



MANDATE

Court of Special Appeals

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No. 02454, September Term, 2004

Windsor Mill Gospel Hall, Inc.
vs.
Baltimore County, Maryland et al.

JUDGMENT: April 14, 2005: Motion for Voluntary
Dismissal filed by counsel for the appellant.
April 20, 2005: Motion for Voluntary Dismissal
granted. Appeal dismissed. MD Rule 8-601.

April 20, 2005: Mandate issued.

From the Circuit Court: for **BALTIMORE COUNTY**
03C040003473

STATEMENT OF COSTS:

Appellant(s):

Lower Court Costs-	60.00
Filing Fee of Appellant-	50.00

RECEIVED
APR 22 2005
BALTIMORE COUNTY
BOARD OF APPEALS

STATE OF MARYLAND, Sct:

I do hereby certify that the foregoing is truly taken from the records and proceedings of the said Court of Special Appeals. In testimony
whereof, I have hereunto set my hand as Clerk and affixed the seal of the Court of Special Appeals, this **twentieth** day
of **April** **2005**

Leslie D. Shadet
Clerk of the Court of Special Appeals

COSTS SHOWN ON THIS MANDATE ARE TO BE SETTLED BETWEEN COUNSEL AND NOT THROUGH THIS OFFICE.

IN THE MATTER OF
THE APPLICATION OF
WINDSOR MILL GOSPEL HALL, INC.
FOR VARIANCE ON PROPERTY
LOCATED ON THE E/S HILLSIDE ROAD*
165' +/- N OF FREDERICK ROAD
(91 HILLSIDE ROAD)

1st ELECTION DISTRICT
1st COUNCILMANIC DISTRICT

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
CASE NO. 03-C-04-003473

* * * * *

MEMORANDUM OPINION & ORDER

This appeal on the record comes from a decision of the Baltimore County Board of Appeals. The original hearing was held on March 18th, 2003, in front of Board Members Margaret Worrall, Melissa Moyer Adams, and Charles L. Marks. After review of the record, accompanying memorandum, and brief argument made by Counsel on December 3rd, 2003, the Court will now render its opinion.

SCOPE OF REVIEW

The standard for review of the action of an administrative agency is whether a reasonable mind could have reached the conclusion which the administrative agency reached. Nnoli v. Nnoli, 101 Md. App. 243, 646 A.2d 1021(1994). Furthermore, [A]n order of an administrative agency must be upheld on judicial review if it is not based upon an erroneous determination of law, and if the agency's conclusions reasonably may be based upon facts proven; however, a reviewing court is under no constraints in reversing an administrative decision that is premised solely upon an erroneous conclusion of law. Montgomery County v. Buckman, 333 Md. 516, 636 A.2d 448 (1994).

FILED DEC 15 2004

per Zimmerman, McFarland, Janczyn

A reviewing Court may, and should, examine facts found by an agency, to see if there was evidence to support each fact found. If there was evidence of the fact in the record before the agency, no matter how conflicting, or how questionable the credibility of the source of the evidence, the court has no power to substitute its assessment of credibility for that made by the agency, and by doing so, reject the fact. Commissioner, Baltimore City Police Dep't v. Cason, 34 Md. App. 487, 368 A.2d 1067 (1977).

REVIEW OF THE BOARD OF APPEALS' FINDINGS

The principal finding in question is that the property does not qualify as unique within the definition set out in Cromwell v. Ward, 102 Md. App. 691 (1995). In Cromwell, *supra*, the Court of Appeals in review of a decision of the Honorable Lawrence R. Daniels of this Court defines a "unique" property as one that has an inherent characteristic not shared by the other properties in the neighborhood. *id.* at 695. The finding that the property was not unique was dispositive of the variance petition and the Board of Appeals did not need to further consider the issue of hardship created by the unique characteristic or if that hardship was self-imposed.

The first witness at the March 18th hearing was Herbert Malmud, who was accepted as an expert witness in the area of land surveying. During cross-examination Mr. Malmud stated that there was another house across Hillside Rd. that was subject to the same steep slope (tr. pg.74 ln.18) which had constructed upon it a single-family dwelling. This admission by Petitioner's own witness weakens the argument that the lot in subject is unique due to the sloping nature of the property.

In addition, Petitioner argues that the environmental easements and restrictions are also to be considered when viewing the unique nature of the lot. In North v. St.

Mary's County, 99 Md. App 502, 638 A.2d 1175 (1994) the Court of Special Appeals specifically states that environmental factors should be considered when determining if the subject property is indeed "unique." Yet, as with the steep grade of the land, the environmental element is not unique to this property in comparison to others in the neighborhood. Petitioner's expert Mr. Malmud never testified that the environmental easement made the property unique, or that it created a hardship. He merely testified to the fact that part of the property was "environmentally sensitive" due to storm water management concerns. (tr. pg.59 ln.21)

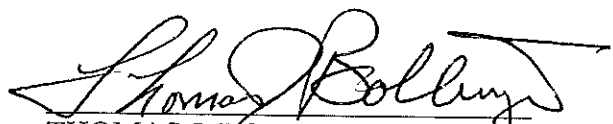
In review of the transcript from the March 18th hearing, Petitioner's expert is only once asked which site features he considered significant in determining if the lot in question was unique. Mr. Malmud responded that it was the lot's pie shape. The shape itself is merely one factor to be considered in whether a property is unique; it is most certainly not dispositive of the issue. For this reason and those stated above, the Board of Appeals was correct in finding that the Petitioners request for variance should be denied.

CONCLUSION

This Court finds that the Board of Appeals did not come to any erroneous findings of fact based upon the evidence presented. Furthermore, this Court finds that the Board of Appeals was proper in concluding Petitioner's request for variance should be denied.

Accordingly, it is this 13th day of December, 2004, by the Circuit Court for Baltimore County,

ORDERED that the Decision of the Board of Appeals is hereby **AFFIRMED**.


THOMAS J. BOLLINGER, JUDGE

IN THE MATTER OF
WINDSOR MILL GOSPEL HALL, INC.
91 HILLSIDE ROAD, E/S HILLSIDE
RD, 165' +/- N OF FREDERICK ROAD

1ST ELECTION DISTRICT
1ST COUNCILMANIC DISTRICT

* BEFORE
* COUNTY BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* CASE NO. 03-049-A

* * * * *

DISSENTING OPINION

This writer respectfully dissents from the Majority decision rendered in the referenced case. The appeal to this Board was made by the Protestants, essentially nearby residents of the proposed facility. The Zoning Commissioner issued his "Findings of Fact and Conclusions of Law" with his Order under date of October 7, 2002.

The Zoning Commissioner granted the Petition for Variance in which certain relief was requested from the *Baltimore County Zoning Regulations* (BCZR) as specified in his Order subject to six conditions. The Majority decision correctly states the evidentiary position of the case on pages 1 through 11 of their decision. The rationale for the Majority decision is on pages 12 to 15 of the Majority Opinion and Order. Appeals taken from a final decision of the Zoning Commissioner to this Board are, of course, on a "de novo" basis, without consideration of the Zoning Commissioner's decision solely based on the testimony and evidence produced at the public hearing held before the Board of Appeals. The burden is on the Petitioner to establish the requirements for the granting of a variance, so well articulated in the Majority Opinion. It is in this area that I find disagreement with the majority of the Board. I believe that the Petitioner more than satisfied his burden that the variance statutes and case law imposed upon him.

