBC holds a visitation program on Tuesday evening, a Thursday evening mid-week service (from 7:00 p.m.-8:00 p.m., with about 100 attendees) and on the first and third Fridays of the month a work party to help maintain the facilities, which takes place between 4:00 p.m.-9:00 p.m. Other than these scheduled events, Pastor Rodriguez testified that other activities or events would be held "sporadically."

In response to questions on cross examination, Pastor Rodriguez testified HVBC has no plans for a school or day care operation. He testified HVBC anticipates 20% yearly growth in membership, and that the new church would provide seating for 1,000. The witness also stated HVBC does not at this time have cost projections for the new facility, and that fund raising or capital campaigns have not yet been planned.

Ken Wells, a licensed surveyor accepted as an expert, was the next witness in the case. Mr. Wells explained that he prepared a minor subdivision plan (Ex. No. 7) for this site, which was approved by the County in 2012. That plan called for three residential lots on the property. The property was then sold to HVBC, and Mr. Wells was first contacted by the Church in late 2012. Mr. Wells explained the church building would have a 30,000 sq. ft. “footprint,” and 982 seats. He testified that no variances are being sought, and that the parking lots will be constructed with environmentally-sensitive “porous pavement.” Mr. Wells explained that the environmental resources and associated buffers and easements were delineated on the prior minor subdivision plan, and have been approved by the County. In conclusion, the witness opined that the proposal and plan satisfies the special exception requirements set forth in B.C.Z. R. §502.1.

The next witness was Mickey Cornelius, a traffic engineer and licensed P.E. accepted as an expert. The witness became involved in the project in April 2014, and his firm prepared traffic counts on a Sunday morning from 9:00 a.m.-noon at the intersection of Shawan and Cuba Roads. Though one movement pattern at that intersection has a level-of-service “D” during the Mon.-Fri. p.m. peak, the intersection functions at an “A” level on Sunday at the times the church will be holding services. Mr. Cornelius also performed projections for the years 2017 and 2020, assuming a doubling in traffic and 400% growth in church membership, and found that the intersection would not be deficient under County standards. Given that the bulk of the vehicle trips will be generated on Sunday, Mr. Cornelius opined that the use would not cause congestion on area roadways.

Landscape architect Avery Harden was the next witness, and he testified that he worked for Baltimore County for over 27 years. Mr. Harden prepared a conceptual landscape plan (Ex. No. 17) and stated he was cognizant that Shawan Road is a designated “scenic route,” which

imposes special requirements. He explained that trees on the eastern portion of the property would create a “woodland edge” and screen the site from the adjoining homes, while still leaving open a scenic view into the site. Of the 89 trees currently on site, Mr. Harden testified that only 13 will need to be removed to provide for ingress/egress. In response to questions on cross examination, the witness indicated that he advised HVBC to reduce the amount of parking proposed for the front of the site—as shown on an earlier site plan—to minimize the impact upon the scenic route.

The final witness was William LeRoy, an architect licensed in Maryland and D.C. Mr. LeRoy testified that he specializes in design work for churches and community buildings. The witness was engaged by HVBC in April 2013, and met with the client on several occasions and visited the site to help plan the project. Mr. LeRoy prepared several elevations of the project from various vantage points (Ex. Nos. 20A-20D), and he described in general terms the layout of the proposed church, which will include a sanctuary, study rooms and meeting spaces. The witness explained the shortest side of the building will face Shawan Road, and the parking lot will be divided into two segments, with fewer cars facing Shawan Road than originally proposed. Mr. LeRoy explained that to make the project consistent with the area and comply with scenic route regulations, the building will use fieldstone veneer, metal roofing and board and batten siding for an agrarian look. In conclusion, he opined the proposed church would “cohabitate well” and be “respectful” of nearby buildings.

On cross examination, Mr. LeRoy testified he has designed at least five other churches and he met with Caleb Bottrell and Gus Rodriguez on six occasions to discuss various aspects of this project. He stated the client never mentioned wanting a school at the site, but that a commercial kitchen was planned for weddings, fundraisers and similar events. Finally, the

witness indicated HVBC considered locating the church to the southeast of its current location shown on the site plan. (Ex. No. 5). Mr. LeRoy did not favor this proposal, which he believed would place the large structure too close to the adjoining single family dwellings.

