

IN THE MATTER OF
HUNT VALLEY BAPTIST CHURCH, INC.
PETITION FOR SPECIAL HEARING AND
SPECIAL EXCEPTION ON THE PROPERTY
LOCATED AT 821 SHAWAN ROAD

8TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No.: 14-190-SPHX

* * * * *

MAJORITY OPINION

This matter comes to the Board of Appeals on Petitions for Special Exception and Special Hearing by Hunt Valley Baptist Church, Inc. (“HVBC”) in connection with the property known as 821 Shawan Road, Cockeysville, Maryland 21030 (the “Property”). HVBC has filed its Petition for Special Exception pursuant to Section 1A03.3.B.4 of the Baltimore County Zoning Regulations (“BCZR”), which requires a special exception for properties in a R.C.4 zone to be used as “[c]hurches and other buildings for religious worship.” In addition, HVBC seeks permission to utilize the special exception, if approved, for up to five years from the date of approval under BCZR § 502.3. Without such permission from the Board, an approved special exception would lapse if not “utilized within a period of two years from the date of the final order granting same.” BCZR § 502.3. Finally, HVBC seeks special hearing relief under BCZR § 500.7 to nullify the requirements associated with the previously approved residential development plan on the Property if and when a building permit to construct a church is issued by the County.

The Office of Administrative Hearings of Baltimore County previously considered this matter and, by written opinion and order dated January 5, 2015, Administrative Law Judge John E. Beverungen granted HVBC’s zoning petitions but only permitted HVBC three years to utilize

the special exception granted. Following the decision rendered by Judge Beverungen, the Valleys Planning Council, Inc. filed an appeal to the Board.

The hearing before the Board took place over seven non-consecutive days from May 2015 to April 2016. In the proceedings before the Board, HVBC was represented by Lawrence E. Schmidt, Esquire, the Valleys Planning Council, Inc. was represented by Michael R. McCann, Esquire, and Patricia O’C. B. Farley and William F. C. Marlow, Jr., the owners and residents of 801 Shawan Road, Cockeysville, Maryland 21030, were represented by Mr. Marlow. After the submission of closing memoranda by the parties, the Board held a public deliberation on July 7, 2016.

STATEMENT OF FACTS

The Property is approximately seventeen acres in size and is located on the south side of Shawan Road to the west of Interstate 83. As noted, the Property is zoned R.C.4 (Watershed Protection) and presently is improved with a farmhouse and a tenant building. In or around 2005, the prior owner of the Property, the Nicholas Bosley Merryman Kemp Family Trust (the “Trust”) filed a three-lot minor subdivision plan with the County, proposing two additional houses on the Property. In 2012, HVBC purchased the Property from Trust for \$900,000 and, rather than pursuing a residential subdivision, seeks to obtain a special exception to use the Property for a building approximately 30,000 square feet in size that will include a sanctuary with 982 seats, classrooms, offices, and a fellowship hall and gymnasium with a basketball court. The threshold issue in this case for the Board’s determination is whether the use of the Property proposed by HVBC complies with the factors established by the Baltimore County Council for a special exception in a R.C.4 zone.

STANDARDS GOVERNING SPECIAL EXCEPTIONS

The County Council has made clear that the R.C.4 “zoning classification and its regulations are established to provide for the protection of the water supplies of metropolitan Baltimore and neighboring jurisdictions by preventing contamination through unsuitable types or levels of development in their watersheds.” BCZR § 1A03.1. The Council has made a legislative determination that certain types of uses in the R.C.4 zone, such as single-family detached dwellings, farms, public open space, and schools, are permitted as of right. *See* BCZR § 1A03.2. Other types of uses in the R.C.4 zone, including “[c]hurches and other buildings for religious uses,” are permitted by special exception.” BCZR § 1A03.3; *see also Hayfields, Inc. v. Valleys Planning Council, Inc.*, 122 Md. App. 616, 638, 716 A.2d 311, 322 (1998) (“Within any given zoning classification, the BCZR prescribes two types of uses: certain uses are permitted as of right and others are conditionally permissible.”).

