

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND SPECIAL EXCEPTION		
E/S Hanover Pike, 4,900' S c/line of	*	ZONING COMMISSIONER
Emory Road		
(14821 Hanover Pike)	*	FOR
4 th Election District	*	BALTIMORE COUNTY
3 rd Council District		
	*	Case No. 2009-0042-SPHX
Robert L. Brantley, et ux		
Petitioners	*	

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of Petitions for Special Hearing and Special Exception filed by Robert Brantley, and his wife, Astra P. Brantley, legal owners, through their attorney, Sebastian A. Cross, Esquire. The Petitioners request a Special Hearing, pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.), to approve a modified parking plan as provided for in Section 409.12 of the B.C.Z.R. In addition, special exception relief is requested pursuant to B.C.Z.R. Sections 1A01.2C(4), (6) and (23) in order to use an existing building for religious worship, school and camp as a spiritual religious retreat center. The subject property and requested relief are more particularly described on the site plan, which was accepted into evidence and marked as Petitioners' Exhibit 2.

Appearing at the requisite public hearing in support of the requests were Robert Brantley, property owner, and Matthew T. Allen, a Professional Engineer, with Bohler Engineering, P.C. As noted above, the Petitioners were represented by Sebastian A. Cross, Esquire of Gildea & Schmidt, LLC. The issues presented in this case generated significant public interest, and a number of individuals from the surrounding community appeared and/or testified in opposition to the request, namely S. Glenn Elseroad, George P. Neubeck, Jr., an officer of the Hanover Road Association, Carol D. Isaac, Sandra M. Brown, Robert Slaterbeck, Charlotte Coarts, Charlene L. Hughes, John R. Lorenz, Paul R. and Frances C. Joyce. J. Carroll Holzer, Esquire

appeared as attorney for the adjoining property owner, Patricia R. Fallon, and Barbara D. Ambrose.

By way of background, the property referred to as Near Haven at 14821 Hanover Pike in the Upperco area of northern Baltimore County has been the subject of Code Enforcement actions pursuant to Section 3-6-205 of the Baltimore County Code (B.C.C.). It is the activities generated by uses other than those normally associated with a single-family dwelling, which is the subject of the instant request. In this regard, the County Enforcement Hearing Officer, on June 24, 2008, ordered the Petitioners that “there shall be no activities allowed on the subject site except for those associated with single-family dwelling uses.” Aggrieved by this decision, the Brantley’s retained Counsel and now seek a determination that the uses they propose are permitted within the zone.

An extensive volume of testimony and evidence was offered by both sides over the two (2) hearing dates, namely September 24, 2008 and February 25, 2009. Due to limitations of time and space, it is impossible to repeat all of the testimony offered herein. Additionally, there were numerous documents, photographs, plats, written memoranda, and other exhibits entered into the record of this case. I shall summarize only the relevant evidence presented.

The subject property is a rectangular shaped parcel (147' wide x 871' deep) containing 2.95 acres on the east side of Hanover Pike (MD Route 30), just south of Old Hanover Road and zoned R.C.2. This lot, identified on Maryland Tax Map 31 as Parcel 353, was created in 1998 through a Minor Subdivision of a 6-acre tract by Joan Morgan.¹ The subject property was purchased from Ms. Morgan by Craig Garrett, who built a two-story, cape code, single-family dwelling that was centrally located on the property. He took great pride in landscaping the lot

¹ The remaining 3.05-acre parcel, 14823 Hanover Pike, identified on Maryland Tax Map 31 as Parcel 150, is on the north side of the common boundary line and was purchased by Patricia Fallon in November 1998. Ms. Fallon, one of the Protestants here, observed as Mr. Garrett built his home and measured the distance between the two (2) homes (foundation to foundation) as being 75 feet.

