

IN RE: **PETITIONS FOR SPECIAL HEARING** * BEFORE THE
AND VARIANCE * ZONING COMMISSIONER
N/W Corner Falls Road and *
Ridge Road * OF
(1804 Ridge Road) *
8th Election District * BALTIMORE COUNTY
2nd Council District *
* **Case No. 2010-0016-SPHA**
Mays Chapel United Methodist Church, Inc. *
Petitioner *

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of Petitions for Special Hearing and Variance filed by James Emerick, Trustee, on behalf of the Mays Chapel United Methodist Church, Inc., legal owner, by and through their representative, J. Scott Dallas, of J.S. Dallas, Inc. The Petitioner requests a special hearing to confirm that the existing cemetery is a non-conforming use and to approve a non-density transfer pending Development Review Committee (DRC) review and approval of lot line adjustments between Parcels 50, 51-1, 51-2 and 52 up to a maximum total of 1.5 acres as follows:

	<u>Existing Acreage</u>	<u>Proposed Acreage</u>	<u>Change in Acreage</u>
P50	2.66	1.47 (1.57 gross)	-1.19
P51-1	1.57	1.64 (1.69 gross)	+0.07
P51-2	1.37	2.78 (2.80 gross)	+1.41
P52	0.32	0.07 (0.10 gross)	-0.25

Additionally, the Petitioner is requesting variance relief from Section 1A01.3B.2 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit setbacks of 46 feet (southwest Hall side), 42 feet (southwest side of the Church Hall), 49 feet (west Hall side), 47 feet (east Hall side), 21 feet (north Church rear) and 11 feet (east Church side), as shown on the variance plat in

lieu of the required 50 foot minimum. The subject property and requested relief are more particularly described on the amended Petition(s) and revised site plan submitted, which were collectively marked and accepted into evidence as Petitioner's Exhibit 1.

Appearing at the requisite public hearing in support of the requests were Richard Shang, Pastor, and James Emerick, Trustee Chairman, of Mays Chapel United Methodist Church, Inc.; Doug Hays, Pastor, and Chia-Ling Chien, Committee Chairman, of the Baltimore Chinese Baptist Church, and J. Scott Dallas, of J.S. Dallas, Inc., the consultant who prepared the site plan for this property and is assisting the Petitioner through the process. It is to be noted that a signed petition reflecting 32 signatures (Petitioner's Exhibit 4) was received from the surrounding property owners who support the proposal. Appearing on behalf of the Falls Road Community Association and Martha Lessner of Heil Manor Drive (interested parties) was Michael R. McCann, Esquire. Mr. McCann submitted a written statement at the close of the hearing indicating that his clients had no opposition to the relief sought in these petitions. There were no Protestants or other interested persons in attendance at the public hearing.

Testimony and evidence revealed that the subject property consists of four (4) parcels all zoned R.C.5 and located at the intersection of Ridge Road and Falls Road in the Reisterstown area of Baltimore County. For over a century, the property was home to the Grace Falls Road United Methodist Church, which was closed on June 30, 2008 by the United Methodist Conference (UMC). At that time, the congregation was merged with Mays Chapel UMC, located at 11911 Jenifer Road, and the subject property was assigned to Mays Chapel UMC for disposition. Along with the Grace Falls Road Church, the subject property was also home to the Grace Falls Road Cemetery, which, as proven by the photographs marked and accepted into evidence as Petitioner's Exhibits 2 & 3, has been in continuous use since at least 1894. The

Petitioner is leasing and wishes to eventually sell the property to the Chinese Baptist Church, which will purchase three (3) of the four (4) parcels but is not interested in continuing the maintenance of the cemetery. Accordingly, Petitioner has proposed a series of lot line adjustments that will enable the Church to separate the cemetery from the remaining three (3) parcels so it can be transferred to a perpetual maintenance entity known as the Grace Falls Road Cemetery Corporation. Petitioner submitted the Articles of Incorporation for this perpetual maintenance entity, which was marked and accepted into evidence as Petitioner's Exhibit 5.

Mr. Dallas provided an explanation of the somewhat complicated lot line adjustments that are proposed in the Petition for Special Hearing. As the following demonstrates, these adjustments are not associated with any changes in density and are primarily proposed in order to tidy up an already convoluted layout and to prevent any of the parcels from relying on another parcel for utilities purposes.