The Court of Appeals has observed that “[t]he special exception adds flexibility to a comprehensive legislative zoning scheme by serving as a ‘middle ground’ between permitted uses and prohibited uses in a particular zone.” *People’s Counsel for Baltimore County v. Loyola College in Md.*, 406 Md. 54, 71, 956 A.2d 166, 176 (2008). “A permitted use in a given zone is permitted as of right within the zone, without regard to any potential or actual adverse effect that the use will have on neighboring properties. A special exception, by contrast, is merely deemed *prima facie* compatible in a given zone.” *Id.* The Court of Appeals further noted that “[t]he special exception requires a case-by-case evaluation by an administrative zoning body or officer according to legislatively-defined standards. That case-by-case evaluation is what enables special exception uses to achieve some flexibility in an otherwise semi-rigid comprehensive legislative zoning scheme.” *Id.* at 71-72, 956 A.2d at 176.

BCZR § 502.1 sets forth the specific factors to be considered by the Board in considering HVBC's petition for a special exception:

Before any special exception may be granted, it must appear that the use for which the special exception is requested will not:

- A. Be detrimental to the health, safety or general welfare of the locality involved;
- B. Tend to create congestion in roads, streets or alleys therein;
- C. Create a potential hazard from fire, panic or other danger;
- D. Tend to overcrowd land and cause undue concentration of population;
- E. Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements;
- F. Interfere with adequate light and air;
- G. Be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations;
- H. Be inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations; nor
- I. Be detrimental to the environmental and natural resources of the site and vicinity including forests, streams, wetlands, aquifers and floodplains in an R.C.2, R.C.4, R.C.5 or R.C.7 Zone.

BCZR § 502.1.

In *Schultz v. Pritts*, the Court of Appeals applied a judicial gloss to the special exception factors enumerated in BCZR § 502.1. In that case, the Court held that "the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its

location within the zone.” *Schultz*, 291 Md. at 22-23, 432 A.2d at 1331. Stated another way, the “proper question” in this case is whether the adverse effects of HVBC’s proposed church “are above and beyond, *i.e.*, greater here than they would generally be elsewhere within” the R.C.4 zone. *See Mossburg v. Montgomery County*, 107 Md. App. 1, 9, 666 A.2d 1253, 1257 (1995). Thus, “[w]ithin each individual factor” set forth in BCZR § 502.1 “lurks another test” – namely, whether the effect of the proposed church in connection with each individual special exception factor would have an adverse effect above and beyond those inherently associated with a church or other building for religious use irrespective of its location within the zone. *See Loyola College*, 406 Md. at 68, 956 A.2d at 175.

With the foregoing principles in mind, the Board considers the BCZR § 502.1 factors as follows:

A. Is HVBC’s Proposal Detrimental to the Health, Safety, or General Welfare of the Locality Involved?

The Board heard voluminous testimony from experts, neighbors, and members of the broader community alike on the alleged detrimental impacts that HVBC’s proposed church would have on the general welfare of the locality surrounding the Property. For example, the Protestants spent considerable time in their case addressing the Property’s location within the Western Run/Belfast Road National Historical District and the alleged adverse impact of HVBC’s proposed church on the historic district. In addition, the Protestants argued in their case that HVBC’s proposed church would have a deleterious impact on the scenic view along Shawan Road, a County-designated scenic route and State-designated scenic byway. On these points, Protestants relied heavily on the testimony of their expert witnesses, Christopher Jukubiak, Richard Hall, Elizabeth Watson, and Daniel Marriott.