placing evergreen trees in the side yards, gardens in the rear yard and a fruit orchard between the front of the house and Hanover Pike. Due to the narrowness of the property, Mr. Garrett filed a Petition for Variance, Case No. 00-284-A. This was done to allow an addition (garage) to be built on the south side of the house. Then Deputy Zoning Commissioner Timothy M. Kotroco, by his Order dated February 4, 2000, granted the variance allowing a side yard setback of 3 feet in lieu of the minimum required 35 feet. Inherent in the relief granted was the Order's restriction that "the Petitioner or subsequent owners shall not allow or cause the garage to be converted to a second dwelling unit and/or apartment." The Petitioners, Robert and Dr. Astra Brantley, purchased the property from Mr. Garrett in September 2004. The property, which they would name "Near Haven", was bought in large part due to its "perfect setting" that they believed would provide an environment for psychological, spiritual and whole health services that they intended to offer to their clients. They advertise Near Haven as being fronted by fruit orchards; the 3-acres features a prayer garden, a meditative walking labyrinth, and an organic vegetable garden in the rear. Mr. Brantley described the property as being distinguished from others by virtue of its symphony of decorative flowers and shrubbery that are frequently visited by local birds and exotic butterflies. He plans for small groups (between two [2] and ten [10]) to use the home as a sanctuary for religious and spiritual retreats. He discussed the need to provide Christian counseling and guidance to clergy, church members and families on central issues in their lives, be it personal or financial. Testimony and evidence indicates that the "existing building for religious worship" referred to in the Petition for Special Exception is the accessory addition (garage) involved in Case No. 00-284-A and now referred to by the Petitioners and their engineer as the "in-law attachment/Living Well Suite" and shown on the site plan (Petitioners' Exhibit 2) as a "proposed church" (25 people).

Robert Brantley testified that he is an ordained Minister of the Gospel of Jesus Christ with 25 years of experience as a strategic planner in management and financial planning holding

a B.S. degree in Business and Economics from Illinois College and an M.B.A. degree from the Northwestern University. Astra Brantley, a licensed Clinical Psychologist, holds a B.A. degree in Psychology from DePaul University, an M.S. Ed. degree in Guidance and Counseling from Chicago State University and a Doctor of Psychology degree from Central Michigan University and a member of the American Association of Christian Counselors. The subject property (14821 Hanover Pike) functions as the Brantley's home and is listed by the Department of Assessments and Taxation's Charter Division as the business location for "*The Brantley Group*", providing Christian Management and Mental Health Services; "*Bridge Point Ministries*", providing Christian, Bible-based, Christ-centered, spirit-led ministry; "*The Brantley Group, LLC*" – to engage in any lawful activities permitted by a Limited Liability Company organized under the laws of the State of Maryland; the "*Justice University Foundation, Inc.*" – to fund global efforts, educating people toward transforming imperfect social systems into structures of justice; and "*The Universal Peacemakers Foundation, Inc.*"² There was controversy between the Petitioners and Protestants over the extent of *actual* collaborative services being provided for at the site by the Petitioners (and their contract providers – i.e., acupuncture, massage therapy, etc.) and a lengthy list of *other* advertised services. See Protestants Exhibits 1 through 16.

Mr. Allen, accepted as an expert in the field of civil engineering and zoning, testified that he was retained by the Brantleys to prepare the site plan, review the deed and zoning on the property, conduct a site visit, prepare an aerial overlay photographic exhibit (Petitioners' Exhibit 1) and determine, after talking with Mr. Brantley, Managing Director of the Brantley Group, what was being proposed at the site. He opined that what was being considered was a spiritual religious retreat or center that is not defined in the definitional section of the B.C.Z.R. He

² Multiple entities providing a variety of services from one location can be problematic and tortuous from a zoning enforcement prospective. See, for example Case No. 07-205-SPH with its associated litigation.

testified that he broke down the activities conducted at this site over the past four (4) years and determined that they equate or share characteristics of a church or other building for religious worship, camps, including day camps and schools similar to what was allowed under B.C.Z.R. Section 1A01.2(C) by special exception in the Loyola College case that involved 53 acres of R.C.2 land in northern Baltimore County. *See People's Counsel for Baltimore County v. Loyola College in Maryland*, 406 Md. 54 (2008). In his opinion, the subject property is in a relatively rural area. Although residential homes and uses are located along Hanover Pike to the north and south of the subject property, it is otherwise surrounded to the east by Dale Trump's black angus cattle farm and the farm property of Glenn Elseroad. To the west, on the opposite side of Md. Route 30, is the 100-acre Brathuhn Farm. It was Mr. Allen's opinion that since the site is very open with significant vegetation along the property lines and no structural changes contemplated at the site, that the requested special exception use will not have a detrimental impact upon the health, safety, and general welfare of the locale. He then addressed drive aisle and parking requirements for religious worship (one space for every four [4] seats – 25 seats proposed equals seven [7]) plus two (2) required parking spaces for residential use. In Mr. Allen's opinion, seven (7) parking spaces were adequate as the B.C.Z.R. contains no parking requirements for the associated camp activities.

Special exception uses are regulated in the B.C.Z.R. under Section 502.1 thereof. Due to the importance of that Section, it will be recited here:

“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 (Bill No. 45-1982);
- 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 (Bill No. 45-1982);
- H) be inconsistent with the impermeable surface and vegetative retention provisions of these zoning regulations; nor (Bill No. 45-1982)
- 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 (Bill No. 74-2000)."

