

IN THE MATTER OF
REVEREND LUCY WARE, Legal Owner/Petitioner
4512 Old Court Road
Baltimore, MD 21208
2nd Election District, 2nd Councilmanic District

RE: Petition for Special Hearing and Variance

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No. 13-147-SPHA

* * * * *

OPINION

This case comes to the Board on appeal of the final decision of the Administrative Law Judge (“ALJ”) denying the Petition for Special Hearing seeking relief from §500.7 of the Baltimore County Zoning Regulations (“BCZR”) to: (1) allow a new church for religious worship on the subject property; (2) allow a residential transition area (“RTA”) buffer of 0’ in lieu of the required 50’; and (3) allow a RTA setback of 0’ in lieu of the required 75’ from a track boundary to a parking lot or structure. The ALJ also denied a Petition for Variance filed pursuant to BCZR §§409.4, 409.8A2 and §409.8A6 to: (1) allow 4 parking spaces that do not have direct access to an aisle; (2) allow a gravel surface of the parking area in lieu of a durable and dustless surface; and (3) allow no striping of the parking area.

A public hearing was held before this Board on June 18, 2013. The Petitioner was represented by Edward J. Gilliss, Esquire. The Protestants, Barbara Roberson, Jimmie Roberson, Ruthanne Otto, Tom Otto, Barry Powell, Sylvia Powell, Gayle Emerson, Lillian Nolley, Helen Aiken, Linda Miller, Tim Lang, Peggy Lang, Wade Young, II, Dale L. Watkins, Rathea Mims, Al Michel, Evelyn Michel, R. Eddie Daniels, Muriel Lyles, Clyde D. Lyles and Ella Green (the “Protestants”) were represented by J. Carroll Holzer, Esquire. A public deliberation was held on July 30, 2013.

Factual Background

On August 31, 2012, the Petitioner, Reverend Lucy Ware (the "Petitioner") purchased a single family home located at 4512 Old Court Road, Pikesville, MD (Pet. Ex. 1) (the "Property") for the purpose of operating a church called "Jesus Christ is the Answer Ministries" (the "Church"). The Petitioner has a degree in construction engineering and was ordained as a minister in 2005. The Church began in 1996, followed by the formation of a 501(c)(3) corporation in 1997.

The Property is located in middle of a residential block on Old Court Road between Scotts Level Road and Streamwood Drive (Pet. Ex. 5). The zoning is D.R. 3.5 (Pet. Ex. 4). The single family home is a 1 story rancher style home (Pet. Exs. 6 and 7) built in 1951 which sits on 1.2 acres (Pet. Ex. 2). Prior to the Petitioner's purchase, the Property had always been used as a residence. The Petitioner testified that she has made numerous improvements to the home including the installation of a new roof, adding a new deck, planting 45 Leyland Cypress trees around the property (Pet. Ex. 19), putting new gravel on the driveway and filling sink holes that existed in the yard.

The Petitioner testified extensively at the hearing about the mission of the Church. From her testimony, the Board learned that it is a non-denominational Christian-based Church which has approximately 30 members. It was formed to assist several groups of people namely: young people who are in trouble with the law; families with children who are disadvantaged; the homeless; and the sick.

In November of 2012, the Petitioner held church services at the property. Before that, the Petitioner hosted a cookout and prayer service in October, which was attended by approximately 40 guests. At both the October and November events, cars were parked on the grass. As a result

of these gatherings, complaints were filed with the County. Code Enforcement informed the Petitioner that she could no longer operate the church at the property.

In this case, the Petitioner would like to continue having worship services on Sunday mornings along with worship and prayer services on Monday and Friday evenings from 7:00-8:30, as well as prayer services on Wednesday evenings from 7:00 - 8:30. She intends to offer counseling services at the Church at times which are convenient for the individual being counseled. The Petitioner was uncertain whether or not other events would be held at the Church such as weddings, school services, or daycare. At this time, there was no plan to increase the footprint of the home. However, she would like to erect a sign for the Church on the property.

With regard to the Church's need for parking, according to the Site Plan, a 64 seat church needs 16 parking spaces (1 per 4 seats) (Pet. Ex. 22). The Petitioner indicated that there are 14 parking spaces in the rear of the property. If there are more than 14 cars coming to the Church, she would allow those cars to park on the grass. The Petitioner admitted that while the Church had 30 members, the members also bring children and sometimes guests. Members will travel to the Church by car or bus. In fact, the Petitioner drives from her home on Liberty Road to the Church. She was also unsure whether there was a limit on the number of members that the Church could have.

