

IN RE: <b>PETITIONS FOR SPECIAL HEARING</b>	*	BEFORE THE
<b>AND VARIANCE</b>		
(2 Lastgate Road)	*	OFFICE OF
4 <sup>th</sup> Election District		
4 <sup>th</sup> Council District	*	ADMINISTRATIVE HEARINGS
First Latin American Church of the		
Nazarene of Baltimore, Inc.	*	FOR BALTIMORE COUNTY
<i>Legal Owner</i>		
Petitioner	*	<b>Case No. 2017-0252-SPHA</b>

\* \* \* \* \*

**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (OAH) for consideration of Petitions for Special Hearing and Variance filed on behalf of First Latin American Church of the Nazarene of Baltimore, Inc., legal owner (“Petitioner”). The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R) as follows: (1) To change the use of existing dwellings at 9 South Tollgate Road, 2 Millgate Road, 6 Millgate Road and 10 Millgate Road from residential to church use; (2) Residential Transition Area (RTA): to confirm that the proposed site improvements (new parking) to the church site are in compliance; or (3) in the alternative, confirm compliance to the extent possible for residential transition. In addition, a Petition for Variance seeks: 9 South Tollgate Road: (1) Existing front yard setback of 36 ft. in lieu of the minimum 50 ft.; 2 Lastgate Road: (1) Existing front yard setback of 31 ft. in lieu of the minimum required 50 ft.; (2) Existing rear yard setback of 20 ft. in lieu of the minimum required 30 ft.; (3) Existing interior side yard setback of 19 ft. in lieu of the minimum required 20 ft.; and (4) Variance from Section 450 for existing freestanding identification sign with sign area/face of 46 sq. ft. and a height of 10.5 ft. in lieu of the permitted 25 sq. ft. and height of 6 ft.; 2 Millgate Road: (1) Existing front yard setback of 23 ft. in lieu of the minimum required 50 ft. and (2) Existing street corner side

yard setback of 15 ft. in lieu of the minimum required 35 ft.; 6 Millgate Road: (1) Existing front yard setback of 23 ft. in lieu of the minimum required 50 ft.; 10 Millgate Road: (1) Existing front yard setback of 20 ft. in lieu of the minimum required 50 ft.; and (2) Existing interior side yards setback of 11 ft. in lieu of the minimum required 20 ft.

A redlined site plan was marked and accepted into evidence as Petitioner's Exhibit 3. Professional engineer Kevin Anderson and landscape architect Devin Learey appeared in support of the requests. Kimberly A. Manuelides, Esq. represented the Petitioner. Several neighbors attended the hearing and opposed the requests. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. Substantive Zoning Advisory Committee (ZAC) comments were received from the Bureau of Development Plans Review (DPR), the Department of Planning (DOP) and the Department of Environmental Protection and Sustainability (DEPS). None of the reviewing agencies opposed the requests.

In 2006 Petitioner purchased the property at 2 Lastgate Road, on which is situated a church with seating for 180 parishioners. There is a macadam parking lot adjacent to the church with space for 45 vehicles, which is the number of spaces required per B.C.Z.R. §409.6. The lot is currently striped to accommodate approximately 70 vehicles, although Petitioner's consultants noted the spaces do not at present satisfy the dimensional requirements contained in the B.C.Z.R.

Attendance has grown, and Petitioner has acquired four residential properties adjacent to the existing church it would like to convert to church use. At present, each of the properties contains a single-family dwelling. Petitioner proposes to raze one of the dwellings (6 Millgate Rd.) to create additional parking, and the dwellings at 9 South Tollgate, 2 Millgate and 10 Millgate would be used for church offices, Sunday school and a parsonage, respectively.

Members of the community oppose the requests, citing concerns with noise, traffic and the potential for negative impact on housing values. Neighbors testified the church would become a “compound,” and that by converting four (4) single-family dwellings to church use Petitioner would change the feel of the entire neighborhood.

### SPECIAL HEARING

The petition for special hearing seeks to change the single-family dwellings from residential to church use, and seeks confirmation Petitioner complies with one of the church “exceptions” contained in the RTA regulations. Petitioner does not propose at this time to make any improvements or changes to the “existing church” at 2 Lastgate Road. As such, I believe the applicable exception is found at B.C.Z.R. § 1B01.1.B.1 (g) (6), which concerns new churches or buildings for religious use.

In *Ware v. People’s Counsel for Baltimore Co.*, 223 Md. App. 669 (2015), the court of special appeals considered the aforementioned regulation in a case where an owner sought to convert an existing single-family dwelling into a church. The court held petitioner did not satisfy the RTA “new church” exception since the proposed parking lot for sixteen (16) vehicles was situated immediately adjacent to a residential property. *Id.* at 685-86. As such, the court found the owner did not comply “to the extent possible” with the RTA requirements, which among other things impose a 50-foot RTA buffer and 75-foot RTA setback. *Id.*

Having reviewed the site plan and considered the testimony of Petitioner’s experts, I believe the same can be said in this case. The parking lot proposed here would accommodate twenty-five (25) vehicles, and would be situated fifteen (15) feet from the residential property at 8 Millgate Road. This is just 1/5<sup>th</sup> or 20% of the required 75 ft. RTA setback. As such, as in *Ware*, I do not believe it can be said Petitioner has complied “to the extent possible” with the setback requirements.