The highest courts of this State have reviewed the treatment of proposed special exception and conditional uses by various local zoning boards and commissions. The seminal case regarding special exceptions is *Shultz v. Pritts*, 291 Md. 1 432 A2d 1319 (1981). In that case, the Court noted that a special exception use is part of the comprehensive zoning plan and thus, shares the legal presumption that it is in the interest of the general welfare and therefore valid. The Court noted that a special exception use is a valid zoning mechanism that delegates to an administrative board or body a limited authority to allow certain enumerated uses which the legislature (in this case, the Baltimore County Council) has determined to be permissible, absent any facts or circumstances which negate that presumption.

The Court further noted that the applicant for a proposed special exception use does not have the burden of establishing affirmatively that the proposal would be of benefit to the community. Moreover, the test is not whether another use is more preferable or whether the property could be used for a higher or better purpose. Rather, the test to be considered by the local administrative body (Zoning Commissioner) is whether the neighboring properties in the general neighborhood would be adversely affected and whether the proposed use in this particular case is in harmony with the general purposes and intent of the underlying zoning scheme.

The Court of Appeals of Maryland further explained the special exception test in *Mossberg v. Montgomery Co.*, 329 Md. 494, 620 A2d 886 (1993). In that case, an applicant sought approval for a solid waste transfer station in Montgomery County. That use was a conditional/special exception use under the relevant Montgomery County ordinance. In its written opinion, the Court noted that there were certain inherent negative uses associated with any solid waste transfer station. For example, such a station would be expected to produce traffic, noise, dust, etc. Moreover, it could be presumed that such impacts would negatively affect surrounding properties. However, although such presumptions are valid, the Court emphasized that the existence of these impacts did not provide a sufficient basis for the local administrative body to deny the Petition for Special Exception. Instead, the Court reasoned *that the local body must show that those impacts are greater at the subject location than would normally be associated with such use.* That is, the criteria is not whether the proposed use carries with it adverse impacts (such adverse impacts are assumed in the first instance by designating the use a special exception rather than by right). Rather, the test is whether that impact at the subject property will produce effects above and beyond those normally inherent with such a use if located anywhere else within the same zoning district. Therefore, in considering the present application, it is not enough to simply conclude that the proposed religious retreat center with its associated school and camp will produce noise, traffic and the site of additional cars parked around the Brantley residence that could adversely affect the neighborhood. It most certainly will, and such an effect is inherent in any religious worship activity as contemplated here. The real standard as recently explained by our highest Court in *People's Counsel v. Loyola, supra* is whether the mixed use of a church, school, camp, religious retreat, and other advertised private services within the Resource Conservation Zone at this location would cause adverse effects upon adjoining and surrounding properties that are unique

and different, in kind or degree, than those inherently associated with such a use regardless of its location. In other words, would these adverse effects cause a real detriment to the neighborhood.

As noted above, numerous individuals appeared in opposition to the request. Testifying in Mr. Holzer's case against the requested relief were Barbara D. Ambrose, George P. Neubeck, Jr., S. Glenn Elseroad, Sandra M. Brown and Patricia R. Fallon. These witnesses each offered their own individual testimony, but the clear tenor and theme of their remarks was that the Petitioners should not be granted special exception or conditional use approval to operate a religious retreat and other private practices on such a narrow lot, as the operation would be clearly visible and a detriment to the general welfare of the community and adjacent residences. Ms. Ambrose utilized a power point presentation (Protestants Exhibit 3) to show a number of adverse affects upon adjoining property values including the following: impacts on septic field capacity, inadequate access for emergency response vehicles, parking of vehicles on neighboring land and lawn areas (traffic issues), documentation for internet advertisement of 20 services (*See* Protestants Exhibits 3 and 5), camping activities outside of Near Haven boundaries, placement of tents and spot-a-pots along adjacent property boundary lines, etc. She testified that these impacts are particularly severe here, due to the proximity of her home 35 feet away. Similarly, Mr. Neubeck stated that the proposed activities were considered by the Hanover Road Association membership and found to be incompatible and inconsistent with the Association's Community Plan and the Hanover Corridor Study. He thought the uses would exploit the area and would be difficult, if not impossible to control. Mr. Elseroad, a community leader and past-President of the Hanover Road Association, gave testimony that encompassed a broad overview as to the reasons he and the community are recommending against approval of this special exception. The proposed activities that would be repeated week after week, month after month, on a lot size and configuration that is 147 feet wide would certainly infringe upon the neighboring property values and affect the quality of life of those in close proximity. By way of example, he explained that