The Petitioner's case was supported by other members of the Church namely: Michael Sterling and Angela Jean-Louis. Both witnesses provided the Board with compelling stories about how the Church has changed their lives in a positive way. Mr. Sterling testified about how the Church helped him with both homelessness and drug use and encouraged him to graduate from Pikesville High School. He is now in his first year of college at Catonsville Community College.

Likewise, Ms. Jean-Louis supported the Church's position. She testified about her suicide attempt in 2004 and the loss of job clearance with the Department of Defense. The Church took her in for 6 months. With the Church's support, she completed her bachelor's degree in electrical engineering and is presently working on her Master's degree in the same field.

Bruce Doak, P.E., a property line surveyor and engineer, testified for the Petitioner as an expert in land use, in the BCZR and as a surveyor. He prepared both the Petition and site plan showing the proposed use and variances requested. Mr. Doak explained that a church is permitted in a DR zone but that a special hearing request is needed to be filed for use of a home as a church.

Mr. Doak first visited the property in the Fall of 2012 as a result of the County's notice to the Petitioner to cease operation of the Church. Mr. Doak provided the Board with photographs of 3 other churches located on Old Court Road namely 4619 (Pikesville SDA Church), 4535 (Blessed Trinity Church) and 4727 (New Life Fellowship Worship) (Pet. Ex. 21A-21F). He also marked a zoning map with the address of those other churches in relation to the proposed church (Pet. Ex. 20). Mr. Doak conceded on cross examination that 2 of these other churches are located in DR 5.5 zones which is more intense than the DR 3.5 zoning for this property.

With regard to the parking needed for the Church, Mr. Doak explained that the parking and driveway cannot be designed to meet the RTA requirements in BCZR, §1B01.1.B.1 and thus, the request for variance relief. He agreed that if the use remained a single family home, there would be no need to comply with the RTA. The reason it must comply with RTA is because of the proposed use as a Church. Mr. Doak also stated that the property is unique because it has not reached maximum density whereas most of the lots in the area have.

There were numerous people who testified against the requested relief. The Board heard from Rathea Mims, 4508 Old Court Rd, who has lived in her home for 19 years. Ms. Mims' house is three homes away from the property. Ms. Mims testified that she is concerned with the additional traffic that would be generated by the Church. She has witnessed the increase in traffic and the high speeds at which cars travel in a neighborhood where the speed limit is 30 mph. She added that the prior owners of 4512 took care of the home. Ms. Mims observed the Church's gathering on October 28 and estimated that there was more than 50 people there. From her observations, she believes that the Church has more than 30 members.

Barbara Roberson, 4520 Old Court Rd. has resided there for 20 years. Her home is also located three homes away from the Church. She testified that the size of her lot was comparable to the Petitioner's lot. Her concerns centered on the decrease in her property value should a Church be located in the middle of a residential block. She believes that the hours of operation will continue to be extended and does not believe the present plan as outlined will be limited as suggested by the Petitioner. Ms. Roberson observed the October 28 gathering at the Petitioner's home and saw people in the backyard. The event generated a lot of noise. Ms. Roberson is also opposed to the Petitioner having a sign on her property to identify the Church.

Dale Watkins, 4513 Dresdan Rd. has lived there since 2001. Her home is adjacent and diagonal to the Petitioner's backyard. She is also concerned with the amount of cars coming to the property for Church services including weeknights. She sees the Church as having the potential for growth and the home located on the property is not sufficient to handle the growth. Ms. Watkins also testified that the Leyland trees planted by the Petitioner are in a drainage easement which runs along the back of the houses including her own house. She further added

that allowing parking in the rear of the property which is not illuminated will cause noise, commotion and traffic issues.

Ruth Ann Otto lives at 4523 Tapscott Road and is one and a half blocks from the property. She has lived there for 44 years. She testified that she is not opposed to Churches but does not support the location of a church at this property. Her concerns range from increased noise and parking, the small size of the property, the increase in traffic generated and a decrease in property values. She highlighted that other churches have parking lots and striping for spaces.

Silvia Powell, 4531 Merry Knoll Rd. is located two streets away from the property. Ms. Powell moved to the neighborhood to enjoy a quiet, attractive neighborhood with a low volume of traffic. She too is concerned that property values will decrease but that traffic will increase. She added that allowing a Church in this location could set a precedent for future churches to open in residential areas.

