

-IN RE: PETITIONS FOR SPECIAL HEARING *	BEFORE THE
AND VARIANCE	
2 nd Election District *	OFFICE OF
2 nd Councilman District *	ADMINISTRATIVE HEARINGS
(4512 Old Court Road) *	FOR BALTIMORE COUNTY
Reverend Lucy Ware *	
Petitioner *	Case No. 2013-0147-SPHA

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for consideration of Petitions for Special Hearing and Variance filed by Bruce E. Doak on behalf of Reverend Lucy Ware, legal owner. The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”), (1) To allow a new church for religious worship on the subject property; (2) To allow a residential transition area (RTA) buffer of 0' in lieu of the required 50'; and (3) To allow a residential transition area (RTA) setback of 0' in lieu of the required 75' from a track boundary to a parking lot or structure. The Petition for Variance seeks the following relief: (1) to allow 4 parking spaces that do not have direct access to an aisle per § 409.4 of the B.C.Z.R; (2) to allow gravel surface of the parking area in lieu of a durable and dustless surface per § 409.8A2 (B.C.Z.R); (3) to allow no striping of the parking area per § 409.8A6 (B.C.Z.R). The subject property and requested relief is more fully depicted on the site plan that was marked and accepted into evidence as Petitioner’s Exhibit 7.

Appearing at the public hearing in support of the requests was Reverend Lucy Ware and Bruce E. Doak from Bruce E. Doak Consulting, LLC, who prepared the site plan. Edward Gilliss, Esquire represented the Petitioner. The file reveals that the Petition was properly posted

and advertised as required by the Baltimore County Zoning Regulations. Several area residents attended the hearing and voiced opposition to the proposal.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. The only substantive comment was from Bureau of Development Plans Review (DPR), which expressed concern about the proposed gravel parking lot and lack of striping.

The subject property is approximately 1.2 acres and is zoned DR 3.5. The property is improved with a single family dwelling, and the Petitioner proposes to convert the home into a church. To do so, zoning relief is required. Mr. Doak testified on behalf of Petitioner, and explained the layout of the proposed site, and he also described in general terms the neighborhood and roadway network. Mr. Doak presented photographs of the subject site and its environs, and also explained why (in his opinion) it was preferable for the parking lot to remain gravel, which he testified was a more environmentally sensitive material than blacktop or macadam surfaces. Mr. Doak also testified the gravel used was comprised of larger stones that were not “dusty,” and he believed that a macadam parking lot would be incompatible with the residential nature of the neighborhood. Finally, the witness explained that if relief was not granted from the RTA requirements of the B.C.Z.R., the Petitioner would be unable to use the property for a purpose permitted (as of right) under the regulations: a new church.

This case turns on the Residential Transition Area (RTA) regulations in the B.C.Z.R., which are difficult to decipher. The regulations indicate the purpose of the RTA is to “assure that similar housing types are built adjacent to one another or that adequate buffers and screening are provided between dissimilar housing types,” B.C.Z.R. 1B01.1.B.1. Yet the RTA regulations

are applicable to a church building (which is not a dwelling or housing) in a DR zone (where churches are permitted as of right), subject to certain exceptions.

The B.C.Z.R. provides for the “variance” of RTA “upon the recommendation of” certain county reviewing agencies. B.C.Z.R. § 1B01.1.B.1.c. But in this case, the enumerated agencies did not make such a recommendation (in fact, Mr. Kennedy indicated in his ZAC comment that the RTA buffer must be provided), and thus the Petitioner is not entitled to seek a “variance” under this regulation.

That leaves B.C.Z.R. § 1B01.1.B.1.g. (6) as the sole avenue of relief for the Petitioner. As an initial matter, it does not seem as if that regulation is applicable, since the Petitioner is not really constructing a “new church,” but a conversion of a single family dwelling to a church with no “proposed improvements.” Even assuming the regulation is applicable, I do not believe the Petitioner is entitled to an RTA exception, since (in my opinion) the church will not be “compatible with the character and general welfare of the surrounding residential premises.” Id.

According to the citizens attending the hearing, the Petitioner already began conducting church services at the property, and the gatherings have been disruptive to the neighborhood. Neighbors indicated that parishioners (children) were running through their yards and that there was dancing and commotion on the premises. A neighbor whose property abuts to the rear of the subject property testified that she has seen 50 cars parked behind the building during services, and all in attendance noted the crowded and dangerous traffic conditions along Old Court Road.

In these circumstances, I simply do not believe that the proposed use would be compatible with the neighborhood.

Pursuant to the posting of the property, public hearing, and after considering the testimony and evidence offered, I find that Petitioners Special Hearing and Variance requests should be DENIED.

THEREFORE, IT IS ORDERED this 7th day of March, 2013, by the Administrative Law Judge, that the Petition for Special Hearing seeking relief from § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”), (1) To allow a new church for religious worship on the subject property; (2) To allow a residential transition area (RTA) buffer of 0' in lieu of the required 50'; and (3) To allow a residential transition area (RTA) setback of 0' in lieu of the required 75' from a track boundary to a parking lot or structure, be and is hereby DENIED.

IT IS FURTHER ORDERED that the Petition for Variance filed pursuant to B.C.Z.R. §§ 409.4, 409.8A2 and 409.8A6 as follows: (1) to allow 4 parking spaces that do not have direct access to an aisle; (2) to allow gravel surface of the parking area in lieu of a durable and dustless surface; and (3) to allow no striping of the parking area, be and is hereby DENIED as moot in light of the ruling on the Petition for Special Hearing.

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