

<b>IN RE: PETITIONS FOR SPECIAL HEARING,</b>	*	BEFORE THE
<b>SPECIAL EXCEPTION &amp; VARIANCE</b>	*	OFFICE OF
<b>(200 Ingleside Avenue)</b>	*	
1 <sup>st</sup> Election District		
1 <sup>st</sup> Council District	*	ADMINISTRATIVE HEARINGS
Protestant Episcopal Church, <i>Legal Owner</i>		
Christian Athletic Association,	*	FOR BALTIMORE COUNTY
<i>Contract Purchaser</i>		
Petitioners	*	<b>Case No. 2015-0138-SPHXA</b>

\* \* \* \* \*

**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County for consideration of Petitions for Special Hearing, Special Exception and Variance filed by Lawrence E. Schmidt, Esquire, on behalf of Protestant Episcopal Church, the legal owner, and the Christian Athletic Association (CAA), contract purchaser (“Petitioners”).

The Petition for Special Hearing was filed pursuant to §500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) as follows: (1) to allow caretaker’s quarters as an accessory use to existing recreational uses; (2) to approve a modified parking plan pursuant to §409.12 so as to allow, among other things, the existing shared parking to continue; and (3) to confirm the existing parking arrangement as permitted in Case No. 70-92-SPH.

A Petition for Special Exception was filed pursuant to B.C.Z.R. §§ 1B01.1.C.4 & 204.3.B.1 to allow existing recreational uses (i.e. ball fields, tennis courts, etc.) in DR 5.5 and R.O. zones.

Finally, a Petition for Variance was filed pursuant to B.C.Z.R. §§1B01.2.C.1.a and 400.1 as follows: (1) for an existing church/school to permit a rear yard setback of 20 ft. in lieu of the required 30 ft.; (2) for the caretaker’s quarters a rear yard setback of 22 feet in lieu of the required 30 feet; and (3) to permit an existing garage to be located in the front yard.

Appearing at the public hearing in support of the requests was David Tracht, an employee of the Christian Athletic Association, and John Mellema, a licensed surveyor who prepared the site plan. Lawrence E. Schmidt, Esq., with Smith, Gildea & Schmidt, LLC, appeared as counsel and represented the Petitioners. Mr. Null, a nearby resident, attended the hearing to obtain additional information about the requests and to voice concern over the current condition of the property.

The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. Zoning Advisory Committee (ZAC) comments were submitted by the Department of Planning (DOP). That agency supports the requests and does not believe the grant of relief would be detrimental to the community.

The subject property is approximately 13 acres in size and is split zoned DR 5.5. and R.O. An Episcopal Church has for years operated on the property, which also contains athletic fields and a dwelling/parsonage.

#### SPECIAL HEARING

The Petition for Special Hearing seeks three aspects of relief. First, Petitioners seek approval of a caretaker's quarters as an accessory use to the existing recreation uses/facilities (i.e., athletic fields). A large dwelling exists on the property, which was formerly used as a parsonage for the church. The Church proposes to sell a portion of the property containing the recreation fields and the dwelling to CAA, and it will retain ownership of that portion of the site on which the Church is located. Mr. Tracht, CAA's only full-time employee, will reside in the home and will be both the caretaker of the property and the administrator for the athletic contests and events held at the location. The dwelling (constructed in 1850) is in the DR 5.5 zone, and the use as proposed is both reasonable and permitted in the zone.

The second element of special hearing relief pertains to a modified parking plan. While at present there are a sufficient number of spaces (according to the site plan, 163 spaces) on site for the existing uses, following the contemplated sale of a portion of the site, the majority of the parking spaces will be on CAA's property. However, Petitioners indicated there will be executed between the Church and the CAA a shared parking agreement, whereby the Church can use spaces on CAA property for its services (mainly on Sunday), and CAA representatives confirmed that there are no games or athletic events held at the site on Sunday. Conversely, the Church will allow CAA's patrons attending games/events to park on Church property, which will be primarily at times when there will be little or no activity at the Church. This will in essence merely formalize the practice that has been in place for years, and I believe (as did the DOP) that this arrangement will not be detrimental to the community and will otherwise satisfy the requirements of B.C.Z.R. §§409.12 and 409.8.B.1.