Reverend Lillian Nolley, 4500 Dresdan Rd., is located half of a block away from the property. She is not able to see the Church from her home. As a minister, she works on Park Heights Avenue in Baltimore City. She added that there is a church on every corner in the City because it is a high crime area.

Muriel Lyles, 4511 Dresdan Rd. is located directly behind the property. Ms. Lyles moved to the neighborhood because it was a peaceful place. A church is not an appropriate use for the property which will increase activity and traffic. In her opinion, a church in this location will negatively impact the neighborhood.

Finally, the Protestants had James Patton, P.E. testify as an expert in land planning and in the BCZR. He testified that he has previously been hired as an expert in a zoning case involving a church. He visited the property and is familiar with the area of Pikesville. Mr. Patton opined

that the plat which was filed to accompany the Petition for Special Hearing is not a site plan. He believes that the Petitioner needs to prepare a development plan under BCC, Art. 32 (Prot. Ex. 10).

Mr. Patton contended that the plat was flawed because it did not show the RTA, it did not show the adjacent lots or houses, nor did it show the tract boundary. He emphasized that the neighborhood included medium density single family homes (Prot. Ex. 11). Mr. Patton did not believe that the request satisfied even the minimal RTA requirements.

With regard to the parking variance, Mr. Patton contended that uniqueness of the property was not satisfied. He stated that having a lot which might be a little larger did not satisfy the uniqueness element. Even if uniqueness has been satisfied, Mr. Patton highlighted that all of the hardships here were self-imposed as the Petitioner did not seek expert advice about her intended use prior to purchase.

Decision

1. The Residential Transition Area.

The RTA is described in BCZR, §1B01.1.B.1 in terms of both 'area' and 'uses'. The RTA is a 100 foot area buffer extending from a D.R. zoned tract boundary into the property or the site to be developed. BCZR, §1B01.1.B1a(1). The purpose of the RTA is to assure that similar housing types are built adjacent to one another or that adequate buffers and screening are provided between dissimilar housing types. BCZR, §1B01.1.B1a(2). There are numerous exceptions to the RTA as listed in BCZR, §1B01.1.B1g.

Section 1B01.1.B1b clarifies that the transition 'area' is generated if "the property to be developed is zoned DR and lies adjacent to land zoned D.R.1, D.R.2, D.R.3.5, D.R. 5.5 or R.C. which:

(1) Contains a single-family detached, semi-detached or duplex dwelling within 150 feet of the tract boundary; or

* * * *

Within the transition 'area', conditions on setbacks and buffers are imposed under §1B01.1.B1e. The 50 foot buffer must "remain an upgraded, uncleared, landscaped buffer unless otherwise directed by the hearing officer, based upon recommendations of the county." §1B01.1.B1e(3). A parking lot for a church must provide a 50 foot buffer and 75 foot setback from the track boundary. §1B01.1.B1e(2).

In determining whether the 'area' is generated here, it is necessary to determine whether the proposed use as a 'church' is a 'residential transition use' under §1B01.1.B1d. Given that 'churches' are permitted uses as of right under §1B01.1.A.3, a church is a residential transition use under §1B01.1.B1d(1). Next, in determining whether the 100 foot transition 'area' has been generated, the property to be developed must be in a DR zone and be adjacent to one of the DR zones listed in §1B01.1.B1b. The property here is located in the DR 3.5 and is located adjacent to a DR 5.5 zone. Thus, the transition area has been generated.

The Petitioner argues that because she is not making any exterior structural changes or additions to the home, than the RTA does not apply. In support of her argument, the Petitioner cites the definition of "development" in BCC, §32-4-101(p) which definition includes: "(1) the improvement of property for any purpose involving building." She therefore concludes that since there is no improvement or building completed, in progress or contemplated, there is no development.

We disagree. The Petitioner is 'developing' the property because she is "improving" it by changing the landscaping, driveway and parking that is required under BCZR to change the

use from single family home to church. The definition of “improvement” is found in BCC §32-4-101(w):

(w) *Improvements.*

(1) “Improvements” means improvements as determined necessary and appropriate by the county.

(2) “Improvements” include:

- (i) Streets;
- (ii) Drains, bridges, and culverts;
- (iii) Sewers;
- (iv) Water lines;
- (v) Open space;
- (vi) Curbs and gutters;
- (vii) Sidewalks and paths;
- (viii) Streetlights;
- (ix) **Landscaping;**
- (x) Stormwater management facilities;
- (xi) Traffic-control devices;
- (xii) Telecommunications conduits; and
- (xiii) **Other improvements as determined necessary and appropriate by the county.**

(Emphasis Added).

