

IN RE: PETITION FOR SPECIAL EXCEPTION	*	BEFORE THE
(12231 Harford Road)		
11 th Election District	*	OFFICE OF
5 th Council District		
Nepali American Cultural Center	*	ADMINISTRATIVE HEARINGS
<i>Legal Owner</i>	*	FOR BALTIMORE COUNTY
Petitioner	*	Case No. 2018-0122-X
* * * * *		

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for consideration of a Petition for Special Exception filed on behalf of Nepali American Cultural Center, legal owner (“Petitioner”). The Special Exception was filed pursuant to the Baltimore County Zoning Regulations (“B.C.Z.R.”) to allow a church or other building for religious worship on property zoned RC-2.

Professional engineers John Motsco and Joe Caloggeri appeared in support of the petition. Timothy M. Kotroco, Esq. represented the Petitioner. Numerous citizens attended the hearing and objected to the request. Substantive Zoning Advisory Committee (ZAC) comments were received from the Department of Planning (DOP), the Bureau of Development Plans Review (DPR), State Highway Administration (SHA) and the Department of Environmental Protection and Sustainability (DEPS). None of the reviewing agencies objected to the request.

The subject property is approximately 30.8 acres and is zoned RC-2. The property is improved with an historic single-family dwelling and several outbuildings. Petitioner purchased the property last year, at which time it was rundown and abandoned. Photographs submitted at the hearing reveal extensive vandalism to the property which occurred both before and after Petitioner purchased the property. Petitioner is in the process of renovating the property, and estimates that

at least 4-5 months of additional restoration work needs to be done before the property can be used by the congregation.

Special Exception

Doug Burgess, an attorney with a law office in the area, testified 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 *Attar v. DMS Tollgate, LLC*, 451 Md. 272 (2017), wherein Maryland's highest court discussed the nature of the evidentiary presumption in special exception cases. The court again emphasized 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.

Mr. Motsco, a professional engineer accepted as an expert, explained the site plan in detail and said he has visited the property on several occasions. He testified the property is approximately 30.8 acres in size and is zoned RC-2. The witness noted the site has mature wooded buffers along all road frontages, and he testified Petitioner is not at this time proposing any new construction on the site. In conclusion, Mr. Motsco opined Petitioner satisfied each of the requirements set forth at B.C.Z.R. §502.1.

Several citizens testified in opposition to the proposal. Though each witness expressed concern with how the project may impact them individually, there were common themes in the testimony. Traffic conditions and roadway safety, and a concern for water wells and private sewage disposal, were the most frequently cited concerns. Many neighbors also complained about several events or gatherings at the site which generated a significant amount of noise. With the exception of the complaints about noise (which will be addressed in a condition included in the

final order), these concerns are inherent in the operation of a church or building for worship located in a rural area. 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).

In rural zones especially roadways are often antiquated and overburdened, and water/sewer services are not provided by the County. Harford Road will be used to access the site, and as a state highway it is under the control and jurisdiction of the State Highway Administration (SHA). As Mr. Caloggeri (a professional engineer accepted as an expert) testified, the SHA, not Baltimore County, will examine the proposed access and determine whether improvements or other measures are necessary to ensure safe ingress/egress from the site.

As noted in the conditions below, Petitioner must obtain approval from Baltimore County for installation of well and septic systems for this property. Ronald Standiford, pastor of the adjacent Redeemer church, noted that the Christian school affiliated with the church has approximately 220 students and the well and septic system are sufficient. According to witnesses in Petitioner’s case, far fewer people will visit this site on a daily basis, and thus there is no reason to believe the water supply and sewerage system would not be adequate.

THEREFORE, IT IS ORDERED this 22nd day of **January, 2018**, by this Administrative Law Judge, that the Petition for Special Exception to allow a church or other building for religious worship on property zoned RC-2, 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 must submit for approval by Baltimore County landscape and lighting plans for the site.
3. Prior to operating a religious facility at the site Petitioner must install a sign at the Harford Road access point (in compliance with the B.C.Z.R. §450) containing the name of the facility and street address.
4. Prior to issuance of occupancy permits, Petitioner must demonstrate to DEPS that the well and septic system proposed will be sufficient to serve the facility.
5. Prior to issuance of permits Petitioner must comply with the ZAC comment of DEPS, a copy of which is attached hereto and incorporated herein.
6. Prior to issuance of permits Petitioner must obtain from SHA an access permit authorizing ingress and egress from the site via Harford Road.
7. Special events held at the site shall be limited to the hours of 10 a.m. to 10 p.m., and outdoor amplification of music or sound shall not be permitted.

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