

IN RE: PETITIONS FOR SPECIAL EXCEPTION	*	BEFORE THE
AND VARIANCE		
N side of Old Court Road, 300' SW of	*	OFFICE OF
c/line of Greens Lane		
2 nd Election District	*	ADMINISTRATIVE HEARINGS
4 th Councilmanic District		
(5616 Old Court Road)	*	FOR
New Antioch Baptist Church of	*	BALTIMORE COUNTY
Randallstown Md., Inc., <i>Legal Owner</i>		
Marcorp, Ltd.,	*	Case No. 2012-0272-XA
<i>Contract Purchaser/Lessee</i>		
Petitioners	*	

* * * * *

ORDER AND OPINION

This matter comes before the Office of Administrative Hearings (OAH) as Petitions for Special Exception and Variance filed for property located at 5616 Old Court Road. The Petition was filed by New Antioch Baptist Church of Randallstown Md., Inc., the legal owner of the subject property, and Marcorp, Ltd., contract purchaser/lessee (the “Petitioners’). The Special Exception Petition seeks relief from Section 1B01.1.C.9 of the Baltimore County Zoning Regulations (B.C.Z.R), to use the property for a funeral establishment. Petitioners are also requesting Variance relief from the Baltimore County Zoning Regulations (B.C.Z.R.) as follows:

- Section 1B01.1.B.1.e(1), to permit use of the existing structure in Residential Transition Area (RTA) for a funeral establishment;
- Section 1B01.1.B.1.e(2), to permit an existing structure 72.5' from the tract boundary in lieu of the required minimum setback of 75';
- Section 1B01.1.B.1.e(2), (3) and (5), to permit an existing parking lot with a setback at a minimum of 20' from the tract boundary and within the RTA buffer of 50' at a minimum of 20' in lieu of the required 75' from the tract boundary and the RTA buffer of 50'; and

- Section 409.6.A.4, to provide 134 parking spaces on a paved and landscaped parking lot in lieu of the required 178 parking spaces.

The subject property and requested relief are more fully described on the site plan which was marked and accepted into evidence as Petitioners' Exhibit 1.

Appearing at the hearing were Victor C. March, Sr., Erick W. March and Nathan Malloy with Marcorp, Ltd., Rev. Kenneth Barney, Sr. with New Antioch Baptist Church of Randallstown Md., Inc., and Burton English, Jr., P.E. with Farrand & English, the site engineering consultant. Emerson L. Dorsey, Jr., Esquire and Darrell Peterson, Esquire, attended and represented the Petitioners. D. Powell and Courtney Miller attended as interested citizens. The file contains a letter of opposition dated June 6, 2012 from Napoleon and Brenda Sykes, residents of the Woodstock community which is in close proximity to the subject property.

Testimony and evidence offered at the hearing revealed that the site is 4.6199 acres and is zoned DR 3.5. The site is improved with a church, constructed in 1992. The Petitioners propose to open and operate a funeral home on the site, and will make only interior improvements to the structure.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. ZAC comments were received from the Department of Planning on May 21, 2012, which state as follows:

The Department of Planning has reviewed the petitioner's request and accompanying site plan. The property is located on an approved church site. The current owners of the property (New Antioch Baptist Church of Randallstown) have constructed a larger church across the street (Old Court Road) from the subject property. The site also abuts another place of worship (Kingdom Hall) along the western property line of the proposed funeral establishment.

Discussions with the petitioner's revealed that this location will be the 3rd such funeral establishment operated by Marcorp LTD in the Baltimore area. Further discussion with the petitioner revealed that as to the variance request to allow 134 parking spaces in lieu of the required 178 parking spaces, it is highly unlikely that

large funerals will be conducted at this site. Typically larger funerals are held at large sanctuaries. Marcorp does not hold funerals on Sunday during the hours that the adjacent churches experience peak traffic.

The Department of Planning recognizes the current volume of traffic generated on Sundays as the result of 2 existing places of worship being located on this portion of Old Court Road. If this building continues to function as approved (another church) it would create greater traffic challenges on Sundays than the proposed funeral establishment.

The Department of Planning supports the requested special exception and variances provided the petitioner submits an updated landscape plan to mitigate the requested RTA variances.

ZAC comments were also received from the Department of Environmental Protection and Sustainability (DEPS) on May 23, 2012, which indicated Groundwater Management will need to review future permits for parking, etc. since the site is served by well and septic.

In addition, ZAC comments were received from the Development Plans Review (DPR) on May 14, 2012, which recommended providing a landscape for the site in order to comply with the Baltimore County Landscape Manual for the RTA and parking requirements.

Under *Cromwell* and its progeny, 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 property is of irregular dimensions and Petitioners must contend with existing site conditions. Also, the property is served by well and septic, even though it is zoned DR 3.5, which also creates certain site constraints with regard to septic reserve areas and such.

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. The Department of Planning has indicated its support for this project, and the Petitioners have the enthusiastic support of community groups in the area.

As for the special exception relief, the proposal satisfies B.C.Z.R. §502.1, and will not be detrimental to the public's health, safety and welfare. The funeral home operation will impose no additional burdens upon the community beyond those caused by the existing church. Petitioners will not conduct funerals on Sunday, so as not to cause traffic congestion associated with services at several nearby churches. The funeral home use is presumptively proper under Maryland law, and no evidence was introduced to rebut that presumption. Schultz v. Pritts, 291 Md. 1 (1981).

Pursuant to the advertisement, posting of the property, and public hearing on these petitions, and after considering the testimony and evidence offered, I find that Petitioners' Special Exception and Variance requests should be granted.

THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County, this 21 day of June, 2012 that Petitioners' request for Special Exception relief under Section 1B01.1.C.9 of the Baltimore County Zoning Regulations (B.C.Z.R), to use the property for a funeral establishment, be and is hereby GRANTED; and

IT IS FURTHER ORDERED that Petitioner's request for Variance relief from the Baltimore County Zoning Regulations (B.C.Z.R.) as follows:

- Section 1B01.1.B.1.e(1), to permit use of the existing structure in Residential Transition Area (RTA) for a funeral establishment;
- Section 1B01.1.B.1.e(2), to permit an existing structure 72.5' from the tract boundary in lieu of the required minimum setback of 75';

- Section 1B01.1.B.1.e(2), (3) and (5), to permit an existing parking lot with a setback at a minimum of 20' from the tract boundary and within the RTA buffer of 50' at a minimum of 20' in lieu of the required 75' from the tract boundary and the RTA buffer of 50'; and
- Section 409.6.A.4, to provide 134 parking spaces (existing) on a paved and landscaped parking lot in lieu of the required 178 parking spaces,

be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioners may apply for appropriate permits and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioners would be required to return, and be responsible for returning, said property to its original condition.
2. Compliance with the ZAC comments made by the Department of Planning dated May 21, 2012, a copy of which is attached hereto and made a part hereof.
3. Compliance with the ZAC comments made by the Department of Environmental Protection and Sustainability dated May 22, 2012, a copy of which is attached hereto and made a part hereof.
4. Compliance with the ZAC comments made by the Bureau of Development Plans Review dated May 14, 2012, a copy of which is 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 _____
 JOHN E. BEVERUNGEN
 Administrative Law Judge
 for Baltimore County

JEB/pz