In reviewing the proposed use, the County required the Petitioner to landscape the property. Toward that end, the Petitioner submitted a landscaping plan (Prot. Ex. 6). The County required the Petitioner to plant (8) 6 ft.- 8ft. tall green giant arborvitae to screen the parking lot from the adjoining property. With this required landscaping, the Church is subjected to the RTA regulations.

Additionally, the County, through the BCZR §§409.6, 409.8A2 and 409.8A6. requires that certain parking requirements be met for church parking lots. These are the same requirements from which the Petitioner is seeking variance relief. Consequently, the parking spaces, the surface of the parking area and the striping of the parking area are not only necessary and appropriate under BCC, §32-4-101 (w)(1) and (2)(xiii) above, but are required.

Given that the transition area is generated by this proposed use as a church, the next issue is whether the plan qualifies for an exception from the RTA restrictions under 1B01.1B.1g(6). The Petitioner argued in the alternative that the proposed use is not subject to RTA requirements because it meets the exception listed in B.C.Z.R. 1B01.1B.1g(6) wherein the landscaping plan was approved:

a new church or other building for religious worship, the site plan for which has been approved after a public hearing in accordance with Section 500.7 and to the extent possible, the proposed use shall comply with RTA use requirements and the plan can otherwise be expected to be compatible with the character and general welfare of the surrounding residential premises.

As the Board analyzes this, of the 16 exceptions listed in BCZR 1B01.1Bg, if any exception applies here based on the facts, Subsection (6) is the only possible candidate.

However, in applying the evidence to exception (6), the proposed Church does not even minimally comply with the RTA requirements. The proposal is for no buffer and no setbacks. The evidence did not show that the plan submitted by the Petitioner would be compatible with the character or general welfare of the surrounding homes which homes are occupied by the Protestants who testified. The Board finds credible the concerns voiced by the Protestants concerning increased traffic generated by this use in the middle of a residential block.

While the Petitioner testified that there were 30 members, the parking calculations on the site plan revealed that this was a 64 seat church. The Petitioner agreed that members could bring guests and family members as well as children. We see this Church as being in the early stage of growth and we expect and anticipate that it will continue to grow, particularly given the charitable work that it does. The modest size of this single family home, on 1.2 acres, is not sufficient to house the planned functions and services.

In reviewing the photographs of the other churches in the area, we notice that with the exception of one church, all of those churches are located in DR 5.5 or DR 16 zones, or they are located on a corner. In addition, all of those churches have adequate land for a parking lot. Those parking lots are paved and striped. Because of this, there is adequate ingress and egress and sufficient control of church traffic. As a result, the impact on the surrounding properties is less. In the case of 4619 and 4535 Old Court Road, those buildings are large and there is still room for paved parking. In this case, however, it is not, in our view, compatible with the neighborhood, for cars to park on the grass for church activities that will occur during the week and on weekends.

As one of the Protestants mentioned, there is no dispute that the work of this Church is admirable and is providing a great service to individuals who truly need the Church's help and guidance. However, the issue for this Board is whether this use, at this particular location, is compatible with the character and general welfare of the surrounding residences. We note that neither the Petitioner, Mr. Sterling nor Ms. Jean-Louis live in the neighborhood and thus the perspective of the Protestants is understandably different. We find, based on the evidence, that this use is not compatible in this location and therefore fails to meet exception (6).

2. Parking Variances.

As to the Petitioner's request for Variances from the BCZR parking requirements, based on the Board's decision to deny the request for Special Hearing relief, the variance requests are moot. If the Petitioner is not entitled to a waiver of the RTA standards and the property does not qualify under one of the RTA exceptions, the parking variances are not needed.

While we need not address the parking variances, if the Petitioner was entitled to the special hearing relief, this Board would have also denied the parking variances. For the

Petitioner to succeed on a variance request, this Board must follow the standard in Section 307.1 of the BCZR which states, in pertinent part, as follows:

.....(T)he County Board of Appeals, upon appeal, shall have and they are hereby given the power to grant variances from height and area regulations...only in cases where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request and where strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship.... Furthermore, any such variance shall be granted only if in strict harmony with the spirit and intent of said height, area...regulations, and only in such manner as to grant relief without injury to public health, safety, and general welfare....