In addition, three (the fourth, at 10 Millgate Rd., is discussed separately below) non-contiguous single-family dwellings (one of which would be razed) would be converted to church use. This would greatly expand (in terms of land area and buildings) the operations and impact of the existing church, and I believe it would therefore not be compatible with the “character and welfare of the surrounding residential premises,” which is the second prong of the “new church” RTA exception discussed in *Ware. Id.* at 685.

Petitioner submitted a “compatibility narrative” (Ex. 4) which referenced B.C.C. §32-4-402. I do not believe that is the applicable provision. This is not a development case, and the RTA “new church” exception does not reference or incorporate the standards from the County Code. Rather, the regulation in question (B.C.Z.R. § 1B01.1.B.1 (g) (6)) simply requires the new church to be compatible with the “character” and “welfare” of the “surrounding residential premises.” Though Petitioner agreed to provide a sidewalk along the road frontage and enhanced landscaping for the site, the fact remains three structures would no longer function as dwellings but would be converted to institutional use.

As members of the community testified, the modest homes in this neighborhood were built in the 1950s for returning war veterans, and the homes and lots throughout the community are roughly the same size. This sort of homogeneity creates the feel of a residential community. By contrast, these three structures would be the only ones in this large community that were not used for residential purposes, and I believe that is a significant consideration in determining whether this proposal would be compatible with the “character” of the “surrounding residential premises.” In addition, the existing church along with the proposed additional buildings are located at the entrance to the Tollgate community, which in my opinion heightens the incongruity of the proposal.

## VARIANCES

A variance request involves a two-step process, summarized as follows:

- (1) It must be shown the property is unique in a manner which makes it unlike surrounding properties, and that uniqueness or peculiarity must necessitate variance relief; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

*Cromwell v. Ward*, 102 Md. App. 691 (1995).

Petitioner's experts testified the property was unique, citing its shape, but I do not believe that testimony can satisfy the onerous requirements for variance relief under Maryland law. As one neighbor testified, many other lots in the Tollgate community have a shape and size which are similar to the subject property. As such I believe the petition for variance must be denied.

Some further clarifications are in order. Petitioner proposes to use the single family dwelling at 10 Millgate for a parsonage. A parsonage is commonly associated with a church or other building for religious worship and is permitted by right in these circumstances whether as a principal residential use or an accessory use to the adjoining church at 2 Lastgate Road. As such, zoning relief is not required. Petitioner also sought variances for the existing church, though it is clear that structure was constructed many years ago and has since been used as a church. I likewise do not believe variances are required for the church itself, which is nonconforming, but I will grant this request to "legitimize" the existing operation.

The other issue concerns the existing parking lot, which Petitioner concedes does not satisfy B.C.Z.R. §409. Though the lot is paved and striped, the dimensions of the spaces and the drive aisles do not satisfy current requirements. Even so, the lot has been used for many years without complaint from the county or community. The Administrative Law Judge is permitted under B.C.Z.R. §409.12 to approve a "modified parking plan" and I believe that would be

appropriate in this case. There is no indication the lot in its current configuration poses a risk to the health, safety and/or welfare of the community, and the Order below will permit Petitioner to continue using the parking lot in its existing condition pursuant to the aforementioned regulation.

THEREFORE, IT IS ORDERED this 26<sup>th</sup> day of **May, 2017**, 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): (1) To change the use of existing dwellings at 9 South Tollgate Road, 2 Millgate Road, 6 Millgate Road and 10 Millgate Road from residential to church use; (2) Residential Transition Area (RTA): To confirm that the proposed site improvements (new parking) to the church site are in compliance; and (3) Or in the alternative, confirm compliance to the extent possible for residential transition, be and is hereby DENIED.

IT IS FURTHER ORDERED that the petition for variance concerning 2 Lastgate Road, which seeks approval for: (1) Existing front yard setback of 31 ft. in lieu of the minimum required 50 ft.; (2) Existing rear yard setback of 20 ft. in lieu of the minimum required 30 ft.; (3) Existing interior side yard setback of 19 ft. in lieu of the minimum required 20 ft.; and (4) an existing freestanding identification sign with sign area/face of 46 sq. ft. and a height of 10.5 ft. in lieu of the permitted 25 sq. ft. and height of 6 ft., be and is hereby GRANTED.

IT IS FURTHER ORDERED that the petition for variance seeking: 9 South Tollgate Road: (1) Existing front yard setback of 36 ft. in lieu of the minimum 50 ft.; 2 Millgate Road: (1) Existing front yard setback of 23 ft. in lieu of the minimum required 50 ft.; and (2) Existing street corner side yard setback of 15 ft. in lieu of the minimum required 35 ft.; and 6 Millgate Road: (1) Existing front yard setback of 23 ft. in lieu of the minimum required 50 ft., be and is hereby DENIED.