The Majority Opinion reflects that "the testimony and evidence are substantial and

convincing that 91 Hillside Road is not different from the other lots in that neighborhood. Maps, photographs and testimony introduced into evidence indicate that neighboring properties are of equivalent size, nature and topography.” I believe that the other panel members have failed to take into consideration that part of *Cromwell v. Ward* defining “uniqueness” that “the subject property has an inherent characteristics not shared by other properties in the area i.e., ...practical restrictions imposed by abutting properties (such as obstructions), and other similar restrictions.”

The majority panel failed to give the physical evidence produced the weight that it deserved.

While the testimony of the Protestants was that steep slopes and environmental constraints were present along “Hillside Road,” the Board failed to consider the property in question as to its uniqueness and environmental conditions that caused the necessity of requesting a variance.

Mr. Herbert Malmud, an expert witness with specialty in land surveying for over 32 years, described existing conditions on the property via Petitioner’s Exhibit #7, 8, 15A and 15B. Examination of the photographs submitted will vividly, I believe, reflect the environmental constraints that restrict the lot usage due to steep slopes and the irregular shape of the lot itself. The lot is constricted due to severe environmental constraints. The only feasible area in which to construct the proposed facility, without violating the lot’s environmentally sensitive posture is in the location reflected on Petitioner’s Exhibit #1. It is on that portion of the property that the Petitioner desires to construct the proposed “Religious Meeting Hall” approximately 30 feet by 50 feet, and a parking lot to hold 12 spaces (including required handicapped spaces). Mr. Malmud opined that the Department of Environmental Protection and Resource Management

(DEPRM) had received the Petitioner's proposal and had identified on the site a water quality area, including existing trees, steep slopes, and stormwater management areas below the level plateau on which this development was proposed to be situated. To that end, 37 percent of the lot had been reserved as an environmental easement area, not to be disturbed in any way, including grading, content, or any other disturbance beyond moving the grass and vegetation already presently existed there. The environmental easement is labeled as Petitioner's Exhibit 14B.

When reviewing the totality of the physical evidence submitted by the Petitioner, such evidence is always subject to "the eye of the beholder," and is judgmental, and while a reviewing court will not substitute its judgement for that of the fact finding board, nevertheless, this writer feels strongly that Mr. Malmud's conclusion that the lot was irregular and "pie-shaped" and, when compared to other lots in the area, the level plateau was the only area that either a "church" or a "house," or any structure could go qualified the property as unique and the practical difficulty imposed by the site itself.

The "Plat to Accompany the Variance Request" clearly demonstrates the property to be irregular and "pie-shaped" with a curved boundary line that runs along Hillside Road, as compared to a rectangular lot to the adjacent property bordering Hillside Road and Frederick Road. People's Counsel Exhibit #3 clearly reflects lots 128 and 129 before the property was subdivided thus creating the unusual shape of the new parcel on which the proposed structure is to be located. An examination of the Stonewall Park Plat filed for recordation on September 19, 1921 and the new lots created speak for themselves. (Reference Petitioner's Exhibit #16.)

Clearly, the majority of the lots on Hillside Road, by even the most casual eye, can be

observed as all rectangular in shape running up to Devere Avenue. A reviewing body needs to examine People's Counsel Exhibit 3 and People's Counsel Exhibit 5 (the official zoning map) to assess the site, and its shape compared to other properties as Hillside veers to the right and heads at a straight line to Devere. There is a significant difference in the other lots along Hillside when compared to the subject property. By its very shape, the subject lot is considerably out of character with the other lots along Hillside.

In this case, there are very substantial characteristics that require a variance due to the property's "shape," "topography," and "environmental factors" that restrict the building of any structure on the property. It must be remembered that most of the lots in Hillside are already built and constructed on what the neighbors have described as a "hilly community." These same Protestants would deny, on the unimproved lot, the Petitioner's same building rights they are already enjoying on property less environmentally sensitive than that of the Petitioner. Clearly, the property meets the uniqueness and practical difficulty tests.

This writer does not disagree with the Majority view that a residence could be built on the subject property while still complying with the setback requirements; however, the Petitioners are not requesting a house. They are seeking to construct a "religious meeting house," with somewhat very small and limited uses. The function of a request for a variance is to seek relief as to existing requirements that restricts the owner's use of the land. The fact that the owner could build two or three houses on the lot is immaterial. Other uses do not come into play. The desire is to construct a small religious "meeting house" on an environmentally sensitive lot, with a plan that protects the integrity of the lot and provides more than adequate screening to the

neighbors. The testimony of the Protestants was self-serving, in my opinion, to say the least. They simply desire to maintain what was described as a "quiet area," and discount what they perceived to be an "institutional building" in the midst of the area which they considered to have inherent traffic problems. While Mr. Ed Reed of the Baltimore County Traffic Division testified as an expert witness and expressed some concerns relative to (1) the sight distance from the property's Hillside entrance meeting only minimum standards; (2) if overflow took place on Hillside Road, there would be problems because the road is a narrow corridor; (3) existing parking by residents created a traffic safety concern; and (4) the intersection of Frederick Road and Hillside was a danger to left-turning vehicles. Mr. Reed acknowledged that no adverse comments had been filed by Baltimore County Traffic in the case prior to the Board's hearing, and that Baltimore County could prohibit parking on Hillside if needed for traffic safety. There had not been any recorded traffic accidents on Hillside and the proposed entrance was the very best available access from Hillside, from a traffic standpoint, according to Mr. Reed.

This dissenting member believes that the testimony produced at the hearing from the Protestants was again self-serving in that they acknowledged they already parked on one side of the street, thereby themselves creating a traffic safety factor because of the narrowness of the street. A reasoning mind could conclude that a meeting house of the size and scope of that proposed with 12 parking spaces would not cause a "traffic congestion" as fostered by the Protestants. As to the compatibility issue, even a casual perusal of the proposed structure (Petitioner's Exhibit #14) would reflect an attractive building consistent with other residential dwellings in the area. Section 1B01.1 of the BCZR establishes the general uses that are

permitted in the D.R. zone. Section 1B01.1.A.3 permits, as a matter of right, “churches, and other buildings for religious purposes, or other religious institutions.”

Petitioners have an absolute right to construct on the D.R. zoned portion of the property a structure to be used for religious purposes. In this case, the Petitioners have developed a meeting room not incompatible with existing homes in the area. Federal law prohibits community discrimination as to religious facilities. Compatibility is not an issue in this case. A religious group may construct a dwelling for meetings, etc. that conforms to their fellowship and religious requirements. The building they desire is small, limited in usage, and very neighborhood compatible. The relief requested is in the form of a variance from the RTA requirements and for reduction in the required setbacks to adjacent property lines. As the Majority Opinion states, “the RTA regulation applies to dissimilar building types /uses. It is designed to buffer the community.” As Mr. Kirwin, the land expert for the Protestants, testified, the proposed building area was the only buildable sliver on the property and that it was the building area’s proximity to the neighboring side lot that had triggered the RTA requirements, considerably because of the proposed use, even though a house constructed in the same area would trigger a driveway to avoid building in the steep slope, stormwater management, or forested area.