The Protestants submitted one exhibit (a copy of the earlier site plan dated December 26, 2012), but did not present any expert testimony or other evidence. Several of the neighbors questioned Pastor Rodriguez during his cross examination, and Bob Shroeder, who has lived in the area since 1994, stated that he feels like he is suffering a “death by a thousand cuts.” He explained that he moved to the area for its rural and agricultural feel, but that several recent projects (i.e., the expansion of the nearby Orthodox Church, construction of the Baltimore County Agricultural Center, and expansion of the Oregon Grill restaurant) are threatening the bucolic nature of the area.

Special Hearing

The Petition for Special Hearing seeks to nullify (if and when the proposed church is constructed) certain obligations imposed in a prior Order, which approved a residential development (3 lots total) on the site. The conservancy easement requirements are specific to residential developments, and are not imposed by Baltimore County in connection with commercial or institutional projects such as a church. As such, the petition will be granted.

Special Exception Law

A use permitted by special exception (here, a church) is presumed under the law to be in the public interest, and to defeat such a petition, a protestant must establish that the inherent adverse effects associated with the use would be greater at the proposed location

than at other similar zones throughout the County. People's Counsel for Baltimore County v. Loyola College in Md., 406 Md. 54 (2008). The court in Schultz stated the applicable test in this fashion: “we now hold 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 v. Pritts, 291 Md. 1, 22-23 (1981).

In this regard, the residents here expressed concern with traffic safety and congestion, noise, trash and similar quality of life issues. But these are exactly the types of inherent adverse effects that the legislature was presumed to have anticipated when it allowed the use by special exception. In other words, most uses for which a special exception is required are regarded as “potentially troublesome because of noise, traffic, congestion....” Montgomery County v. Butler, 417 Md. 271, 297 (2010). Any large church will generate a significant volume of traffic, and thus that impact is “inherent” in the use. A 1,000-seat church would generate the exact same volume of traffic and noise at any R.C.4-zoned property as it would at the present site.

As noted earlier, the Protestants did not present any expert testimony, documents or other evidence in their case. In their post-hearing memorandum, Protestants contend that the Petitioner failed to provide precise details concerning the nature of its operation as a “church,” and that as such the special exception should be denied. But that is not entirely true. The Petitioner has been operating a church in a nearby residential neighborhood for several years, and the pastor described at length the services and programs offered at

HVBC. He indicated that the operation at the new facility would function largely as it has at the present one. Thus, I believe Petitioner has provided sufficient details concerning the nature of the use, and the Protestants have not cited any authority for the proposition that the B.C.Z.R. requires more. I will include in the order which follows certain restrictions (as permitted by B.C.Z.R. §502.2) “for the protection of surrounding and neighboring properties.”

Significantly, there was no testimony or other evidence presented from residents living near the current HVBC to suggest that the church has been disruptive to the community in any way. While the proposed church will obviously be substantially larger than the existing one, the size of the lot (16.65 acres) is also significantly larger, and according to the testimony of Petitioner’s experts, will be more than sufficient to accommodate the use and provide appropriate buffers from environmental features and residential properties. As such, given the presumption under Maryland law, and the testimony of the Petitioner’s experts, I find the special exception requirements have been satisfied and the petition will be granted.

The Petitioner has requested, as a second aspect of special exception relief, five years in which to utilize the special exception. The B.C.Z.R. provides that a special exception must be utilized within two years, but the Administrative Law Judge (ALJ) is authorized to extend this period to no more than five years. I recognize that this church project is an ambitious one, and HVBC will no doubt need time to raise funds for the new building. But on the other hand, I also do not believe that HVBC should be given five years, from the outset, in which to do so and to begin construction. This is too long a period of uncertainty, and I will instead extend the period to three years. If, at that time, HVBC has

made substantial progress towards its fundraising goals, it could then request an extension for the additional two years.

THEREFORE, IT IS ORDERED this 5th day of January, 2015, by this Administrative Law Judge, that the Petition for Special Hearing to permit the requirements associated with the previous approved residential development (i.e., the conservancy easement and lot requirements) to be nullified if and when the church is built, be and is hereby GRANTED; and

IT IS FURTHER ORDERED that the Petition for Special Exception to (1) to permit the property to be used as a church; and (2) to permit Petitioner three (3) years after the date of the Final Order to utilize the Special Exception, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioner may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioner is hereby made aware that proceeding at this time is at its own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If for whatever reason this Order is reversed, Petitioner would be required to return the subject property to its original condition.
2. Petitioner shall not operate a school or day care facility on the subject property.
3. Prior to issuance of permits, Petitioner must obtain approval from the Baltimore County Landscape Architect of a final landscape and lighting plan for the site. Lighting fixtures used at the site shall be no taller than 18 feet in height.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

Signed
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB/sln