

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
(200 Bloomsbury Avenue)	*	OFFICE OF
1 st Election District		
1 st Council District	*	ADMINISTRATIVE HEARINGS
International Society for		
Krishna Consciousness, <i>Legal Owner</i>	*	FOR BALTIMORE COUNTY
Petitioner	*	Case No. 2014-0014-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 Lawrence E. Schmidt, Esquire, of Smith, Gildea & Schmidt, LLC, on behalf of International Society for Krishna Consciousness, the legal owner. The Special Hearing was filed pursuant to §1B01.1.B.1.g(6) of the Baltimore County Zoning Regulations (“B.C.Z.R.”), to approve the site plan for a proposed building for religious worship and that the same is exempt from Residential Transition Area (RTA) requirements. In addition, a Petition for Special Variance was filed pursuant to B.C.Z.R. §4A02.4.G.1 to permit a proposed building for religious worship where it has been determined through the Basic Services Mapping Standards that the capacity of the public facilities (transportation) necessary to accommodate additional development is less than sufficient. Finally, a Petition for Variance (as an alternative to the Petition for Special Hearing) was filed as follows: (1) to permit an RTA of 35 feet in lieu of the required 100 feet pursuant to §1B01.1.B.1.a(1); (2) to permit an RTA buffer of 0 feet in lieu of the required 50 feet pursuant to §1B01.1.B.1.e(5); (3) to permit an RTA setback of 35 feet in lieu of the required 75 feet pursuant to §1B01.1.B.1.e(5); and (4) to permit a building height within the RTA of 48 feet in lieu of 35 feet pursuant to §1B01.1.B.1.e(5). 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 1.

Appearing at the public hearing in support of the requests were Amrish Patel, Shanker and Santosh Gupta, Steve Szili and Chester Luczak. Lawrence E. Schmidt, Esquire, of Smith, Gildea & Schmidt, LLC appeared and represented the Petitioner. The file reveals that the Petition was properly advertised and the site was properly posted as required by the Baltimore County Zoning Regulations. Berchie Manley, a resident of the area and former member of the Baltimore County Council, appeared and opposed the petition. Finally, Terry Curtis of Department of Public Works (DPW) attended the hearing and testified the plan is in compliance with the County's flood plain requirements.

Substantive Zoning Advisory Committee (ZAC) comments were received from the Bureau of Development Plans Review (DPR) and the Department of Planning (DOP). The DPR indicated that if the proposed Temple is restricted from having meetings or services between the hours of 4 and 6 PM on weekdays (due to rush hour traffic) then they would not be opposed to the Special Variance. The DOP indicated that the RTA exemptions would not compromise the residential integrity of the neighborhood and that they did not oppose the Special Variance.

The Special Variance pertains to the failing intersection at Bloomsbury and Frederick Road; specifically, the northbound direction on Bloomsbury Avenue during the weekday evening rush hour. Mr. Patel testified there will be no church services offered during the weekdays. He indicated the church has about 60 parishioners for services offered on Sunday 4-6 pm. Otherwise, the facility will only be used periodically throughout the week and during 4 or 5 holidays observed by the parishioners. In addition, Mr. Patel confirmed that no school or day care programs will be offered. In these circumstances, there is no reason to believe the proposed use would exacerbate in any way the traffic conditions on Bloomsbury Avenue in the evening weekday period. Thus, I find the impact of the proposed development will be less than that assumed by the standards and regulations that would otherwise prohibit the use. In addition, the

grant of the Petition will not adversely impact any pending applications for reserve capacity certificates. As such, the Petitioner has satisfied the requirements set forth in B.C.Z.R. §4A02.4.G and the Special Variance will be granted.

The Petition for Special Hearing seeks confirmation that the proposed building for religious worship is entitled to an exemption from the Residential Transition Area (RTA) regulations. The B.C.Z.R. provides that a “new church or other building for religious worship” is not subject to the RTA regulations provided the improvements will be compatible with the surrounding residential premises. The subject property is bordered by only one single family dwelling, which is owned by a church member. The property is bound on the north and west by Baltimore County owned facilities, and the site plan shows the site will be improved with landscaping. In these circumstances, I believe the Petitioner is entitled to an exemption from the RTA regulations.

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

THEREFORE, IT IS ORDERED this 16th day of September, 2013, by this Administrative Law Judge, that Petitioners’ request for Special Hearing filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”), to approve the site plan for a proposed building for a religious worship and that the same is exempt from Residential Transition Area (RTA) requirements, be and is hereby GRANTED.

IT IS FURTHER ORDERED that Petitioners' Special Variance request pursuant to § 4A02.4.G.1 to permit a proposed building for religious worship where it has been determined through the Basic Services Mapping Standards that the capacity of the public facilities (transportation) necessary to accommodate additional development is less than sufficient, be and is hereby GRANTED.

IT IS FURTHER ORDERED that Petitioners' Variance request as follows: (1) to permit an RTA of 35 feet in lieu of the required 100 feet pursuant to §1B01.1.B.1.a(1); (2) to permit an RTA buffer of 0 feet in lieu of the required 50 feet pursuant to §1B01.1.B.1.e(5); (3) to permit an RTA setback of 35 feet in lieu of the required 75 feet pursuant to §1B01.1.B.1.e(5); and (4) to permit a building height within the RTA of 48 feet in lieu of 35 feet pursuant to §1B01.1.B.1.e(5), be and is hereby DISMISSED WITHOUT PREJUDICE.

The relief granted herein shall be subject to the following:

- Petitioner may apply for its appropriate permits and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at its own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioner would be required to return, and be responsible for returning, said property to its original condition.
- There shall be no day care center or services offered at the subject property.
- There shall be no school programs of any sort conducted on the subject property.
- The Petitioner shall not conduct organized religious services on weekdays between 4 and 6 PM.

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

JEB/sln

Signed

JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County