While the testimony relating to the establishment of the Western Run/Belfast Road National Historical District and the designation of Shawan Road as a scenic route/byway provides context to the Property's location, the Board agrees with HVBC that these issues are not directly relevant to whether HVBC is entitled to a special exception. As HVBC points out in its closing memorandum, under BCZR § 100.5, "[t]he designation of . . . [a] historic district does not change the zoning classification or any requirement with respect to that zoning classification, unless specified otherwise in these regulations." (HVBC Mem. at 14). The BCZR do not preclude the placement of churches in a historic district, and Protestants have not identified any provision in the nomination of the Western Run/Belfast Road Historical District that prohibits HVBC's proposal. In short, the Property's presence in the Western Run/Belfast Road Historical District does not warrant a finding that HVBC's proposal would be detrimental to the general welfare of the locality at issue so as to preclude the special exception use sought by HVBC. Similarly, the Board does not find that the designation of Shawan Road as a scenic route renders HVBC's proposal detrimental to the general welfare of the surrounding locale or impose any limitations in connection with the consideration of a petition for a special exception.

B. Would HVBC's Proposal Tend to Create Congestion in the Roads, Streets, or Alleys Therein?

The evidence presented to the Board indicates that, at its present location at 1800 Worthington Heights Parkway, Hunt Valley, Maryland 21030, HVBC conducts Sunday school at 9:00 a.m. and services at 10:30 a.m. and 6:00 p.m. each Sunday. In addition, HVBC holds a mid-week service on Thursday evenings at 7:00 p.m. and hosts a "work party" from 5:00 – 9:00 p.m. on the first and third Friday of each month, where families assist with cleaning and maintenance of the church building. Other ministries, meetings, classes, choir and orchestra practices, and events also take place at the church throughout the week and year. HVBC Pastor Gus Rodriguez

indicated in his testimony that HVBC plans to operate in the same fashion at the proposed location at 821 Shawan Road as it currently functions at 1800 Worthington Heights Parkway.

It is clear from the testimony before the Board that HVBC's primary activities take place on Sundays or in the evenings when usage of Shawan Road and other local roads is reduced. Moreover, a bus transports many of the congregants to HVBC's services, further alleviating the burden on local roadways. In addition, traffic engineer, Mickey Cornelius, provided un rebutted expert testimony, opining that HVBC's proposal would not result in traffic congestion. Based on the foregoing, the Board agrees with HVBC that its proposal will not tend to create congestion on Shawan Road and other surrounding roads, streets, and alleys above and beyond the congestion inherently associated with a church or other building for religious use irrespective of its location within the R.C.4 zone.

C. Would HVBC's Proposal Create a Potential Hazard from Fire, Panic, or Other Danger?

Based on the testimony before the Board, the proposed structure to be built on the Property by HVBC would comply with all fire and building codes and would be set back substantially from Shawan Road and from neighboring properties. There was no evidence presented to the Board that HVBC's proposed use of the Property would create a potential hazard from fire, panic, or other danger.

D. Would HVBC's Proposal Tend to Overcrowd Land and Cause Undue Concentration of Population?

According to the evidence admitted at the hearing, HVBC's proposed structure will comply with the height limitation, building setback, and density requirements legislatively established for the R.C.4 zone. *See* BCZR § 1A03.4. At approximately 30,000 square feet, the proposed building would occupy approximately 4.3% of the 17-acre Property, according to Ken Wells, HVBC's land

surveyor. Based on the testimony of Pastor Rodriguez, HVBC will use the Property most intensively, like most Christian churches, for Sunday services. Weighing the evidence presented, the Board concludes that HVBC's proposed building will not overcrowd the Property or cause undue concentration of population in a manner that would be above and beyond the effect that the proposal would have elsewhere within the R.C.4 zone.

E. Would HVBC's Proposal Interfere with Adequate Provisions for Schools, Parks, Water, Sewage, Transportation, and Other Public Requirements, Conveniences, or Improvements?