There was no significant testimony or evidence to counter the Petitioner’s contention that the adjacent homeowners to the side line of Petitioner’s lot were on the other side of a dense, deciduous, and evergreen screen, which would remain undisturbed under Petitioner’s plan referenced in Petitioner’s Exhibit #9. A close examination of Petitioner’s Exhibit #4 disclosed the condition. The development of the proposed site would not be injurious to the neighborhood

nor in any way be a negative factor to the public health, welfare or safety.

It is the conclusion of this dissenting Board member that the Majority members failed to consider the totality of the testimony and evidence in rendering their decision. To that extent, the writer believes that the Petitioner met the required test for the granting of a variance and that clearly the configuration, topography, existing vegetative and environmental constraints imposed by the site are clearly ones that meet the uniqueness test imposed by *Cromwell*, and that the statutory requirements relative to setbacks, etc., in this case are excessively burdensome and that relief can be granted without detrimental impact on adjacent properties. To that end, this Member respectfully dissents.



Charles L. Marks

* Date of this Dissent: March 26, 2004

*** SEE MAJORITY OPINION AND
DISSENTING NOTE ISSUED UNDER
DATE OF: March 1, 2004**

IN THE MATTER OF
THE APPLICATION OF
WINDSOR MILL GOSPEL HALL, INC.
FOR VARIANCE ON PROPERTY LOCATED
ON THE E/S HILLSIDE ROAD, 165' +/- N OF
FREDERICK ROAD (91 HILLSIDE ROAD)

1ST ELECTION DISTRICT
1ST COUNCILMANIC DISTRICT

* BEFORE THE
* COUNTY BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* CASE NO. 03-049-A

* * * * *

MAJORITY OPINION

This case comes before the Baltimore County Board of Appeals on a timely appeal brought by the Emily Reiter on behalf of the Stonewall Park Community Association as well as Mr. and Mrs. James O'Donnell, Mr. and Mrs. William Armstrong, Jr., Mr. and Mrs. Angelo Barnabee, Jr., Patricianne Chinn, Mary Lou Beach and Erma A. Meier, resulting from a decision of the Zoning Commissioner, dated October 2, 2002.

In his decision, the Zoning Commissioner granted a Petition for Variance 1) from the Residential Transition Area (RTA) requirements set forth in § 1B01.1.B.1.c.1&2; and 2) from § 1B01.B.e.5 to allow a driveway and parking facility with a buffer and property line setback of 18 feet each in lieu of the required 50-foot buffer and 75-foot property line setback; to permit a principal use structure to be located 30 feet and 55 feet from the nearest property lines, in lieu of the required 100 feet in an RTA; and to permit a 30-foot buffer in lieu of the required 50 feet and a 30-foot setback in lieu of the required 75 feet to the east, and a setback of 55 feet in lieu of the required 75 feet to the south.

In addition, the Zoning Commissioner imposed restrictions limiting the design and construction of the proposed building to a residential character as shown in Petitioner's Exhibit 4 [CBA Exhibit #15]; requiring compliance with environmental comments submitted by Baltimore

County's Department of Environmental Protection and Resource Management (DEPRM), dated August 24, 2002, as attached to his opinion; placing a limit of 48 seats and maximum capacity of 48 persons in the proposed building; and requiring a landscape and lighting plan approved by the County's landscape architect.

The subject property is located at 91 Hillside Road, 1st Election District, 1st Councilmanic District. The Petitioner is the owner of the property: Windsor Mill Gospel Hall, Inc., by Eric Waskey, Vice President, and John G. Walley, Treasurer.

The Petitioner was represented by Michael P. Tanczyn, Esquire. C. Victor McFarland, Esquire, represented the Appellants/Protestants. Peter Max Zimmerman appeared on behalf of the Office of People's Counsel.

A public hearing before the Board of Appeals was held on March 18, 2003 and November 12, 2003. A public deliberation followed on January 8, 2004.

Testimony

Herbert Malmud appeared as the Petitioner's first witness. He was accepted by the Board as an expert surveyor.

Mr. Malmud testified that he prepared the site plan (Petitioner's Exhibit #1). He recalled that he went before the Development Review Committee (DRC) in December 2000 with a request to reconfigure the lot lines on two parcels owned by Mr. Waskey. The DRC approved a lot along Frederick Road that corresponded to the R.O. zoning lines and a second lot along Hillside Road that is zoned D.R. 2. (Petitioner's Exhibit #4) The latter lot is the subject of the variance request.

Mr. Malmud also submitted into evidence the Stonewall Park subdivision plat

(Petitioner's Exhibit #5) that was approved in December 1920 with lot lines running north/south.

He described the use along Hillside Road as single-family dwellings.

Petitioner's Exhibit #6 was a depiction of the new lines of division as approved by the DRC.

He also submitted photographs of the area (Petitioner's Exhibits # 7-14A) that he had taken showing the manner in which Hillside Road curves to the right from Frederick Road, the fact that there are "no parking" signs on Hillside Road, the vegetative area and mature trees on the subject site as well as the business uses on Frederick Road and nearby intersections.

In support of his testimony that 37 percent of the lot is reserved as an environmental easement and cannot be disturbed, Mr. Malmud introduced an environmental easement map (Petitioner's Exhibit 14B) with that area marked in green. He noted that this easement has not been recorded.

Petitioner's Exhibit #15, introduced through this witness, was an architect's rendering of the proposed meeting hall building. Mr. Malmud testified that the drawing was furnished to him by Mr. Waskey, who had donated the subject lot for the proposed use.

He opined that the lot in question is unique because it is pie-shaped and subject to burdensome environmental constraints. He noted that there is practical difficulty in building the meeting hall as proposed without the requested variances. He stated that there is no way to place any similar structure on the lot without encroaching on the RTA.

Mr. Malmud concluded that the variance request is within the spirit and intent of the law, that there would be no increase in density because no one would actually live on the site, that 12 parking places would be sufficient to serve a maximum capacity of 48 people, and that all

neighbors have off-street parking and garages and would not be adversely affected by this use.

On cross-examination by Mr. McFarland, Mr. Malmud said that he did not know what use the R.O. lot would be put to, nor did he know how the access would be accomplished to serve the house that currently exists on that lot. Mr. Malmud also agreed with Mr. McFarland's calculation that the Petitioner has asked for eight variances to setbacks that range from 24% to 73% with an average variance of 44.39%. Mr. Malmud also noted that the parking lot could be seen from Hillside Road and that the peak of the roof of the proposed building would be 34.5 feet high.

On cross-examination by Mr. Zimmerman, Mr. Malmud testified that both lots had been used for the one existing residence since 1947. He noted that the State would not give access to the parcels from Frederick Road because of traffic and grade, and that the site plan as proposed does not address access to the existing house. Mr. Malmud said that he was not hired to address conditions on the lot that fronts Frederick Road, but access could be secured through the gospel hall property via easement agreement.

