

IN RE: PETITIONS FOR SPECIAL HEARING *	BEFORE THE
AND VARIANCE	
Parcel 363 (Lots 12 & 13 – Kenwood Ave.) *	OFFICE OF
and Parcel 901 (Buehler Ave.)	
14 th Election District *	ADMINISTRATIVE HEARINGS
6 th Council District	
	FOR BALTIMORE COUNTY
United House of Prayer, <i>Legal Owner</i>	
Petitioner *	Case No. 2019-0420-SPHA

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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 United House of Prayer, the legal owner (“Petitioner”). The Special Hearing was filed pursuant to Section 1B01.1.B.1 of the Baltimore County Zoning Regulations (“BCZR”) for a finding that the proposed Residential Transition Area (“RTA”) buffer of 10 ft. is in compliance to the extent possible. In addition, a Petition for Variance was filed pursuant to BCZR as follows: (1) to permit a proposed church building within 66 ft. of DR 5.5 property line in lieu of the required 75 ft.; and (2) to permit 32 parking spaces in lieu of the required 45 spaces. A three sheet site plan was marked and accepted into evidence as Petitioner’s Exhibit 1.

Deacon Charles Weathers, Professional Engineer John B. Gonzalez and Architect Eric Bond appeared in support of the requests. Edward J. Gilliss, Esq. represented the Petitioner. There were no protestants or interested citizens in attendance. The Petition was advertised and posted as required by the BCZR. Substantive Zoning Advisory Committee (“ZAC”) comments were received from the Department of Planning (“DOP”) and the Department of Environmental Protection and Sustainability (“DEPS”).

SPECIAL HEARING

Mr. Gilliss explained that this proposed house of worship will replace an existing “store-front” church in Essex and is necessitated by a growing congregation. He stated that the church and engineer had made all efforts to comply “to the extent possible” with the RTA based on the site and the needs of the church, and that he believes the requested 66 foot RTA is in compliance with BCZR Section 1B01.1.B.1 and with the overall spirit and intent of the regulations.

Mr. Gonzalez testified about his professional credentials, education, and experience and he was accepted as an expert in land use, design, engineering, and the BCZR. He testified that the property in question is currently vacant with no structures on it. He noted that the property is split-zoned BL and DR and that a church is permitted by right in both zones. He testified that virtually all church activities will be during evenings and weekends and that it will not have an undue impact on traffic or parking in the area, as verified by a trip generation study that was done. He noted that there is public transportation nearby and that the church is hopeful that it will also draw congregants who will walk there. He also explained that the property is served by public water and sewer systems. Mr. Gonzalez, with the assistance of Mr. Bond, then gave an overview of the surrounding neighborhood and of the planned architecture of the church and grounds. They stressed that the architecture and height of the building are designed to harmoniously integrate with the neighborhood. Architectural renderings of the building, landscaping, lighting and fencing were shown. The site will be fully surrounded by an architectural quality metal security fence. Aerial photos of the site and the surrounding properties were admitted into evidence as Petitioner’s Exhibit 2. Zoning and Tax parcel maps from the My Neighborhood site were marked and admitted as Exhibits 3 and 4.

Mr. Gilliss questioned Mr. Gonzalez about each of the factors in BCZR Section 502.1 and Mr. Gonzalez explained that in his expert opinion the proposed project is fully compliant. Mr. Gonzalez acknowledged that he was aware of the comments of the various County agencies, as

well as those from the State Highway Administration. He explained that this was merely phase one of the project and that he and Petitioner are fully aware that they will have to satisfy all Agency comments and fully comply with all aspects of State and County law through the permit, building, and inspection process. Based on the undisputed record evidence I believe the Petitioner has complied with BCZR Section 1B01.1.B.1 “to the extent possible” and is entitled to the requested RTA relief.

VARIANCE

Under BCZR Section 307, and Maryland common law, an applicant for a variance must satisfy a two-step analysis, 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).

The property in question is an irregularly shaped lot in split-zones and is bounded on two sides by businesses and at the rear by residences. As such, the property is unique. If the Regulations were strictly interpreted, Petitioner would experience a practical difficulty because it would be unable to build its proposed house of worship as designed. I find that the relatively minor setback variance will not unduly impact the adjoining DR property. Further, as noted above, the church will have a fully fenced perimeter with all its parking contained within. As also noted, most of the church’s activities will be during evening and weekend hours so there should be minimal parking impacts on the surrounding properties.¹ As also noted, there is public

¹ On the day of the hearing, the OAH received a letter from Joyce M. Hicks, the Exec. V.P. of Off Duty Police Security Services, Inc., one of the adjoining businesses. In it she states her opposition to the proposed parking variance, stating “I am very much against the use of my property for parking or any other use.” Mr. Gonzalez and Deacon Weathers explained at the hearing that due to the enclosed parking lot at the church that there would be no overflow parking onto Ms. Hicks’ property. If Ms. Hicks is still concerned she should post “no parking” signage and can take all proper enforcement actions. The letter will be placed in the file.

transportation in the immediate vicinity and it is anticipated that some of the congregation will walk to services from the surrounding neighborhood. I therefore find that the variance can be granted in harmony with the spirit and intent of the BCZR, 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 County and/or community opposition.

THEREFORE, IT IS ORDERED this 6th day of **November, 2019**, by this Administrative Law Judge, that the Petition for Special Hearing for a finding that the proposed Residential Transition Area (“RTA”) buffer of 10 ft. is in compliance to the extent possible, is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance as follows: (1) to permit a proposed church building within 66 ft. of DR 5.5 property line in lieu of the required 75 ft.; and (2) to permit 32 parking spaces in lieu of the required 45 spaces, 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. Prior to issuance of permits, Petitioner must comply with ZAC comments submitted by the DOP, DEPS, DPR and SHA, copies of which are attached hereto and made a part hereof.

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

Signed
PAUL M. MAYHEW
Managing Administrative Law Judge
for Baltimore County

PMM:sln/dlw