

<p><b>IN RE: DEVELOPMENT PLAN HEARING</b>  W/Side of Deer Park Road @ end of  Deer Park Reserve  2<sup>nd</sup> Election District  4<sup>th</sup> Councilmanic District  <b>(Christian Life Church  FKA Deer Park Reserve)</b></p> <p><b>Christian Life Church c/o Dr. Hugh Bair</b>  <i>Applicant/Developer</i></p>	<p>* BEFORE THE</p> <p>* OFFICE OF</p> <p>* ADMINISTRATIVE HEARINGS</p> <p>* FOR BALTIMORE COUNTY</p> <p>* <b>HOH Case No. 02-705 and</b>  <b>Zoning Case No. 2011-0311-SPHA</b></p>
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**ADMINISTRATIVE LAW JUDGE’S OPINION AND ORDER ON DEVELOPMENT PLAN  
AND SPECIAL HEARING**

This matter comes before the Office of Administrative Hearings for a hearing pursuant to Section 32-4-227 of the Baltimore County Code (B.C.C.). In accordance with the development regulations codified in B.C.C. Article 32, Title 4, the Developer seeks approval of a Development Plan (the “Plan”) prepared by D.S. Thaler & Associates, Inc., for a 2,100 seat church building -- (the “subject property”) and 553 parking spaces on approximately 12.35 acres, more or less, split-zoned B.R., D.R.3.5, B.L. and R.C.5.

The Developer is also requesting certain zoning relief and has filed an amended Petition for Special Hearing pursuant to Section 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) for: approval pursuant to B.C.Z.R. Section 238.C of a building that exceeds the height permitted in Section 238.C.1, and (2) pursuant to Section 1B01.1.B.1.g(6) of the B.C.Z.R. for a finding that the proposed improvements are planned in such a way that compliance, to the extent possible with RTA requirements, will be maintained and that said plan can otherwise be expected to be compatible with the character and general welfare of the surrounding residential premises, if necessary. The Developer originally filed a Petition for Variance from Section 409.4 of the

B.C.Z.R. to allow parking spaces in an off-street parking facility to have direct access to a driveway, but withdrew this request at the hearing.

The church project is more particularly described on the Plan submitted into evidence and marked as Developer's Exhibit 1.

In 2006, Deputy Zoning Commissioner John Murphy approved a Development Plan for the construction of 40 houses on the subject property, known as "Deer Park Reserve." PDM Case II-705. Those homes were never constructed, and the Developer now seeks to construct a 2,100 seat church/sanctuary. Then Director of Permits and Development Management Timothy Kotroco advised counsel for Developer that this constituted a "material" amendment to the Development Plan, and that the Developer would therefore need to comply with the Baltimore County development regulations.

In that regard, a Development Plan Conference (DPC) is held between the Developer's consultants and various Baltimore County agencies with responsibility over certain aspects of the development proposal. In this case, the DPC was held on May 25, 2011. At the DPC, the Baltimore County agencies responsible for the review of the Development Plan submit written comments regarding the compliance of the Development Plan with the various Baltimore County regulations governing land development in the County. Thereafter, the Developer may revise the Development Plan in accordance with the DPC comments. The Hearing Officer's Hearing was held before me on June 17, 2011.

Appearing at the public hearing on behalf of the Developer was Dr. Hugh Bair, Pastor of Christian Life Church, David Thaler, P.E., architect Stephen Carroll, traffic consultant Mickey Cornelius, P.E., and Brian Childress. David H. Karceski, Esquire with Venable, LLP entered his appearance as counsel for the Developer.

Appearing in opposition to the Developer's request were Felicia Flourney and Jay Burtis, residents of the surrounding communities. Attorney Lisa Heimlicher appeared at the hearing and requested that the Plan be denied, because she alleges the Developer is indebted to her client (a utility company) for certain infrastructure costs. I explained this was a civil matter over which this Office did not have jurisdiction, and I therefore refused to entertain the request.

Representatives of the various Baltimore County agencies who reviewed the Plan attended the hearing, including the following individuals with the Department of Permits, Approvals and Inspections (PAI): Darryl Putty, Project Manager; Jeffrey Perlow, representative of the Office of Zoning Review; Dennis A. Kennedy, Development Plans Review; and Brad Knatz, Real Estate Compliance. Also appearing on behalf of the County were Lloyd Moxley, Office of Planning; Jeffrey Livingston, Department of Environmental Protection and Sustainability (DEPS), and Bruce Gill, Department of Recreation and Parks (R&P)/Development Plans Review (DPR). Don W. Muddiman, Baltimore County Fire Marshall's Office and Steven D. Foster, Chief of Engineering Access Permits Division of the State Highway Administration, were represented at the hearing through prior correspondence. All Baltimore County representatives indicated – during the “informal” phase of the case – that the Development Plan satisfied all Baltimore County rules and regulations, and their agencies recommended approval of the Plan.

### **DEVELOPER'S CASE**

The first witness presented by the Developer was Brian Childress, who works at D.S. Thaler & Associates, Inc. Mr. Childress testified that he has prepared over 50 plans for review and approval by Baltimore County, and has previously been accepted as an expert witness in Baltimore County administrative proceedings. Mr. Childress prepared the Development Plan in the present case, with assistance and supervision provided by Mr. Thaler.

