

IN RE: PETITIONS FOR SPECIAL HEARING *	BEFORE THE
AND VARIANCE	
(10240 Liberty Road) *	OFFICE OF
2nd Election District	
4 th Council District *	ADMINISTRATIVE HEARINGS
Baltimore Christian Faith Center, Inc.	
<i>Legal Owner</i> *	FOR BALTIMORE COUNTY
Petitioner	Case No. 2020-0124-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 Baltimore Christian Faith Center, Inc. P(“Petitioner”). The Special Hearing was filed seeking relief from Baltimore County Zoning Regulations (“BCZR”) § 450.7.B.1.d, to permit an Electronic Changeable Copy Sign outside of the Urban Rural Demarcation Line (“URDL”) for a Religious Institution. In addition, a Petition for Variance was filed from BCZR § 450.4.1.a.V to permit a sign with a face/area of 44 sq. ft. on each side (two side total) for a Religious Institution in lieu of the permitted 25 sq. ft. per side; and, finally, a variance from BCZR § 450.4.1.a.VII to allow a Religious Institution to construct a sign with a height of 7 ft. in lieu of the permitted 6 ft..

Due to COVID-19 pandemic, a public WebEx hearing was conducted virtually in lieu of an in-person hearing. The Petition was properly advertised and posted. A site plan was marked and accepted into evidence as Petitioners’ Exhibit 8.

Pastor Helede “Teddy” Santos appeared on behalf of the Petitioner. Midgett S. Parker, Esq. represented the Petitioner. Brian Dietz of Dietz Surveying Co., the licensed surveyor who prepared the site plan also appeared. People’s counsel has opposed the Special Hearing relief but has not opposed the area and height variances. There were protestants in attendance. Substantive

Zoning Advisory Committee (“ZAC”) comments were received from the Department of Planning (“DOP”). The agency is opposed to the Special Hearing relief but supports the area and height variances.

The property is approximately 1.655 acres and is zoned RC 5. It is approximately 2000 feet outside the Urban Rural Demarcation Line (URDL) on Liberty Road. The property is a long, narrow, trapezoid on rolling topography. Pastor Teddy Santos testified that the Baltimore Christian Faith Center, has operated their Church on the site since 1980. Pastor Teddy Santos’ father was the Church’s pastor from 1980 until his death in 2019, at which time he assumed that role. Pastor Santos explained that the Church hosts and supports a wide variety of religious and community based programs there, including a food pantry, clothing drives, addiction counseling, marriage and pre-marriage counseling, as well as conferences and guest speaker events. He explained that the requested larger electronic changeable copy sign would enhance the Church’s ability to advertise all these various programs, which change daily.

Special Hearing Relief

Petitioner has framed its request for permission to install an electronic, changeable copy sign as a special hearing request. However, as People’s Counsel correctly notes in their letter and email opposition, what is actually being requested is a *use* variance, and use variances are not permitted under BCZR § 307.1, which proscribes the scope of my authority. As People’s Counsel also points out, BCZR § 450.8.A.2 states that “[n]o special exception or variance may be granted if it will result in the authorization of a sign *class* which is not otherwise permitted for a particular zone or use by Section 450.4.” And indeed BCZR § 450.4 prohibits the electronic changeable copy sign class anywhere outside the URDL. In sum, although I would like to assist

the Church's mission by allowing such a sign, I am simply not empowered to do so. This same conclusion was reached in Case Nos. 18-103 and 19-084.

Finally, as discussed at the hearing, I am mindful that the Church enjoys the protections of the Religious Land Use and Institutionalized Persons Act (RLUIPA), which ensures, among other things, that local governments do not "substantially burden" religious uses unless the restrictions are narrowly tailored to accomplish a compelling governmental interest. 42 U.S.C. § 2000cc(a)(1); *Bethel World Outreach Ministries v. Montgomery County Council*, 706 F.3d 548, 556 (4th Cir. 2013). However, as People's Counsel has pointed out, our highest court has held that the denial of a similar sign variance did not constitute a substantial burden under RLUIPA. *See, Trinity v. People's Counsel*, 407 Md. 53 (2008). And a similar result was just reached by the United States Court of Appeals for the First Circuit in a case denying a variance for an electronic changeable copy sign at a church in New Hampshire. *See, Signs for Jesus and Hillside Baptist Church v. Town of Pembroke*, 977 F.3d 93 (1st Cir. 2020).

In the instant case the Church has been successfully operating with a manual sign since 1980. Further, the Baltimore County sign regulations do allow for a manually changeable sign. Finally, as discussed below, the size and height variances will be granted in this case, which will further diminish any burdens on the Church. I therefore find that the denial of the electronic changeable sign request will not substantially burden the Church's religious activities in violation of RLUIPA.

Variance Relief

Petitioner has also requested variances from the area and height sign regulations. The Pastor and the surveyor, Mr. Dietz, both testified that the subject property has steep topography and that the existing Church building is approximately 500 feet off the road and about thirty feet

higher. Further, they explained that this stretch of Liberty Road is quite hilly and a larger and taller sign is needed in order to safely identify the Church and direct drivers there.

A variance request involves a two-step process, summarized as follows:

- (1) It must be shown the property is unique in a manner which makes it unlike surrounding properties, and that uniqueness or peculiarity must necessitate variance relief; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

Cromwell v. Ward, 102 Md. App. 691 (1995).

As explained above, the subject property is irregularly shaped and it lies at an angle to the road. It also has fairly steep topography and is located on a hilly stretch of the road, which makes the sign visibility difficult. If the requested variances were denied the Church would suffer practical difficulty and hardship because it would be unable to construct the signage needed to direct the public to its Church building. I find that the variance relief can be granted within the spirit and intent of the BCZR and without harming the public health, safety, or welfare.

THEREFORE, IT IS ORDERED this **10th** day of **November, 2020**, by this Administrative Law Judge, that the Petition for Special Hearing seeking relief from BCZR § 450.7.B.1.d, to allow an Electronic Changeable Copy Sign outside of the Urban Rural Demarcation Line (“URDL”) is hereby DENIED.

IT IS FURTHER ORDERED that the Petition for Variances from BCZR § 450.4.1.a.V to allow a sign with a face/area of 44 sq. ft. on each side (two side total) in lieu of the permitted 25 sq. ft. per side; and from BCZR § 450.4.1.a.VII to allow a 7 ft. sign in lieu of the permitted 6 ft. sign, be and hereby are GRANTED.

The relief granted herein shall be subject to the following:

- 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.

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

Signed _____
PAUL M. MAYHEW
Managing Administrative Law Judge
for Baltimore County

PMM/dlm