Finally, the Petition for Special Hearing seeks to "confirm" the parking arrangement validated in Case No. 70-92-SPH. Counsel presented a copy of the Order in that case (Petitioners' Exhibit 3), which permitted a certain number (34) of parking spaces on Church property to be utilized by the commercial enterprise located nearby at 640 Frederick Avenue. Deputy Zoning Commissioner Hardesty granted a use permit, which provided for commercial parking in a residential (DR 5.5) zone. None of the Church or CAA representatives in attendance could confirm whether business patrons still utilize these spaces, and it may be that a "use permit" would not run with the land or be perpetual in nature. Even so, the Order below will confirm the relief granted in that 1969 case, without opining (one way or the other) on the continued validity of that permit.

### SPECIAL EXCEPTION

Under Maryland law, a special exception use enjoys a presumption that it is in the interest of the general welfare, and therefore, valid. Schultz v. Pritts, 291 Md. 1 (1981). The Schultz standard was revisited in People's Counsel v. Loyola College, 406 Md. 54 (2008), where the court emphasized that a special exception is properly denied only when there are facts and circumstances showing that the adverse impacts of the use at the particular location in question would be above and beyond those inherently associated with the special exception use. In this case, Mr. Mellema testified via proffer that the Petitioners satisfied the B.C.Z.R. §502.1 standards, and I concur. The athletic fields and facilities provide much-needed recreational opportunities for the community. As such, the Petition for Special Exception will be granted.

### VARIANCES

Based upon the testimony and evidence presented, I will also grant the petition for variance. To obtain variance relief requires a showing that:

- (1) The property is unique; and
- (2) If variance relief is denied, petitioner will experience a practical difficulty or hardship.

*Trinity Assembly of God v. People's Counsel*, 407 Md. 53, 80 (2008).

The Petitioners have met this test. The large site is split-zoned and irregularly shaped. It is therefore unique. If the B.C.Z.R. were strictly enforced, the Petitioners would suffer a practical difficulty, since they would be unable to consummate the proposed real estate transaction and continue using the property in the manner in which it has been used for many years. Finally, I find that the variance can be granted in harmony with the spirit and intent of the B.C.Z.R., and in

such manner as to grant relief without injury to the public health, safety, and general welfare. This is demonstrated by the absence of community opposition and the support of the DOP.

Pursuant to the advertisement, posting of the property and public hearing on this Petition, and for the reasons set forth above, the special hearing, special exception and variance relief requested shall be granted.

THEREFORE, IT IS ORDERED this 17<sup>th</sup> day of February, 2015, by this Administrative Law Judge, that the Petition for Special Hearing filed pursuant to §500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R) as follows: (1) to allow caretaker’s quarters as an accessory use to existing recreational uses; (2) to approve a modified parking plan pursuant to §409.12 so as to allow, among other things, the existing shared parking to continue; and (3) to confirm the existing parking arrangement as permitted in Case No. 70-92-SPH, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Special Exception filed pursuant to B.C.Z.R. §§§ 1B01.1.C.4 & 204.3.B.1 to allow existing recreational uses (i.e. ball fields, tennis courts, etc.) in DR 5.5 and RO zones, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance pursuant to B.C.Z.R. §§1B01.2.C.1.a and 400.1 as follows: (1) for an existing church/school to permit a rear yard setback of 20 feet in lieu of the required 30 feet; (2) for the caretaker’s quarters a rear yard setback of 22 feet in lieu of the required 30 feet; and (3) to permit an existing garage to be located in the front yard, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioners may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioners are hereby made aware that proceeding at this time is at their 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, Petitioners would be required to return the subject property to its original condition.

2. Petitioners shall, within 90 days of the date hereof, remove from the property any junk, trash and debris, as shown on the photographs marked as Community Exhibit 1.
3. Petitioners shall within 90 days of the date hereof remove from the property the skateboard ramps or other structures/fixtures that constitute the skate park.
4. The lights illuminating one of the athletic fields shall be turned off every evening no later than 10 p.m.

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

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Signed \_\_\_\_\_  
JOHN E. BEVERUNGEN  
Administrative Law Judge  
for Baltimore County

JEB:sln