Mr. Childress confirmed that the Developer withdrew its request for variance relief, but added that parking being provided on site was still in excess of that required by B.C.Z.R. § 409. The next topic of inquiry concerned the height of the proposed church, which will be 61 feet to the top of the highest roof. Mr. Childress testified that the church will be located entirely within the BR zone on the subject property, and would comply with the “tent height” requirements of that zone, although B.C.Z.R. § 238.C limited the height to 35 feet since the BR lot was within 750 feet of an RC zone.

The next witness was Stephen Carroll, a licensed architect with over 30 years of experience. Mr. Carroll’s principle offices are in Chattanooga, Tennessee, and his firm specializes in preparing plans and drawings for churches. Mr. Carroll’s resume was marked and accepted as Developer’s Exhibit 7, and he stated that he has provided expert testimony on more than 20 occasions in judicial and administrative matters.

Mr. Carroll advised that the irregular shape of the subject property made this a difficult site to plan. He testified that a church is a transitional use which will serve as an effective buffer between commercial and residential uses. Though the church building would be just over 60 feet tall, Mr. Carroll pointed out that a nearby water tower (shown in the photo marked as Developer’s Exhibit 6) is over 100 feet tall.

With respect to the special hearing relief requested under B.C.Z.R. § 238.C.2, Mr. Carroll testified that the project met the special exception standards set forth in B.C.Z.R. § 502. Specifically, Mr. Carroll said that the church would not be detrimental to the surrounding area and would be a buffer to the adjacent residential areas, and would also be a deterrent to crime. He explained that churches have sporadic impacts limited to the dates of church services, and unlike housing developments would therefore not overcrowd the land. In addition, Mr. Carroll testified

that the unique design of the church (as revealed on Developer's Exhibit 8) causes the roof line to "step away" from the adjoining residential areas, and the tallest roof is oriented toward the commercial zones contiguous to the parcel.

Mr. Carroll stated that he was unable to discern any particular "pattern" of development in the surrounding area and reiterated that the design of the church -- essentially breaking the structure into three separate buildings -- made the structure compatible with the surrounding environment and assisted in creating a rural feel to the development. With regard to the special hearing relief sought under B.C.Z.R § 1.B.01.1.B.1.g.6, the witness testified that the proposal satisfied the elements of the residential transition area exception set forth therein. Specifically, Mr. Carroll opined that the proposed church is planned in such a way that it complies to the extent possible with RTA use requirements, and that the development would be compatible with the character and welfare of the surrounding community. Mr. Carroll explained that of all development projects, churches have the lowest impact (in terms of traffic and crowding) upon adjacent residential communities.

The Developer's next witness was David Thaler, a professional engineer with approximately 36 years of experience. Mr. Thaler explained that the church will be constructed entirely within the BR zoned portion of the subject property. He described the BR zone as the most intense business zone under the B.C.Z.R., and opined that if the economy was more robust at this time, a car dealership would most likely seek to open on this site. Mr. Thaler, who was accepted as an expert witness, opined that the Development Plan marked as Exhibit 1 satisfied all County requirements and should therefore be approved pursuant to B.C.Z.R § 32-4-229(b). In addition, Mr. Thaler testified that the Developer sought a waiver of certain Department of Public Works (DPW) standards -- to be excused from performing approximately 200 linear feet of roadway widening -- and he explained that such relief should be granted given that road widening on this portion of Deer

Park Road could in fact be dangerous and that there was in reality no need for such widening once a motorist had traveled past the proposed church entrance.

Mr. Thaler next opined that the Developer's proposal satisfied the requirements set forth in B.C.Z.R. § 238.C.2, for exceeding the 35 feet height limitation in a BR zone situated within 750 feet of an RC zone. Mr. Thaler advised that the Developer's proposal satisfied each of the special exception factors set forth in B.C.Z.R. § 502, and that the proposal also met the compatibility objectives set forth in B.C.Z.R. § 32-4-402(d)(1-8). With regard to the variance relief sought under B.C.Z.R. § 1.B.01.1, Mr. Thaler testified that the proposed church would be compatible with and promote the general welfare of the surrounding residential properties, and he explained churches have long been considered "transitional uses" between commercial and residential properties, and that they provided an effective use of land to serve as a buffer indicating that a commercial zone was segueing into a more rural residential setting.

The final witness presented in Developer's case was Mickey Cornelius, a licensed professional engineer employed with The Traffic Group, a firm which provides traffic engineering services and transportation planning studies. Mr. Cornelius prepared a lengthy and detailed traffic impact analysis (marked and accepted into evidence as Developer's Exhibit 11), and he advised that the study area included the intersections of Rt. 26 and Deer Park Road, Deer Park and Winands Road, Winands and Marriottsville Road, and Deer Park and Lyons Mill Road. Summarizing the conclusions reached in his traffic analysis, Mr. Cornelius opined that the surrounding road network can safely handle the volume of traffic projected for the church project. Mr. Cornelius also opined that the church would in no way create "congestion," as that term is used in B.C.Z.R. § 502.

