

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
(110 Greenwood Avenue)	*	OFFICE OF
14 th Election District		
6 th Council District	*	ADMINISTRATIVE HEARINGS
Bryan and Caulina Merrick		
<i>Owners</i>	*	FOR BALTIMORE COUNTY
Petitioners		
	*	Case No. 2016-0271-SPHA

* * * * *

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 Bryan and Caulina Merrick, legal owners (“Petitioners”). The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to approve a proposed church and parking lot in a DR 5.5 zone in accordance with the residential transition area (“RTA”) regulations. In the alternative, a Petition for Variance requests a variance of the conditions in the RTA. A site plan was marked and accepted into evidence as Petitioners’ Exhibit 1.

Appearing at the public hearing in support of the requests were Kevin Cartwright and professional engineer Kenneth Colbert. Robert D. Porter, Esq. represented the Petitioners. Two members of the community attended the hearing to express concerns about the project. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. Substantive Zoning Advisory Committee (ZAC) comments were received from the Bureau of Development Plans Review (DPR) and the Department of Planning (DOP).

SPECIAL HEARING

Petitioners acquired the subject property in 2012. The property was improved with a single-family dwelling, but that home was razed and the site is now unimproved. Petitioners propose to construct a small church and parking lot on the 1.8 acre site. The property is zoned DR 5.5, which permits churches by right. Of course, even though the use is permitted Petitioners must nonetheless comply with the RTA regulations. Based on the testimony presented, I believe they comply with the pertinent regulations and the petition will be granted.

A “new church” building is one of the uses specified in the B.C.Z.R. which is eligible for an RTA exception. Under that regulation, Petitioners must comply to the “extent possible” with the RTA requirements, and the use must be compatible with the surrounding residential premises. In this case, Mr. Colbert (who was accepted as an expert) opined the plan satisfied the requirements of B.C.Z.R. §1B01.1.B.g(6). He noted the RTA was generated by a vacant lot (zoned residential) owned by Baltimore County, on which is stored construction equipment and materials. Mr. Colbert stated the nearest occupied dwelling was approximately 182 ft. from the Petitioners’ property line. This distance, coupled with the landscaping to be provided, will provide a more than sufficient buffer for the dwellings to the west of this site. In addition, the site plan (Ex. 1) reflects that the nearest dwellings are separated from the subject property by a 100 ft. wide electric utility easement containing large BGE towers as well as a 60 ft. wide County utility easement. In these circumstances I believe the proposed church would be compatible with surrounding residential properties and would not be detrimental to the health, safety and/or welfare of the community.

The facts in this case stand in stark contrast to those in Ware v. People’s Counsel for Balto. Co., 223 Md. App. 669 (2015). In that case, the court of special appeals denied an owner’s petition for special hearing to convert an existing single-family dwelling on a small lot into a

church. The court held the church's site plan provided no buffers and did not satisfy in any respect the RTA regulations. *Id.* at 685-86. Here, it is only the parking lot with 39 spaces that will be within the RTA setbacks as shown on Exhibit 6, and the church itself will be positioned far away from adjoining residences. As such, I believe Petitioners have satisfied the new church RTA exception and the petition for special hearing will be granted. In light of this disposition, the variance is unnecessary.

Two nearby residents expressed concerns with traffic in the area as well as with the loss of trees and habitat for wildlife that would be impacted by the project. While the development of unimproved property invariably involves the removal of trees and other vegetation, Mr. Colbert stressed Petitioners would not remove any more trees than absolutely necessary and would strive to reduce the amount of disturbance to the existing environment. In addition, a landscape plan will be required and it will dictate that Petitioners install a variety of vegetative buffers at the site. As for traffic, the church would hold services on Sunday, and the parking lot would accommodate only 39 vehicles. While the church would no doubt increase the amount of traffic in the community, the peak period would be Sunday morning, which would not conflict with weekday commuter traffic. Finally, Mr. Colbert noted sufficient density exists under the DR 5.5 zoning to construct eight single-family dwellings on the site, which would in my opinion generate a substantial amount of traffic and have a greater impact upon the community.

THEREFORE, IT IS ORDERED this 27th day of **June, 2016**, by this Administrative Law Judge, that the Petition for Special Hearing filed pursuant to § 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R.") to approve a proposed church and parking lot in a DR 5.5 zone in accordance with B.C.Z.R. §1B01.1.B.g(6), be and is hereby GRANTED.

IT IS FURTHER ORDERED the petition for variance of the conditions in the residential transition area (RTA), be and is hereby DISMISSED without prejudice as unnecessary.

The relief granted herein shall be subject to and conditioned upon the following:

1. Petitioners may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioners are hereby made aware that proceeding at this time is at their 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, Petitioners would be required to return the subject property to its original condition.
2. Petitioners must comply with the ZAC comments of the DOP and DPR, copies of which are attached hereto.

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