There was no evidence presented at the hearing that HVBC's use of the Property would interfere in any way with the adequate provision for schools or parks. The proposal will have no impact on the enrollment in local schools or the usage of public parks. In addition, the site will be developed without public water or sewage service. Finally, there was no testimony or evidence introduced at the hearing demonstrating that HVBC's proposal would interfere with the adequate provision of transportation infrastructure.

F. Would HVBC's Proposal Interfere with Adequate Light and Air?

There was no evidence cited to the Board that HVBC's proposed structure would interfere with adequate light and air for any nearby property.

G. Is HVBC's Proposal Inconsistent with the Purposes of the Property's Zoning Classification or in any Way Inconsistent with the Spirit and Intent of the Zoning Regulations?

HVBC seeks a special exception under Section 1A03.3.B.4 of the BCZR to use the Property as a church or other building for religious worship. Although not specifically defined in Section 101.1 of the BCZR, Webster defines "church" as "a building for public and especially

Christian worship.”¹ The project proposed by HVBC is, however, more than just a building for Christian worship. A substantial portion of HVBC’s proposed building includes a gymnasium with a basketball court and a fellowship hall. Even under the most liberal definition, it cannot seriously be contended that a gymnasium with a basketball court qualifies as a building for Christian worship and is not the type of use that the County Council approved for the R.C.4 zone by special exception.

HVBC expressly acknowledges the fact that its proposed gymnasium/fellowship hall serves a qualitatively different purpose than that of a “church” since HVBC has planned to construct its proposed facility on the Property in two phases. The first phase of construction would include a sanctuary, classrooms, and offices, while the second phase would add the gymnasium and fellowship hall. In his testimony, Pastor Rodriguez admitted that the second phase is not critical to the operation of the church:

MR. MCCANN: Why the two phases?

PASTOR RODRIGUEZ: Again, just prudence and we want to make sure that obviously the, the main core, the main function of the church is the sanctuary and the classrooms to support the Sunday School, that’s the primary purpose, that’s the main focus of the operation of the church and the fellowship hall and the gymnasium is, is not critical for the operation of the church. So we could and intend to phase that because it’s not, it’s not critical to the operation.

(See Transcript, May, 6, 2015, at 90-91).

Because (a) HVBC seeks a special exception to use the Property as a church under BCZR § 1A03.3.B.4 and (b) the planned use of the Property presented to the Board includes more than just a church, the majority of the Board concludes that HVBC’s proposal is inconsistent with the

¹ Under Section 101.1 of the BCZR, “[a]ny word or term not defined in this section shall have the ordinarily accepted definition as set forth in the most recent edition of Webster’s Third New International Dictionary of the English Language, Unabridged.”

spirit and intent of the BCZR. The particular use of the Property proposed by HVBC, including a gymnasium, would thus have an adverse effect in relation to the spirit and intent of the zoning regulations “above and beyond” that which is inherently associated with churches and other buildings of religious worship in other locations in the County within the R.C.4 zone. *See Schultz*, 291 Md. at 22-23, 432 A.2d at 1331. For this reason, HVBC’s Petition for Special Exception must be denied.

H. Is HVBC’s Proposal Inconsistent with the Impermeable Surface and Vegetative Retention Provisions of the BCZR?

Section 1A03.4.B.3 of the BCZR provides, in relevant part, that “no more than 10% of any lot in an R.C.4 Zone may be covered by impermeable surfaces (such as structures or pavement).” To meet the requirements of Section 1A03.4.B.3, HVBC’s proposal includes the construction of a parking lot with porous material that will allow for the absorption of water. Whether HVBC’s proposed porous pavement parking lot would allow for HVBC’s proposed project to meet with the impermeable surface requirements of the BCZR comes down to a battle of expert witnesses – namely, Ken Wells on behalf of HVBC and Dan O’Leary on behalf of the Protestants.