Mr. Malmud agreed that a single-family dwelling could be built without variances on the subject site. He noted as well that, so far as he knows, there are no other institutional uses on Hillside Road; all uses are single-family dwellings. These lots also have steep slopes, "around 25%," according to the witness.

In reviewing Petitioner's Exhibit #15, Mr. Malmud pointed out that the architect's rendering is not a plan sufficient to secure a building permit nor is it binding on the Petitioner.

Eric B. Waskey, who lives at 305 Glenrae Drive, Catonsville, and is noted on the Petition for Variance as Vice President of Windsor Mill Gospel Hall, Inc., was the next witness. He

submitted his personal deed of purchase for the two lots 128 and 129 dated October 23, 2000 (Petitioner's exhibit #16).

Mr. Waskey stated that he is a member of the Windsor Mill Gospel Hall, Inc., and gave the property to that entity for a small meeting room suitable for prayer and the Lord's Supper.

The primary church is located on Windsor Mill Road in Woodlawn. Here, according to Mr. Waskey, more than 100 people meet every day at 6:00 a.m. to break bread, then separate into smaller groups for prayer meetings. They also hold services in the principal building every Sunday morning and every Monday at 7:00 p.m.

Mr. Waskey testified that the proposed meeting hall would be used twice a week for 1 to 1½ hours each time. There would be no residence there. He stated that he would be willing to commit to the integrity of the architectural rendering (Petitioner's Exhibit #15) as the maximum to be built. The one-story building would be on a slab with no basement and include an entrance area, a utility room, restrooms, and the meeting area. The building, he assured, would not be rented to any others. Maintenance of the site would be the responsibility of the Windsor Gospel Hall, Inc.

Mr. Waskey submitted photos (Petitioner's Exhibits 17A-B) showing the extensive renovations to the existing house on the adjoining lot that he still owns. He stated that the house is currently rented to a family from New Zealand.

On cross-examination by Mr. McFarland, Mr. Waskey said that he bought the two lots with the express purpose of offering back part as a gift to Windsor Gospel. He said that he had never considered using the existing house for meeting purposes. His purpose, he testified, in dividing the parcels was to create land for building the meeting hall and all the land was not

needed for that purpose.

On further questioning, Mr. Waskey declared that the bulk of the church membership comes from Catonsville and that there would be no kitchen facilities included in the building proposed.

On cross-examination by Mr. Zimmerman, Mr. Waskey affirmed that he was aware that he could build a single-family residence on the subject property and that he might be able to have as many as three houses on the entire property of two lots. He reiterated, however, that his reason for purchasing the lots was not a business one, but to provide property for the meeting hall.

In response to Board member Marks, Mr. Waskey stated that the use would be very limited; there would be no Sunday School, no weddings, no Scouts or day care. There would be a sign on the property.

Sharon Kneebone, 113 Hillside Road, was the first witness for the Appellants. Ms. Kneebone stated that there are six to eight houses between her residence and the subject site.

She is employed as the executive director of the Appraisal Institute. With that experience, she investigated the Stonewall Park neighborhood before purchasing her house, finding that it was a quiet area with no community or institutional uses. The lots were large with a rural feel overall. She described her property as having a severe slope toward a stream, located on a narrow, "barely" two-lane road. She affirmed that all lots share a steep topography.

Ms. Kneebone opined that the proposed use would have a detrimental effect on her property because of increased traffic and a building dissimilar to the others in the subdivision. She also expressed concern about lighting and that there is nothing in the proposal to limit future

uses.

On cross-examination by Mr. Tanczyn, Ms. Kneebone stated that she could not see the subject site from her property. She also agreed that some neighbors park on the street in front of their houses and that there have been no accidents in the eleven months that she has lived there.

The next witness was Edward Reed, Jr., a senior traffic inspector with the Baltimore County Department of Traffic Engineering since 1990. He described his duties as any traffic-related issues on the west side of the county. He testified that he had worked with Stephen Weber, director of traffic engineering, on this issue.

Mr. Tanczyn objected to Mr. Reed testifying as an expert. The Board permitted him to testify in his experience in his field.

Mr. Reed stated that he had visited the site that is located on an "older, rural road, 20' wide." He described a steep vertical slope to the driveway. On performing a sight analysis, he found that the bare minimum allowed, 250 feet, existed; this minimum is based on the posted speed of 25 mph. There is "no parking" on the east side of Hillside Road, but parking is permitted on the west. Mr. Reed opined that, when cars are parked along the road, the "throughway" is reduced to 13 feet which is not adequate, in Mr. Reed's opinion, for two vehicles to pass. Mr. Reed cited additional operational problems that would be generated for emergency vehicle access, if cars were parked on the west side of Hillside Road.

To support his descriptions of the elevations "up and down" Hillside Road, Mr. Reed offered a Baltimore County GIS survey map (P.C. Exhibit #7).

On cross-examination by Mr. Tanczyn, Mr. Reed stated that the west side of Hillside Road is posted "no parking" 80 feet from the intersection with Frederick Road. He agreed that

the entire west side could be posted “no parking” but that hadn’t been an issue to date. Mr. Reed also agreed that if all cars associated with the proposed gospel hall were parked on site, there would be no problem. Mr. Reed also acknowledged that the proposed driveway entrance will be moved slightly to the east and this will afford the best location for access to the property from a sight distance perspective (People’s Counsel Exhibit #4).

William Kirwin, 28 E. Susquehanna Avenue, was the next to testify. Mr. Kirwin was accepted by the Board as an expert in landscape architecture and land planning. (People’s Counsel Exhibit #8)

Mr. Kirwin introduced a tax map (People’s Counsel Exhibit #9) showing lots 128 and 129 after the lot line change. He described lot 128 as having an existing house in the middle of the lot with a steep slope in front of the house. He described lot 129 as vacant with steep grades of more than 25% with sporadic vegetation.

He noted (People’s Counsel Exhibit #11) a letter from the Department of Natural Resources, dated April 29, 2003, indicating that there are no rare or endangered species on the subject property and that the topography is steep. Mr. Kirwin opined that the subject property is not unique: steep slopes exist here and across the road; there are no rock outcroppings; there are no streams or springs.

Mr. Kirwin described the neighborhood as rural-residential. The houses on the east side of Hillside Road have a “backside walk out” caused by the steep topography. West side lots slope steeply upward. Lots throughout are approximately the same size or larger than lots 128 and 129. He noted that there are no institutional uses on Hillside Road.

Mr. Kirwin testified that a single-family residence could be built on this property and

meet the setback requirements. Mr. Kirwin also stated that, in his opinion, 12 parking spaces requiring four occupants to each car is insufficient for the planned institutional use. He noted that parking for handicapped vehicles is not addressed. He also opined that the size of the proposed building is out of character with the existing houses (ranchers and split level predominantly) in the neighborhood as is the size of the parking lot.

Further, Mr. Kirwin opined that the proposal overcrowds the land. D.R. 2 zoning is designed for half-acre lots with residential housing. Mr. Kirwin stated that the property owner would be able to build such a residence within the requirements of the D.R. 2 zoning.