while on his farm, behind the Trump farm, he hears noise, sees lights, tents, and the spot-a-pots next to the Trumps beautifully maintained property. He also stated that based on his personal experience with religious faith-based groups and given the extent of advertisement generated by the Brantley Group, he projects rapid expansion of the Bridge Point Ministries that will lead to more problems. Finally, Sandra Brown and Patricia Fallon gave corroborating testimony and opinions that the advertised activities, are of a business nature rather than church counseling. Ms. Brown, a beautician, whose home, also on R.C.2 land a half mile away, finds it disturbing that she is prohibited from operating a beauty salon from her residence, while the Brantleys advertise a host of business activities, which she states are disguised as pastoral destinations.

In rebuttal, Mr. Cross questioned, to no avail, the witnesses as to the feasibility of entering into an agreement or formal covenants with the Hanover Road Association and neighbors that would limit Petitioners activities and use of the property. Mr. Elseroad stated that while the Hanover Road Association is usually amenable to an amicable resolution, he did not believe that it was possible or practical to enforce the number of people or activities allowed on private property. He stated normally what happens is the community ultimately ends up with the burden of being required to enforce the limitations imposed.

As noted in the discussion above regarding the law of special exceptions, the undersigned is required to focus upon the impacts of the proposed use and how they particularly affect the locality involved. The undersigned has reviewed the proposal in that light, and I find that the Special Exception request has failed to meet the test set out in B.C.Z.R. Section 502.1.A & I. There are two (2) factors that justify this conclusion. First, in this instance a religious business retreat with its accompanying indoor and outdoor activities at this location will be detrimental to the health, safety and general welfare of the locality involved based on the evidence received. The number of advertised services “holistic clinical services, acupuncture therapy, massage therapy, acoustic therapy, mediation training, personal fitness training, stress self defense,

financial and estate planning, annual Christian children's camps, spa days, pastoral counseling, holistic health training, labyrinth medication, conference center", etc. are clearly excessive for this narrowly configured 3-acre R.C.2 site. It is clear, based on the testimony received that the Community does not need an additional spiritual retreat which will not serve the local residents. The Hanover Road Association is convinced this type of activity will be detrimental to their Community Plan and the Hanover Corridor Study that have been prepared for this section of Maryland Route 30 and would negatively impact not only on the residential community but also the existing business community. Further, it would have contradictory impacts upon the Hanover Pike Streetscape as the activities with attendant automobile parking are visible from the public right-of-way and aesthetically not compatible with the single-family dwelling use in this resource conservation classification.

Second, Mr. Elseroad and others testified that the front or western portion of the property is impacted by the 100-year flood plain and the Department of Environmental Protection and Resource Management (DEPRM) has raised issues of impacts upon the existing well and septic systems on the property. Mr. Elseroad and Ms. Ambrose testified as to specific septic failures in the area and at the very least a letter outlining the worship center's proposed water supply usage is required so that DEPRM can evaluate these risks.

In sum, I find the proposed use(s) does not meet the applicable criteria set forth in Section 502.1 of the B.C.Z.R., pursuant to *Schultz* and *Loyola, infra*. Specifically, the applicant for a special exception bears both the burden of production and the burden of persuasion on the issue of whether the special exception should be granted. I have been presented with evidence that generates a genuine question of fact as to whether the grant of a special exception would violate applicable legislation and case law. The Petitioners have not produced by a preponderous of evidence that the special exception will conform to the requirements and not having an adverse or negative impact on the properties located nearby. Additionally, the number of

potential visitors and activities inherent in this type of use is one that lends itself to a larger and broader expansion not easily capable of control by the Division of Code Enforcement. These impacts are particularly severe here, due to the proximity of adjacent residential homes.

Pursuant to the advertisement, posting of the property and public hearing on these petitions held, and for the reasons set forth above, the relief requested shall be denied.

THEREFORE, IT IS ORDERED by the Zoning Commissioner of Baltimore County, this 3RD day of March 2008, that the Petition for Special Exception to permit the use of the described property for religious worship, school and camp and as a spiritual religious retreat center, pursuant to Sections 1A01.2C(4), (6) and (23) of the Baltimore County Zoning Regulations (B.C.Z.R.), in accordance with Petitioners' Exhibit 2, be and is hereby DENIED; and

IT IS FURTHER ORDERED that the Petition for Special Hearing seeking relief from Section 409.12 of the B.C.Z.R., to approve a modified parking plan, be and is hereby DISMISSED AS MOOT.

Any appeal of this decision must be taken in accordance with Section 32-3-401 of the Baltimore County Code.

SIGNED
WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County