Dan O’Leary was accepted by the Board as an expert in stormwater management, water resources, and as a professional engineer. Mr. O’Leary explained in his testimony that the efficacy of a pervious pavement parking lot, like the one proposed by HVBC, depends on the characteristics of the soil below the pavement. As Mr. O’Leary testified, the 2000 Maryland Stormwater Design Manual (the “Manual”), prepared for the Water Administration of the Maryland Department of the Environment, provides that “[t]he capacity of permeable pavements to capture and detain runoff is governed by the storage capacity, compaction of the soil subgrade, and in-situ soil properties.” (Prot. Ex. 58 at 5.46). The Manual further emphasizes that “[s]andy and silty soils are critical to successful application of permeable pavements.” (*Id.*). In addition, the Manual mandates that, for

applications of permeable pavement that exceed 10,000 square feet – as in this case – the “underlying soils shall have an infiltration rate . . . of 0.52 in/hr. or greater.” (*Id.* at 5.48). Appendix D to the Manual similarly states that “[s]oil textures with minimum infiltration rates less than 0.52 inches per hour are not suitable for usage of infiltration practices.” (Prot. Ex. 62 at D.13.2).

Based on an analysis of over 5,000 soil samples by the United States Department of Agriculture (“USDA”) “under carefully controlled procedures,” soil textures characterized as “sand,” “loamy sand,” “sandy loam,” and “loam” have minimum infiltration rates of 0.52 inches per hour or greater, thus allowing for a proper functioning permeable pavement system. (*Id.* at D.13.1 – D.13.2). Soil textures with higher clay content, however, do not allow for the minimum required infiltration rate for use in connection with a permeable pavement system. (*Id.* at D.13.2). These unsuitable soil textures “include soils that have a 30 percent clay content, making these soils susceptible to frost heaving and structurally unstable, in addition to having a poor capacity to percolate runoff.” (*Id.*).

Using data provided by the USDA, Mr. O’Leary prepared a Custom Soil Resource Report for the Property to determine whether the soil types for the Property would allow for a properly functioning permeable pavement system on HVBC’s proposed parking lot. Based on the Report, the Property primarily consists of “BgA” and BgB” soil types. (*See* Prot. Ex. 59 at 10-11). These soil types have a “typical profile” of silt loam from 0 to 8 inches and clay from 8 to 115 inches. (*Id.*).

The predominant presence of clay in the Property’s soil as reflected in the Custom Soil Resource Report is corroborated by soil evaluations performed by the Baltimore County Water and Sewer Division on November 4 and 24 and December 9, 1987. (*See* Prot. Ex. 60). Similarly,

in 1988, Blue Mount Environmental Services performed a “series of soil evaluation studies” on the Property and found that the “soil profile was a heavy sticky red clay” with “heavy red clay” “from 0’ to 17’ with a ground water table at 9’ to 12’.” (See Prot. Ex. 61). Soil borings from 2008 taken to determine the feasibility of the installation of a septic reserve area on the Property further confirm that clay is the predominant presence in the Property’s soil. (See Prot. Ex. 67 and Transcript, November 17, 2015, at 85). Because of the numerous indications of predominantly clay soils on the Property, and because clay soils have infiltration rates below the minimum threshold of 0.52 inches per hour, Mr. O’Leary concluded that porous pavements are not “the right application for this site.” (See Prot. Ex. 62 at D.13.2 and Transcript, November 17, 2015, at 83).

Ken Wells is a professional land surveyor and is certified to devise and submit storm water management plans. Mr. Wells opined that the Property was suitable for the installation of a porous paving parking lot and that soils thereon would satisfy the minimum infiltration requirements set forth above. In his testimony, Mr. Wells testified that the soil borings included on Protestants’ Exhibit 67, taken from the Property in 2008, indicate an average infiltration rate of 3.63 inches per hour – significantly more than the minimum 0.52 inches per hour infiltration rate required by the Manual. (See Pet. Ex. 31).