Therefore, according to Mr. Kirwin, the subject proposal would place a burden on the immediately adjacent property, have an effect on the narrow road as well as a visual impact, and is not in character by size, shape or height with the residential neighborhood or community at large.

On redirect by Mr. McFarland, Mr. Kirwin reiterated that the subject lot is much the same in shape and topography as others in the Stonewall Park community. He also opined that the requested setbacks are excessive, 24% -36% of the norm, and violate the purpose of the regulations which is to protect the integrity of the existing community.

On cross-examination by Mr. Tanczyn, Mr. Kirwin explained that his definition of the "neighborhood" was delineated by areas most affected by the proposal, those in proximity, those with similar topography, and those of a similar character. He also noted that lots 118-122 are smaller than the subject property while others are larger. Mr. Kirwin did not know if some of the other lots are split-zoned.

Mr. Tanczyn asked if the proposed use is permitted by right. Mr. Kirwin answered that it

is if it meets the area regulations. He agreed that regulations allow for a request for a RTA variance and that no variance would be needed for a house to be built.

When asked by Mr. Tanczyn if any other lots in Stonewall Park have the same DEPRM constraints placed on them as on lot 129, Mr. Kirwin said that he did not study the whole community. He also answered Mr. Tanczyn's question about buildable area by saying that it is 80 feet by 254 feet.

On redirect by Mr. Zimmerman, Mr. Kirwin noted that the smaller lots in the community have houses existing. He also stated that some parts of other lots include areas that are not buildable because of the degree of the slope. He testified that this is not unusual on Hillside Road.

On re-cross by Mr. Tanczyn, Mr. Kirwin agreed that it is possible to park 12 cars in some of the driveways that serve other lots nearby, although he described that custom as "not practical."

William Armstrong followed Mr. Kirwin as the next witness for the Appellants. Mr. Armstrong presented appropriate documentation (Protestants' Exhibit #3) to permit him to speak on behalf of the Stonewall Park Community Association.

Mr. Armstrong lives at 98 Hillside Road, diagonally from the subject lot 129. He testified that the Association is concerned about the increased traffic and the impact on the neighborhood from an institutional use that they view as out of character with their neighborhood as it currently exists. Mr. Armstrong introduced photographs (Protestants' Exhibit #4 A-N) to support his testimony in opposition to the request for variance.

He described the current parking problems that are intensified when bad weather prevents

residents from negotiating the steep slopes of their driveways. This situation often necessitates parking on Hillside Road which is narrow. He noted that parking on the road is dangerous, in his opinion, and residents do not park there unless they have to.

On cross-examination by Mr. Tanczyn, Mr. Armstrong said that, so far as he knows, the Association did not take a position on the building and expansion of the Assembly of God Church because it is not in their community.

He admitted that the community has not asked the County to post the west side of Hillside Road with “no parking” signs and that there is not a lot of street parking near the access to the subject proposal.

On redirect by Mr. McFarland, Mr. Armstrong noted that there are no sidewalks on Hillside Road.

Joseph Suarez testified next before the Board. Mr. Suarez stated that he has lived at 116 Hillside Road, Lot 107, for 27 years. He noted that there have been accidents on Hillside Road, although they may not have been reported. He stated that there are blind spots where people need “spotters” to back from their driveways and cars on the road need to “squeeze by school buses.”

He expressed his concerns with the variances requested which he described as “astounding, not just a petty few inches.”

The final witness for the Appellants was Angelo Barnabee who testified to living at 115 Hillside Road for 40 years. Mr. Barnabee concurred with Mr. Suarez’s concerns and comments and added that since he has lived in the Stonewall Park community all buildings have been constructed within the regulations of the zoning without variances.

Majority Decision

Section 307 of the BCZR permits granting of a variance of this regulation upon certain terms and conditions, which in pertinent part in this case, allow a variance where special circumstances or conditions exist that are peculiar to the land that is the subject of the variance requested, and where strict compliance with the zoning regulations would result in practical difficulty or unreasonable hardship. Such a variance shall be granted only if in strict harmony with the spirit and intent of said height, area, off-street parking or sign regulations, and only in such manner as to grant relief without injury to the public health, safety, and welfare. The Board shall have no power to grant any other variances.

The burden to establish special circumstances or conditions was clarified by the Court of Special Appeals in *North v. St. Mary's County*, 99 Md.App. 502 (1994), when Judge Cathell stated:

An applicant for variance bears the burden of overcoming the assumption that the proposed use is unsuited. That is done, if at all, by satisfying fully the dictates of the statute authorizing the variance.

Under the Court of Special Appeals decision in *Cromwell v. Ward*, 102 Md.App. 691 (1995), which sets forth the legal benchmark by which a variance may be granted, the Board of Appeals, hearing the case *de novo*, is given the task of interpreting regulations and statutes where issues are debatable in the light of the law. The first burden on the Petitioner for variance is to prove that the property is unique. This standard must be met before other parts of the variance requirements can be properly considered.

The Court defined the term “uniqueness” and stated:

In the zoning context the “unique” aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon neighboring

property. “Uniqueness” of a property for zoning purposes requires that the subject property has an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions.

After a thorough review of the evidence and testimony before us, the majority of this Board finds as a matter of fact that the Petitioner has not met the burden as required for a variance under BCZR 307.1 and the standards of *Cromwell v. Ward*.

The first prong requires that the land itself of the subject property must be unique from others in the neighborhood to qualify for a variance. The testimony and evidence are substantial and convincing that 91 Hillside Road is not different from the other lots in that neighborhood. Maps, photographs and testimony introduced into evidence establish that neighboring properties are of equivalent size, nature and topography. All have the burden of steep slopes and the attendant environmental constraints caused by those grades. As one of the witnesses remarked, “That’s why it’s called Hillside Road.”

Having found that the first prong of the standard has not been met by the Petitioner, the Board as a matter of law need not consider practical difficulty or spirit and intent.

However, in light of the complexity of the case, the majority notes that testimony, both that of the Petitioner’s expert, Mr. Malmud, as well as that of the Appellant’s expert, Mr. Kirwin, is uncontradicted that a residence could be constructed on the subject property while still complying with the setback regulations.

Mr. Waskey, the previous owner of lot 129 who donated it to Windsor Gospel, testified that his two lots together could support two and possibly three houses. He indicated, however, that he did not purchase the property to build residences but chose to give a portion of his

purchase to his religious institution for a meeting hall. It is the choice of this institutional use that triggers the RTA regulations and the Petitioner's request for variance from them.

We do not therefore find that the Petitioner suffers from practical difficulty in using the property within the D.R. 2 regulations. The Petitioner is not denied beneficial use of the land.

Relative to spirit and intent, we share the concern of the Appellants on the degree of the RTA variances requested. Indeed the requests are not inconsequential or *de minimus* in the opinion of the majority of this Board. The buildable area with the environmental constraints taken into account is .47 acre. A single-family dwelling constructed on this site and similar to others in the community would not require any variance, as noted above.

The RTA regulation applies to dissimilar building types/uses and is designed to buffer the community. Infringing on those buffers to such a degree as proposed here is not in strict harmony with the regulations as required and would have an adverse effect on the public health, safety and welfare of the Stonewall Park community.

