

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
(3113 Richwood Road)	*	OFFICE OF
2nd Election District		
4th Council District	*	ADMINISTRATIVE HEARINGS
The Israel of God		
<i>Legal Owner</i>	*	FOR BALTIMORE COUNTY
Petitioner	*	Case No. 2020-0096-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 Andre Henry on behalf of The Israel of God, legal owner (“Petitioner”). The Special Hearing was filed under § 500.7 of the Baltimore County Zoning Regulations (“BCZR”) to allow the change of use of the property from community care to worship facility; and to allow the existing parking to remain in the Residential Transition Area (RTA) in lieu of the required 75 ft. setback and 50 ft. buffer; to allow the existing improvements to remain in the RTA 50 ft. buffer; to allow existing building setbacks of 44 and 49 ft. each in lieu of the required 75 ft. and for such further relief as may be deemed necessary by the Administrative Law Judge (“ALJ”) for Baltimore County. In the alternative, a Petition for Variance was filed to allow the existing parking to remain in the RTA in lieu of the required 75 ft. setback and 50 ft. buffer per BCZR § 1B01.1(B)(1)(e)(3); allow the existing improvements to remain in the RTA 50 ft. buffer per BCZR § 1B01.1(B)(1)(e)(5); allow existing building setback of 44 and 49 ft. in lieu of the required 75 ft. per BCZR § 1B01.1(B)(1)(e)(5) and for such further relief as may be deemed necessary by the ALJ for Baltimore County.

Due to the 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 Petitioner's Exhibit 1. A concept landscape plan was admitted as Petitioner's Exhibit 2.

Pastor Andre Henry appeared in support of the requests. J. Neil Lanzi, Esq. represented the Petitioner. Kevin Anderson, the professional engineer who prepared and sealed the site plan, and Devin Leary, the landscape architect who prepared and sealed the concept landscape plan also appeared and were accepted as experts in their fields. There were no protestants or interested persons in attendance. Substantive Zoning Advisory Committee ("ZAC") comments were received from the Department of Environmental Protection Sustainability ("DEPS") dated April 28, 2020, the Department of Planning ("DOP") dated May 6, 2020, the State Highway Administration ("SHA") dated May 12, 2020 and the Bureau of Development Plans Review ("DPR") dated June 1, 2020. These agencies did not oppose the requested relief.

The property is approximately 1.21 acres and is zoned DR 5.5. Petitioner, the Israel of God Church (Church) purchased the property in 2018 from Community Support Services, which had been providing services for the blind at this location. The building dates to the 1940s and was originally a Baltimore County school and then a County recreation and parks building. This lot is bounded on the north and the east by County property, and on south and west by County roads lined with residences. Pastor Henry explained that they are currently operating under a temporary use and occupancy permit. He testified that they purchased the property for \$675,000 and that they have invested approximately \$800,000 in interior improvements, including lead and asbestos abatement. Pastor Henry testified that the Church currently has approximately 80 members and that they hope this location will allow them to grow to about 120 members. He

testified that they have been welcomed into the neighborhood. He explained that the Church offers a variety of community based programs, including a food pantry and clothing distribution. He explained that they need the requested RTA relief because the existing building and parking lot are within the RTA setback and buffers and therefore would be unable to use the property for their religious purposes unless the RTA or variance relief is granted.

Mr. Anderson explained the site plan in detail, including the fact that the plan calls for 33 parking spaces, including two accessible spaces, and that the BCZR requires only 25 spaces. Mr. Leary explained the landscape concept plan and confirmed that they will comply with the lighting and landscaping provisions of the Baltimore County Landscape Manual, although he noted that at this time, per the concept plan, there are no proposed changes to the existing lighting, and no plans for a dumpster on the site. Both of these experts are of the opinion that the RTA and variance relief can be granted within the spirit and intent of the BCZR and without causing harm to the public health, safety, or welfare.

Special Hearing

The proposed Church is permitted by right in this residential zone. The existing building on the site pre-dates the BCZR and therefore is not in conformance with the RTA regulations. However, as noted above, the property is bordered on two sides by County property that is open and undeveloped. And on the other two sides by public streets which provide some buffer from the residences across those streets. Based on the record evidence, including the expert opinions of Mssrs. Anderson and Leary, I find that, pursuant to BCZR § 1B01.1(B)(1)(g)(6) “the proposed improvements are planned in such a way that compliance, to the extent possible, with RTA use requirements will be maintained and that said plan can otherwise be expected to be compatible with the character and general welfare of the surrounding residential premises.”

Indeed, as explained above, the existing building has been an integral part of this neighborhood since the 1940s and the Church will continue to serve the community in a similar way as the previous school, recreational, and community uses that have operated there.

Variance

In the alternative, I also find that the requested variance relief should also be granted. 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 noted above, the property is unique because it is bordered on two sides by open and undeveloped County property. Further, the residents on the other two sides are all across the street, so none directly adjoin the subject property. Finally, the existing building is a former County school that was built back in the 1940s and is non-conforming with current RTA setback and buffer regulations. The Church would suffer extreme difficulty and hardship if the variances are not granted because it would be unable to operate at this location and they have already invested more than \$1.5 million dollars in the property.

THEREFORE, IT IS ORDERED this **2nd** day of **October, 2020**, by this Administrative Law Judge, that the Petition for Special Hearing seeking relief pursuant to § 500.7 of the BCZR to allow the change of use of the property from community care to worship facility; to allow the existing parking to remain in the RTA in lieu of the required 75 ft. setback and 50 ft. buffer; to allow the existing improvements to remain in the RTA 50 ft. buffer and to allow existing building setbacks of 44 and 49 ft. each in lieu of the required 75 ft. and hereby are GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance seeking relief pursuant to § 1B02.3.C1, to permit the existing parking to remain in the RTA in lieu of the required 75 ft. setback and 50 ft. buffer per BCZR § 1B01.1(B)(1)(e)(3); to allow the existing improvements to remain in the RTA 50 ft. buffer per BCZR § 1B01.1(B)(1)(e)(5) and to allow existing building setback of 44 and 49 ft. in lieu of the required 75 ft. per BCZR § 1B01.1(B)(1)(e)(5) be and are hereby GRANTED.

The relief granted herein shall be subject to the following:

- Petitioner may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioner is 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, Petitioner would be required to return the subject property to its original condition.
- Petitioner shall submit a final landscape plan for approval by the County Landscape Architect.

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