The other principle focus of Mr. Cornelius' testimony concerned safety at the proposed facility and site distances at the access points for the proposed church. Mr. Cornelius explained that

Deer Park Road has a 30 mph speed limit, and that under Baltimore County regulations a 400 feet sight distance would be required. Mr. Cornelius added that under national (ASHTO) standards, sight distances would be required to be at least 435 feet. Under either scenario, Mr. Cornelius stated that the current proposal would be acceptable, given that the sight distances from the northern access point is 470 feet, and from the southern access point, the sight distance is over 500 feet.

To obtain relief under B.C.Z.R. § 238C.2, Developer must obtain the recommendations of the Departments of Public Works, PAI and DEPS. Those recommendations were presented during the “informal” portion of the case. See County Exhibits 1-3. The regulation also requires the Hearing Officer, based on those recommendations, to determine the proposed use is compatible with existing uses of the adjoining RC zone. In that regard, I find that the church is in fact a lower intensity use for the BR zone, and will therefore not have a negative impact upon the surrounding community. The building is being designed in such a way as to minimize the massing of the structure, and lighting will be carefully designed to prevent unwanted illumination of the nearby homes. The architectural drawings depict a well-designed, impressive structure that will be an asset to the community and will preserve the rural and bucolic feel of the area.

### **PROTESTANTS’ ISSUES**

As noted earlier, neighbors Felicia Flourney and Jay Burtis attended the hearing and voiced certain concerns about the proposal. Ms. Flourney was primarily concerned with the height of the church and whether the lighting proposed would illuminate the surrounding homes. Mr. Carroll (Developer’s architect/expert) addressed the first concern by explaining that the massing and layout of the church was designed to cause the building to look less like an imposing monolithic structure, and more like three harmoniously adjoining pieces of a whole. In addition, Mr. Carroll presented architectural elevations which he prepared (marked and accepted into evidence as Developer’s

Exhibit 8) showing the pitched roof lines which slope away from the RC zone and “soften” the appearance and impact of the 61 feet height of the roof.

With respect to the lighting issue, Lloyd Moxley from the Office of Planning stated that the church would be required to provide “pedestrian scale” lighting, which he explained would confine the light to the subject property, and would be of such height and orientation, as shown on the architectural elevations, to prevent the light from spilling onto adjoining residential properties.

Mr. Burtis expressed concerns over the proposed stormwater management facilities, and worried they may have an impact on his drinking water well. Mr. Thaler testified that in his 30+ years of experience he has never been involved with, or even heard of, a stormwater management facility contaminating or in any way harming a nearby well. Mr. Thaler added that, even in a worst case scenario, the Developer was going to provide public water facilities to the northern property line of its lot, which adjoins the property owned by Mr. Burtis, and that he could connect to public water in the future in the event a problem arose with his well.

The Baltimore County Code (§ 32-4-228) is clear regarding the standards that must be applied when the Hearing Officer considers a development plan. The Hearing Officer must approve a plan that satisfies the rules, regulations and policies adopted by Baltimore County regarding development. Based upon the testimony and evidence presented, I find that the Plan as submitted at the hearing and accepted as Developer’s Exhibit 1 meets all County rules, regulations and standards for development in Baltimore County and, therefore, must be approved.

Pursuant to the zoning and development regulations of Baltimore County and Article 32, Section 4 of the B.C.C., the Development Plan (Developer’s Exhibit 1) shall be approved consistent with the comments contained herein.

THEREFORE, IT IS ORDERED by this Hearing Officer/Administrative Law Judge this \_\_\_1st\_\_\_ day of July, 2011, that the redlined Development Plan for **CHRISTIAN LIFE CHURCH** identified herein as Developer's Exhibit 1, be and is hereby APPROVED;

IT IS FURTHER ORDERED that the Special Hearing relief requested pursuant to Section 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R.") for: approval pursuant to B.C.Z.R. Section 238.C of a building that exceeds the height permitted in Section 238.C.1, and (2) pursuant to Section 1B01.1.B.1.g(6) of the B.C.Z.R. for a finding that the proposed improvements are planned in such a way that compliance, to the extent possible with RTA requirements, will be maintained and that said plan can otherwise be expected to be compatible with the character and general welfare of the surrounding residential premises, be and is hereby GRANTED, subject to the following conditions:

1. Developer is to provide details of the proposed outdoor lighting at the site, and shall include the following note on the site plan: "A lighting plan that conforms with IESNA standards will be submitted in conjunction with the final landscape plan. Lighting should not compromise the adjacent residential community."
2. Developer is to provide pedestrian access from the north entrance of the church to Deer Park Road.
3. Developer shall provide decorative privacy fencing (in addition to the proposed evergreen screening) along the property's northern boundary wherever the property abuts existing residential uses to further mitigate the impact of the proposed parking lots, storm water management facility and private driveways. This fence should be constructed prior to Developer receiving a use and occupancy permit for the proposed church.

Any appeal of this Order shall be taken in accordance with Baltimore County Code, Section 32-4-281.

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

LMS:pz