Therefore it is the majority decision of this Board to deny the Petition for Variance 1) from the Residential Transition Area (RTA) requirements set forth in § 1B01.1.B.1.c.1&2; and 2) from § 1B01.B.e.5 to allow a driveway and parking facility with a buffer and property line setback of 18 feet each in lieu of the required 50-foot buffer and 75-foot property line setback; to permit a principal use structure to be located 30 feet and 55 feet from the nearest property lines, in lieu of the required 100 feet in an RTA; and to permit a 30-foot buffer in lieu of the required 50-foot and 30-foot setback in lieu of the required 75 feet to the east, and a setback of 55 feet in lieu of the required 75 feet to the south at 91 Hillside Road.

ORDER

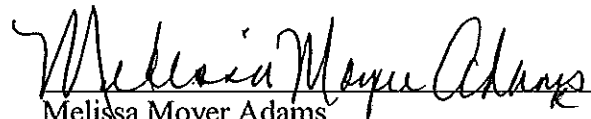
THEREFORE, IT IS THIS 1st day of March, 2004 by the County Board of Appeals of Baltimore County

ORDERED that the Petitioners' request for variance 1) from the Residential Transition Area (RTA) requirements set forth in § 1B01.1.B.1.c.1&2; and 2) from § 1B01.B.e.5 to allow a driveway and parking facility with a buffer and property line setback of 18 feet each in lieu of the required 50-foot buffer and 75-foot property line setback; to permit a principal use structure to be located 30 feet and 55 feet from the nearest property lines, in lieu of the required 100 feet in an RTA; and to permit a 30-foot buffer in lieu of the required 50-foot and 30-foot setback in lieu of the required 75 feet to the east, and a setback of 55 feet in lieu of the required 75 feet to the south at 91 Hillside Road be and the same is **DENIED**.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*.

**COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY**


Margaret Worrall


Melissa Moyer Adams

IN THE MATTER OF
WINDSOR MILL GOSPEL HALL, INC.
91 HILLSIDE ROAD, E/S HILLSIDE
RD, 165' +/- N OF FREDERICK ROAD

1ST ELECTION DISTRICT
1ST COUNCILMANIC DISTRICT

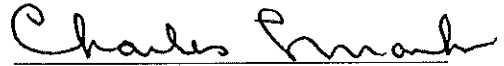
* BEFORE
* COUNTY BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* CASE NO. 03-049-A

* * * * *

DISSENT FROM MAJORITY OPINION

The undersigned hereby respectfully dissents from the Majority Opinion and Order as
stated in the public deliberation held on January 8, 2004.

The minority dissenting opinion will follow.


Charles L. Marks

DATE: March 1, 2004

IN RE: PETITION FOR VARIANCE
E/S Hillside Road, 165' N of the c/l
Frederick Road
(91 Hillside Road)
1st Election District
1st Council District

Windsor Mill Gospel Hall, Inc.
Petitioners

* BEFORE THE
* ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 03-049-A
*

COPY

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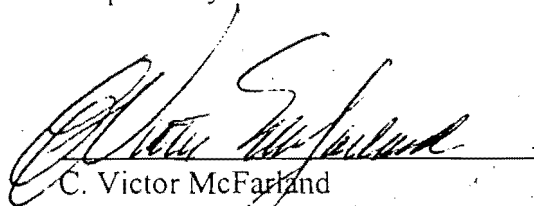
NOTICE OF APPEAL

Dear Mr. Commissioner:

Please enter an Appeal from the Zoning Commissioner's Findings of Fact and Conclusions of Law and Order dated October 7, 2002 in the above entitled case to the County Board of Appeals on behalf of the following protestants who were present at the hearing before the Zoning Commissioner:

Ms. Emily Reiter, PO Box 21003, Catonsville, MD 21228
Telephone 410-744-4130
Mr. and Mrs. James O'Donnell, 117 Hillside Road, Catonsville, MD
21228 Telephone 410-747-0636
Mr. and Mrs. Angelo Barnabee, Jr., 115 Hillside Road, Catonsville,
MD Telephone 410-744-5657
Ms. Patricianne Chinn, 104 Hillside Road, Catonsville, MD 21228
Mr. and Mrs. William Armstrong, Jr., 98 Hillside Road, Catonsville,
MD 21228 Telephone 410-747-6686
Ms. Mary Lou Beach, 105 Hillside Road, Catonsville, MD 21228
Telephone 410-747-3870
Mrs. Erma A. Meier, 125 Longview Drive, Catonsville, MD 21228
Telephone 410-747-9002

Respectfully filed



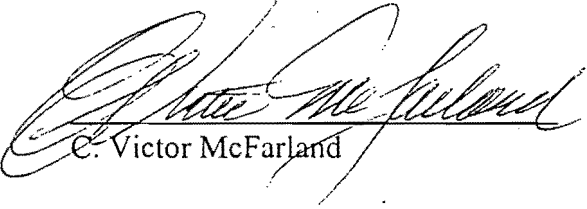
C. Victor McFarland
Attorney for the Protestants
920 Frederick Road
Catonsville, MD 21228
410-788-2300

CERTIFICATE OF MAILING

COPY

I HEREBY CERTIFY that a copy of the foregoing Notice of Appeal was mailed
this 18 day of November, 2002, to the following:

1. Michael P. Tanczyn, Esquire FAX 410-296-8827
Suite 106, 606 Baltimore Avenue
Towson, MD 21204
Attorney for the Applicant and Appellee
2. Peter Max Zimmerman, Esquire FAX 410-887-3182
Peoples Counsel
400 Washington Avenue
Towson, MD 21204
3. Baltimore County Board of Appeals FAX 410-887-3468
County Courts Building
401 Bosley Avenue
Towson, MD 21204


C. Victor McFarland

LAW OFFICES
McFARLAND & MASTERS LLP

920 FREDERICK ROAD
CATONSVILLE, MARYLAND 21228

E-Mail Address: mcfarland.masters.law@erols.com

C. VICTOR McFARLAND
KENNETH H. MASTERS
BRIAN V. McFARLAND

410-788-2300
410-788-0311
410-744-0931
FAX 410-744-0932

October 31, 2002

HAND DELIVERED

Arnold Jablon, Director
Department of Permits and
Development Management Office
111 W. Chesapeake Avenue
Towson, MD 21204

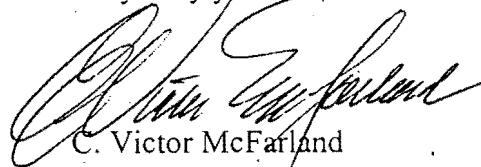
Re: Appeal from Zoning Commissioner
decision dated October 7, 2002.
Case No. 03-049-A
91 Hillside Road
1st Election District

Dear Mr. Jablon:

Enclosed is a Notice of Appeal to be filed in the subject matter to the County Board of Appeals from the decision of the Zoning Commissioner of October 7, 2002 together with a check in the amount of \$210.00 to cover the cost of filing the Appeal.

Please forward any forms or documents that are required of the appellants.