The Board views this issue as a close call, particularly at this stage of the proceedings. That said, the Board finds most persuasive the testimony of Mr. O’Leary based on his many years of experience as an engineer in the areas of stormwater management and water resources. Considering the Custom Soil Resource Report completed by Mr. O’Leary, along with the other exhibits introduced by the Protestants demonstrating the predominant presence of clay in the soil throughout the Property, and not just in an isolated area, the Board concludes that the porous paving parking lot proposed by HVBC would not be suitable under the standards set forth in the

Manual. Without a porous parking lot, HVBC's proposal does not meet the impermeable surface requirements of BCZR § 1A03.4.B.3. For this additional reason, the majority of the Board concludes that HVBC's Petition for Special Exception must be denied.

I. Would HVBC's Proposal be Detrimental to the Environmental and Natural Resources of the Site and Vicinity Including Forests, Streams, Wetlands, Aquifers and Floodplains in an R.C.2, R.C.4, R.C.5 or R.C.7 Zone?

As HVBC's memorandum makes clear, "substantial environmental analysis of the site and the constraints associated with the property were previously addressed when the previous owner's (Kemp) minor residential subdivision was approved." (HVBC Mem. at 23). Except as set forth above, the Board does not find any evidence in the record that HVBC's proposal would be detrimental to the environmental and natural resources of the site and vicinity, including forests, streams, wetlands, aquifers, and floodplains.

CONCLUSION

Based on the testimony and documentary evidence presented at the hearing, and an analysis of the BCZR § 502.1 factors under the standard of review set forth in *Schultz v. Pritts* and its progeny, the Board is compelled to deny HVBC's Petition for Special Exception. Because the Board has denied the request for special exception relief, HVBC's request to extend the period of utilization of the special exception under BCZR § 502.3 is moot. In addition, because the Board has denied the petition for a special exception, HVBC's petition for a special hearing under BCZR § 500.7 to nullify the requirements associated with the previously approved residential development plan on the Property if and when a building permit to construct a church is issued by the County also is moot.

ORDER

THEREFORE, it is this 22nd day of February, 2017, by the Board of Appeals of Baltimore County,

ORDERED, that HVBC's Petition for Special Exception be and is hereby **DENIED**; and

IT IS FURTHER ORDERED, that HVBC's request to extend the period of utilization of its special exception under BCZR § 502.3 is hereby **MOOT**; and

IT IS FURTHER ORDERED, that HVBC's Petition for Special Hearing to nullify the requirements associated with the previously approved residential development plan on the Property if and when a building permit to construct a church is issued by the County is hereby **MOOT**.

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**

Meryl W. Rosen
Meryl W. Rosen

James H. West /kc
James H. West

IN THE MATTER OF
HUNT VALLEY BAPTIST CHURCH, INC.
PETITION FOR SPECIAL HEARING AND
SPECIAL EXCEPTION ON THE PROPERTY
LOCATED AT 821 SHAWAN ROAD

8TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT

* BEFORE THE
* BOARD OF APPEALS
* OF
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* Case No.: 14-190-SPHX

* * * * *

DISSENT

This matter comes to the Board of Appeals on Petitions for Special Exception and Special Hearing by Hunt Valley Baptist Church, Inc. (“HVBC”) in connection with the property known as 821 Shawan Road, Cockeysville, Maryland 21030 (the “Property”). HVBC has filed its Petition for Special Exception pursuant to Section 1A03.3.B.4 of the Baltimore County Zoning Regulations (“BCZR”), which requires a special exception for properties in a R.C.4 zone to be used as “[c]hurches and other buildings for religious worship.” In addition, HVBC seeks permission to utilize the special exception, if approved, for up to five years from the date of approval under BCZR § 502.3. Without such permission from the Board, an approved special exception would lapse if not “utilized within a period of two years from the date of the final order granting same.” BCZR § 502.3. Finally, HVBC seeks special hearing relief under BCZR § 500.7 to nullify the requirements associated with the previously approved residential development plan on the Property if and when a building permit to construct a church is issued by the County.