The Petitioner argued that the property is unique because it was a little larger than other lots in the neighborhood. Protestant, Barbara Roberson testified that her lot was compatible in size to the Property. We do not agree that this point meets the uniqueness standard in *Cromwell v. Ward*, 102 Md. App. 691 (1995), wherein the Court writes:

...The Baltimore County ordinance requires "conditions ...peculiar to the land...and...practical difficulty...." Both must exist. ...However, as is clear from the language of the Baltimore County ordinance, the initial factor that must be established before the practical difficulties, if any, are addressed, is the abnormal impact the ordinance has on a specific piece of property because of the peculiarity and uniqueness of that piece of property, not the uniqueness or peculiarity of the practical difficulties alleged to exist. It is only when the uniqueness is first established that we then concern ourselves with the practical difficulties...."

Id. at 698.

In requiring a pre-requisite finding of "uniqueness", the Court defined the term 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. In respect to structures, it would relate to such characteristics as unusual architectural aspects in bearing or parting walls....

Id. at 710. We find that, actually, the property is more similar to other properties in the neighborhood than it is different. The evidence presented shows no unusual property characteristics which would warrant a deviation from the parking requirements.

So that the record may be clear, we further find, even assuming *arguendo* that the property was somehow determined to be unique, that no showing of practical difficulty has been established. Petitioner admitted on cross examination that nothing prevents the use of the Property as a single family home. Moreover, the law is clear that self-inflicted hardship cannot form the basis for a claim of practical difficulty. Speaking for the Court in *Cromwell, supra*, Judge Cathell noted:

Were we to hold that self-inflicted hardships in and of themselves justified variances, we would, effectively, not only generate a plethora of such hardships but we would also emasculate zoning ordinances. Zoning would become meaningless. We hold that practical difficulty or unnecessary hardship for zoning variance purposes cannot generally be self-inflicted.

Id. at 722.

In this case, all of the hardships are self-imposed. The Petitioner purchased the property without performing the due diligence necessary to make certain that the zoning would permit her intended use. The fact that she made improvements to the property, in addition to the purchase price, only adds to the self-inflicted nature of the hardship.

For all the foregoing reasons, we deny the Petitioner's request for variances.

ORDER

THEREFORE, IT IS THIS 9th day of October, 2013, by the Board of Appeals of Baltimore County,

ORDERED that the Petition for Special Hearing seeking relief from §500.7 of the Baltimore County Zoning Regulations (“BCZR”) to: (1) allow a new church for religious worship on the subject property; (2) allow a residential transition area (“RTA”) buffer of 0’ in lieu of the required 50’; and (3) allow a RTA setback of 0’ in lieu of the required 75’ from a track boundary to a parking lot or structure. be and the same are hereby **DENIED**; and it is further,

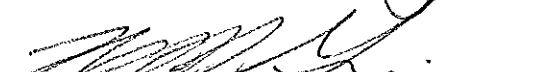
ORDERED that the Petitioner’s request for a Petition for Variance filed pursuant to BCZR §§409.4, 409.8A2 and §409.8A6 to: (1) allow 4 parking spaces that do not have direct access to an aisle; (2) allow a gravel surface of the parking area in lieu of a durable and dustless surface; and (3) allow no striping of the parking area, be and the same is hereby **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*.

**BOARD OF APPEALS
OF BALTIMORE COUNTY**


Andrew M. Belt, Panel Chair


Maureen E. Murphy


Wendell H. Grier



Board of Appeals of Baltimore County

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October 9, 2013

Edward J. Gilliss, Esquire
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RE: In the Matter of: Reverend Lucy Ware – Legal Owner/Petitioner
Case No.: 13-147-SPHA

Dear Counsel:

Enclosed please find a copy of the final Opinion and Order issued this date by the Board of Appeals of Baltimore County in the above subject matter.

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, WITH A PHOTOCOPY PROVIDED TO THIS OFFICE CONCURRENT WITH FILING IN CIRCUIT COURT. Please note that all Petitions for Judicial Review filed from this decision should be noted under the same civil action number. If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

Sunny Cannington

Krysundra "Sunny" Cannington
Acting Administrator

Enclosure
Duplicate Original Cover Letter

c: Reverend Lucy Ware
Tom and Ruthanne Otto
Lillian Nolley
Tim and Peggy Lang
Dale Watkins
R. Eddie Daniels
George and Martha Zentz

Bruce E. Doak
Barry and Sylvia Powell
Helen Aiken
James S. Patton
Jeffrey and Rathea Mims
Clyde and Muriel Lyles
Reverend Ervin Dantzler

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Gayle Emerson
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Lawrence M. Stahl, Managing Administrative Law Judge
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Nancy West, Assistant County Attorney

John E. Beverungen, Administrative Law Judge
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