Very truly yours,



C. Victor McFarland

CVMcF:dt
Enclosures

cc: Michael P. Tanczyn, Esquire, Attorney for Appellees
Peter Max Zimmerman, Esquire, Peoples Counsel
County Board of Appeals
Emily Reiter

COPY
PMZ

NOV - 6
REC

IN RE: PETITION FOR VARIANCE

E/S Hillside Road, 165' N of the c/l
Frederick Road
(91 Hillside Road)
1st Election District
1st Council District

Windsor Mill Gospel Hall, Inc.
Petitioners

* BEFORE THE

* ZONING COMMISSIONER

* OF BALTIMORE COUNTY

* Case No. 03-049-A

*

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Variance filed by the owners of the subject property, Windsor Mill Gospel Hall, Inc., by Eric Waskey, Vice President and John G. Walley, Treasurer, through their attorney, Michael P. Tanczyn, Esquire. The Petitioners seek relief from the Residential Transition Area (RTA) requirements set forth in Section 1B01.1.B.1.c.1&2 of the Baltimore County Zoning Regulations (B.C.Z.R.). In addition, relief is sought from Section 1B01.B.1.e.5 of the B.C.Z.R. to allow a driveway and parking facility with a buffer and property line setback of 18' each in lieu of the required 50' buffer and 75' property line setback; to permit a principal use structure to be located 30' and 55' from the nearest property lines, in lieu of the required 100' in a RTA; and, to permit a 30' buffer in lieu of the required 50' and a 30' setback in lieu of the required 75' to the east, and a setback of 55' in lieu of the required 75' to the south. In the alternative, the Petitioners request a finding that the proposed meeting hall and prayer room is exempt from the RTA regulations, pursuant to Section 1B01.1.B.1.g.10 of the B.C.Z.R. The subject property and requested relief are more particularly described on the site plan submitted which was accepted into evidence and marked as Petitioner's Exhibit 1.

Appearing at the requisite public hearing in support of the request were Eric B. Waskey and James Waskey, representatives of the Windsor Mill Gospel Hall, Inc., property owners, Herbert Malmud, Registered Land Surveyor who prepared the site plan for this property, and

Michael P. Tanczyn, Esquire, attorney for the Petitioners. The sign-in sheet circulated at the hearing reflects that a number of other members of the Waskey family and members of the congregation also appeared in support of the request. In addition, several individuals appeared in opposition to the request, all of who signed the Protestants sign-in sheet circulated at the hearing. They included Emily Reiter who appeared on behalf of the Stonewall Park Community Association and the Wilkens Police and Community Relations Council, and C. Victor McFarland, Esquire, an attorney who resides in the vicinity. In addition to the Protestants who appeared, the undersigned received a number of letters from nearby residents who are opposed to the request.

The subject property under consideration is an irregular shaped tract, somewhat triangular in appearance, and is located on the northeast corner of the intersection of Frederick Road and Hillside Road in Catonsville. The property actually consists of two lots, which contain a combined gross area of .876 acres, more or less, split zoned R.O. and D.R.2. Apparently, the lots were part of an old subdivision created by G. Howard White, which was recorded in the Land Records of Baltimore County many years ago. The two lots are identified as Lots 128 and 129 on an old subdivision plat, a copy of which was submitted into evidence as Petitioner's Exhibit 5. The property line that divides Lots 128 and 129 runs perpendicular to Frederick Road and both lots have frontage on that road. Thus, the lots are of narrow width but have significant depth.

As noted above, the property is split zoned R.O. and D.R.2. As shown on the site plan, the front portion of the site abutting Frederick Road is zoned R.O. to a depth of approximately 165 feet, while the rear portion of the site abutting Hillside Road is zoned D.R.2. This was no doubt done by the County Council to reflect the more arterial nature and commercial characteristics of properties along Frederick Road so that the front portion of the site was classified for residential/office use, and the rear portion of the site, residential. In order to reconcile the two zoning classifications and adjust the property line between the two lots, the Petitioners sought a lot line adjustment through the Development Review Committee (DRC) in December 2000. At that time, the property owners' request was considered and approved by the DRC on January 19, 2001. The effect of this amendment was to essentially rotate the property line 90°, thereby making the

property line consistent with the zoning line. As a result of this change, the entire front portion of the site adjacent to Frederick Road constitutes a single lot, zoned R.O., and the rear portion of the property abutting Hillside Road constitutes the second lot, zoned D.R.2. The "new" lot on the front portion of the site is improved with a 1½ story single family dwelling, known as 2210 Frederick Road, which is unoccupied at the present time; however is being renovated. The "new" lot to the rear of the property is unimproved but for a storage shed. To the east, the parcel abuts two residential properties which have been improved with single family homes, respectively identified as 2206 Frederick Road, and 95 Hillside Road.

Messrs. Waskey are members of the Windsor Mill Gospel Hall, Inc. and are fervent devotees of that religious organization. Significant testimony was offered regarding their church. Apparently, there are 83 members and they currently meet at a facility on Windsor Mill Road in Woodlawn. Eric Waskey testified that it is a covenant of the organization that the membership meet in smaller groups for prayer and discussion. In order to meet this obligation, the Petitioners propose the construction of a small 50' x 30' building on the rear lot for use as a meeting hall and prayer room. In addition to the building, the Petitioners propose to provide a driveway leading to the interior of the site from Hillside Road and a small parking area that will accommodate up to 12 vehicles to the rear of the structure. The proposed building will be designed so as to appear residential in character, and only one story in height. A schematic drawing of the proposed building was submitted into evidence as Petitioner's Exhibit 4. Mr. Waskey indicated that there would be periodic prayer meetings for between 40 and 50 members. The building will also provide a worship area of approximately 30' x 30' and the remaining 20' x 30' area will contain a restroom and vestibule. Mr. Waskey repeatedly emphasized his church's responsibility to "divide into small companies for prayer" and indicated that the proposed facility would be constructed and designed to meet that purpose.

The Protestants who appeared raised a number of concerns. Chief among them was a fear that the proposal would cause traffic congestion in the area. It was indicated that parking is limited on Hillside Road and that traffic conditions in the general area are congested. The

potential impacts of the proposed use from a traffic/parking standpoint were emphasized. The Protestants also oppose an institutional use within this residential community.

In addressing these concerns and objections, an identification of the specific relief requested need be emphasized. Section 1B01.1 of the B.C.Z.R. sets out the general uses permitted in the D.R. zone. Section 1B01.1.A.3 thereof, permits as of right, "churches, other buildings for religious worship, or other religious institutions" (emphasis added). Thus, the County Council has seen fit to permit, by right, buildings used for religious worship in the D.R. zone. This is not a special exception/conditional use case. The Zoning Commissioner is not being asked to consider whether this proposed use would be detrimental to the health, safety and general welfare of the locale. Such is the test when approval for a use permitted only by special exception is sought. The use proposed here is permitted by right in the D.R. zone. Thus, the Petitioners have the absolute right and privilege to develop the D.R. zoned portion of the site with a building to be used for religious purposes. The relief requested is in the nature of a variance from the RTA requirements and for a reduction in the required setbacks to adjacent property lines.