The Office of Administrative Hearings of Baltimore County previously considered this matter and, by written opinion and order dated January 5, 2015, Administrative Law Judge John E. Beverungen granted HVBC’s zoning petitions but only permitted HVBC three years to utilize

the special exception granted. Following the decision rendered by Judge Beverungen, the Valleys Planning Council, Inc. filed an appeal to the Board.

The hearing before the Board took place over seven non-consecutive days from May 2015 to April 2016. In the proceedings before the Board, HVBC was represented by Lawrence E. Schmidt, Esquire, the Valleys Planning Council, Inc. was represented by Michael R. McCann, Esquire, and Patricia O’C. B. Farley and William F. C. Marlow, Jr., the owners and residents of 801 Shawan Road, Cockeysville, Maryland 21030, were represented by Mr. Marlow. After the submission of closing memoranda by the parties, the Board held a public deliberation on July 7, 2016. During the deliberation, the Board reviewed in detail the factors enumerated for the granting of a Special Exception pursuant to BCZR § 502.1. The Board was unanimous in their findings on all of these factors except one, in which the undersigned has dissented. The undersigned concurs, but wishes comment further on another factor.

Is HVBC’s Proposal Inconsistent with the Impermeable Surface and Vegetative Retention Provisions of the BCZR?

As noted in subsection (H) of the Majority Opinion, the Board was required to determine from evidence provided by both parties whether HVBC’s proposal is inconsistent with the impermeable surface and vegetative retention provisions of the BCZR. Each party provided expert testimony on this issue and it was the Board’s task to determine which expert was more persuasive.

Section 1A03.4.B.3 of the BCZR provides, in relevant part, that “no more than 10% of any lot in an R.C.4 Zone may be covered by impermeable surfaces (such as structures or pavement).” In attempt to meet the requirements of Section 1A03.4.B.3, HVBC’s proposal envisions the construction of a parking area made of a porous material which would permit water absorption. In short the Board was tasked to determine whether HVBC’s proposed porous pavement parking lot would meet with the impermeable surface requirements of the BCZR. As

noted in the Majority Opinion, making this determination involved listening to a battle of expert witnesses – namely, Ken Wells on behalf of HVBC and Dan O’Leary on behalf of the Protestants.

As outlined in the Majority Opinion Mr. O’Leary and Mr. Wells had a difference of opinion regarding the characteristics of soils found on the site. In summary, Mr. O’Leary opined that the nature of the soil on the site would not allow a pervious pavement parking lot to function efficiently. Mr. Wells testified that the soil on the site was of a “C” classification that would meet criteria under State regulation. Mr. O’Leary, on the other hand, testified that the type of soil, i.e. clay, would have an effect on what the infiltration rate of that soil would be.

Mr. Wells opined that the Property was suitable for the installation of a porous paving parking lot and that soils thereon would satisfy the minimum infiltration requirements set forth above. HVBC argues that the use of porous material for the parking area was the identical approach followed by Baltimore County when a Special Exception was granted for the St. Mary’s Church which is located directly next door. HVBC, also correctly notes that neither the Office of Planning nor the Department of Environmental Protection put forth any Zoning Advisory Committee comments that this section of the BCZR was being violated.

Mr. O’Leary provided some anecdotal evidence that he had observed some areas on the St. Mary’s Church parking area where water had gathered evidencing the failure of that porous lot. Mr. O’Leary also made a point to stress that the success of such a porous lot often depended on whether steps were taken to properly maintain the surface. Mr. Wells concurred with this assessment and testified that HVBC agreed to the maintenance protocol, including power-washing and vacuuming.

As noted by the Majority Opinion, the Board views this issue as a close call, however, the Minority has to make the call the other way. While Mr. O’Leary’s testimony provided interesting

details regarding the nature of the soil, the overall effect on the efficiency of the porous pavement seemed too speculative. Consequently the Minority on the issue, finds the testimony of Mr. Wells to be more persuasive based on its practicality due to the fact that what is being proposed has been already approved by the County and is in use for a property immediately next door. Additionally, the Minority is inclined to take HVBC at its word that it will employ the necessary maintenance to insure that the porous pavement functions as designed. In short, the Minority dissents and finds that based on the testimony of Mr. Wells, HVBC's proposal is consistent with the impermeable surface and vegetative retention provisions of the BCZR.

Is HVBC's Proposal Inconsistent with the Purposes of the Property's Zoning Classification or in any Way Inconsistent with the Spirit and Intent of the Zoning Regulations?

As was noted in the public deliberation on this matter, while undersigned generally concurs with the Board's decision as to whether HVBC's proposal is inconsistent with the purposes of the property's zoning classification or in any way inconsistent with the spirit and intent of the zoning regulations, the undersigned does believe that phase of 1 would pass muster as to this factor of review.

HVBC seeks a special exception under Section 1A03.3.B.4 of the BCZR to use the Property as a church or other building for religious worship. The undersigned concurs that the project proposed by HVBC is more than just a building for Christian worship. It is clear that a large portion of HVBC's proposed building, particularly what they have delimited at phase two of their project, includes a gymnasium with a basketball court and a fellowship hall. While the sanctuary, classrooms, and offices contemplated in phase one can be logically tied to the operation of the church, a basketball court and fellowship hall are not. Throughout the many days of testimony before the Board, much testimony was heard inferring that no church should be allowed

In re: Hunt Valley Baptist Church, Inc. 14-190-SPHX – Dissent

on the property at issue, or if so, only a very small one. The undersigned is not persuaded by this testimony and does not believe that the R.C.4 Zone mandates such. Consequently, the undersigned does not conclude that alterations to the HVBC project would not make it acceptable to BCZR § 502.1. in the future.

February 22, 2017
Date


Andrew M. Belt



Board of Appeals of Baltimore County

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February 22, 2017

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RE: *In the Matter of: Hunt Valley Baptist Church, Inc. – Legal Owner*
Case No.: 14-190-SPHX

Dear Counsel:

Enclosed please find a copy of the final Majority Opinion and Order issued this date by the Board of Appeals of Baltimore County in the above subject matter, as well as a copy of Mr. Belt's Dissent.

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,

A handwritten signature in cursive script that reads "Sunny Cannington".

Krysundra "Sunny" Cannington
Administrator

KLC/tam
Enclosure
Multiple Original Cover Letters

c: See Attached Distribution List

Hunt Valley Baptist Church, Inc. – Legal Owner
Distribution List
February 22, 2017
Page 2

c: Pastor David Bottrell/Hunt Valley Baptist Church, Inc.
Valleys Planning Council, Inc.
Aaron Glover
Avery Harden
Brooke and Stacy Dorman
Caleb Bottrew
Chris Corez
Darcy Fancher
Derek Renshaw
Dolores R. and Charles G. Shaw, Jr.
Donald Wilson
Harvey Miller
Holly Musgrove
James P. McElroy
Jim Smith
Kathleen McGuigan
Kenneth Ohliger
Kenneth J. Wells/kjWellsInc.
Marc Dorman
Marcia Goldberg
Michael Snyder
Mickey Cornelius/The Traffic Group
Murrell Taylor
Robert and Mary Jane Shroeder
Simon Purdy
Thomas Zizos
William LeRoy
Office of People's Counsel
Andrea Van Arsdale, Director/Department of Planning
Lawrence Stahl, Managing Administrative Law Judge
Arnold Jablon, Deputy Administrative Officer, and Director/PAI
Nancy C. West, Assistant County Attorney/Office of Law
Michael E. Field, County Attorney/Office of Law