In considering whether a variance should be granted, the undersigned is obliged to evaluate the request in accordance with the standards set forth in Section 307 of the B.C.Z.R. That regulation has been construed by the appellate courts of this state in Cromwell v. Ward, 102 Md. App. 691 (1995). Therein, the Court interpreted the regulation to require that two tests be met in order for variance relief to be granted. First, it must be shown that the property is unique in some manner, and that such uniqueness drives the need for variance relief. Secondly, upon the determination that the property is unique, then it must be considered whether compliance with the regulation would cause a practical difficulty upon the property owner and would be unnecessarily burdensome.

Despite cross-examination by Mr. McFarland, in particular, Mr. Malmud opined that the site was unique. The contributing factors that he identified were the configuration and shape of the property, the topography of the land, and the existing vegetation thereon. In this regard, the "new" lot to the rear is more triangular in shape and rises in elevation from Hillside Road. There is

significant vegetation on the lot, much of which will be retained. The proposed building will be located in the southeast corner of the rear lot (towards Frederick Road). Mr. Malmud opined that these factors mandate relief from the RTA and setback requirements.

It again bears emphasis that I must consider the request in accordance with the mandate of Cromwell v. Ward, and Section 307 of the B.C.Z.R., rather than whether the proposed use is appropriate. In applying the test to the testimony, evidence and record made, I am persuaded that variance relief should be granted. In my judgment, the configuration, topography and existing vegetation of the lot are characteristics that make this lot unique. That uniqueness drives the need for variance relief. In this regard, the unique factors of this property would not allow the construction of this building on the lot, if all of the setbacks were met. Moreover, I find that the Petitioners would suffer a practical difficulty if relief was denied, in that strict adherence to the regulations would be unduly burdensome. Finally, as set out in Section 307 of the B.C.Z.R., I find that relief can be granted without detrimental impact upon adjacent properties.¹

In granting the relief, however, I will exercise the discretion afforded me by law to impose certain conditions and/or restrictions thereon to protect the integrity of the surrounding locale and to insure that there will be no detrimental impacts on adjacent properties. Under Section 409 of the B.C.Z.R., a church or other religious building must provide a minimum of one parking space for each four seats in the building. The Petitioners have not sought any waiver or variance of this requirement and none would be granted in any event due to the nature of the neighborhoods and surrounding road system. The Petitioners propose a 12-space parking lot, which under law, would allow for a seating capacity of 48 persons within the building. Thus, a restriction shall be entered so that no more than 48 seats shall be allowed in the building. This restriction is not intended or offered to in any way restrict or limit the Petitioners upon the exercise of their religious beliefs. Rather, from a land use perspective, it requires that churches or other buildings of religious worship provide reasonable off-street parking arrangements for its respective

¹ The Petitioners also requested alternative relief for a finding that the use was exempt from the RTA requirements. Although Section 1B01.1.B.G.10 exempts community buildings, it clearly does not exempt churches and other buildings used for religious purposes. Thus, the RTA requirements apply here.

members. Neither a challenge to those regulations nor a variance from same has been requested here. The Petitioners apparently submit to the requirements of that regulation. Thus, in view of same, there shall be no more than 48 seats within the church building, and a maximum capacity at any single meeting will be limited to that number.

Secondly, the Petitioners shall submit for review and approval by the County's Landscape Architect, a landscape plan and lighting plan for the subject property. In this regard, the Petitioners are encouraged to retain as much of the existing vegetation along the perimeter of the property to visually screen and buffer the site from Hillside Road, and the adjacent residential lots to the east. All lighting should be designed to not reflect onto adjacent properties or roads.

Third, the Petitioners shall comply with the environmental regulations set forth in the Zoning Advisory Committee (ZAC) comments submitted by the Department of Environmental Protection and Resource Management (DEPRM), dated August 22, 2002.

Pursuant to the advertisement, posting of the property and public hearing on this Petition held, and for the reasons set forth herein, the relief requested shall be granted.

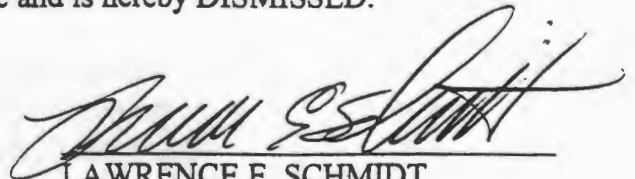
THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 7th day of October, 2002 that the Petition for Variance seeking relief from the Baltimore County Zoning Regulations (B.C.Z.R.) as follows: 1) from the Residential Transition Area (RTA) requirements set forth in Section 1B01.1.B.1.c.1&2; and, 2) from Section 1B01.B.1.e.5 to allow a driveway and parking facility with a buffer and property line setback of 18' each in lieu of the required 50' buffer and 75' property line setback; to permit a principal use structure to be located 30' and 55' from the nearest property lines, in lieu of the required 100' in a RTA; and, to permit a 30' buffer in lieu of the required 50' and a 30' setback in lieu of the required 75' to the east, and a setback of 55' in lieu of the required 75' to the south, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED, subject to the following restrictions:

- 1) The Petitioners may apply for their building permit and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until the 30-day appeal

period from the date of this Order has expired. If an appeal is filed and this Order is reversed, the relief granted herein shall be rescinded.

- 2) The design and construction of the proposed building shall be of a residential character, substantially similar to the building elevation drawings submitted as Petitioner's Exhibit 4.
- 3) There shall be no more than 48 seats within the church building, and a maximum capacity at any single meeting will be limited to that number.
- 4) Compliance with the environmental regulations set forth in the ZAC comments submitted by DEPRM, dated August 22, 2002, a copy of which is attached hereto and made a part hereof.
- 5) The Petitioners shall submit for review and approval by the County's Landscape Architect, a landscape plan and lighting plan for the subject property.
- 6) When applying for any permits, the site plan/landscaping plan filed must reference this case and set forth and address the restrictions of this Order.

IT IS FURTHER ORDERED that the Petition for Variance seeking alternative relief for a finding that the proposed meeting hall and prayer room is exempt from the RTA regulations, pursuant to Section 1B01.1.B.1.g.10 of the B.C.Z.R., be and is hereby DISMISSED.


LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

DEPARTMENT OF ENVIRONMENTAL PROTECTION & RESOURCE MANAGEMENT

TO: Arnold Jablon

FROM: R. Bruce Seeley *RBS*

DATE: August 22, 2002

SUBJECT: Zoning Item 03-049 A
Address 91 Hillside Road

Zoning Advisory Committee Meeting of August 5, 2002

X The Department of Environmental Protection and Resource Management offers the following comments on the above-referenced zoning item:

X Development of the property must comply with the Regulations for the Protection of Water Quality, Streams, Wetlands and Floodplains (Sections 14-331 through 14-350 of the Baltimore County Code).

X Development of this property must comply with the Forest Conservation Regulations (Section 14-401 through 14-422 of the Baltimore County Code).

X Developments which disturb greater than five thousand square feet (5,000 sq.ft.) of land must address the Stormwater Management Regulations.

 Additional Comments:

Reviewer: R. Bruce Seeley (for John G. Russo)

Date: 8/22/02