The property is currently comprised of four (4) parcels known as P50, P51-1, P51-2, and P52, and these parcels will all continue to exist after the proposed lot line adjustments. From west to east, the changes to these parcels are as follows: P51-2, which encompasses the westernmost section of the property and houses the parsonage, will only undergo a minor change in that a "kickout" or "bumpout" to the east will be added in order to add the well serving the parsonage to the parcel on which it is located. P52 was a small triangular parcel and it has simply been decreased in size to add land to P50. P50 contains Fellowship Hall where the Church holds services, and the property added from P52 contains the access way to the church. The proposed change will result in the access way to the church structure being contained on P52, the same parcel that contains the actual structure. The eastern half of P50 will become part of P51, which will be separated and will contain the entire cemetery. As previously stated, these

adjustments do not have any effect on density, and the testimony at the public hearing demonstrated that the Petitioner is not interested in undertaking any development activity such as expanding the church structure or parsonage.

The Zoning Advisory Committee (ZAC) comments were received and are contained within the case file. Comments were received from the Office of Planning dated August 5, 2009, which stated that the site plan should be revised to show gross acreages. The proposed area of revised Parcel 50 is shown as 1.47 acres, which according to Scott Dallas, Property Line Surveyor, is shown in net acres. Any new R.C.5 lot must be 1.5 acres or greater.¹ Comments were also received from Department of Environmental Protection and Resource Management (DEPRM), dated September 9, 2009, which stated that development of this property must comply with the Forest Conservation Regulations (Sections 33-6-101 through 33-6-112 of the Baltimore County Code).

Turning first to the Petition for Special Hearing, I am convinced that the requested relief should be granted. Petitioner has first requested that the existing cemetery be declared a nonconforming use, which is defined in Section 101 of the B.C.Z.R. as “a legal use that does not conform to a use regulation for the zone in which it is located or to a special regulation applicable to such a use.” The Court of Appeals of Maryland has articulated the standard for a permissible nonconforming use and has held that when a property owner at time of adoption of the last comprehensive zoning was using land for use which by new legislative action became non-permitted, the owner has a lawful nonconforming use. *See, e.g., Board of Zoning Appeals v. Meyer*, 207 Md. 389 (1955). Pursuant to Section 104.1 of the B.C.Z.R., a nonconforming use may continue unless the use is abandoned or discontinued for a period of one year or longer. In

¹ It should be noted that this Comment was received prior to the public hearing and Mr. Dallas did make the changes requested by the Office of Planning, as shown on Exhibit 1. Once the gross acreage was represented, the parcel in question was shown to be over 1.5 acres as required by the B.C.Z.R.

this case, Petitioner presented photographic evidence that the cemetery has been in use since the late 1800's and has continued to the present day. Accordingly, I find that the cemetery is a permissible nonconforming use within the meaning prescribed by the B.C.Z.R.

I am also convinced that the request for Special Hearing to approve a non-density transfer pending Development Review Committee (DRC) review and approval of lot line adjustments between Parcels 50, 51-1, 51-2 and 52 should be granted. As previously stated, there is no density associated with the proposed changes, and the adjustments primarily seek to simplify an already complicated layout by separating the cemetery from the remaining parcels and setting the utilities on the same parcels that contain the structures that they are serving. Accordingly, I find that the Petition for Special Hearing should be granted in its entirety.

Turning next to the Petition for Variance, I am convinced that the requested relief should also be granted. The property has existed in its current condition for nearly a century, and this Petition does not contain any changes in density or requests for increased development. The requested variances will essentially permit the Church to separate the parsonage and Fellowship Hall from the cemetery parcel so that it can be transferred to a perpetual maintenance entity.

As a practical matter, this request reflects changes that will only be seen on paper, as the variances will settle existing conditions that deal entirely with issues interior to the subject property. The signed petition marked as Petitioner's Exhibit 2, along with Mr. McCann's written statement that his clients have no opposition to this request, leads me to find that this request will not have any negative effect on the surrounding locale. Additionally, I find that strict compliance with the B.C.Z.R. would result in practical difficulty or unreasonable hardship since the Petitioners would be forced to seek approval from the State's Attorney for Baltimore County pursuant to Section 10-402 of the Maryland Criminal Law Article to disinter various remains in

order to bring the cemetery into compliance with the setbacks prescribed by the B.C.Z.R. Having considered the requirements of Section 307 of the B.C.Z.R., as discussed in *Cromwell v. Ward*, 102 Md. App. 691 (1995), I find that the request for Variance should be granted.

Pursuant to the advertisement, posting of the property and public hearing on these Petitions 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 8th day of October 2009 that the Petition for Special Hearing seeking confirmation that the existing cemetery is a non-conforming use and to approve a non-density transfer pending the Development Review Committee's (DRC) approval of lot line adjustments between Parcels 50, 51-1, 51-2 and 52, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED; and,

IT IS FURTHER ORDERED that the Petition for Variance seeking relief from Section 1A01.3B.2 to allow setbacks of 46 feet (SW side of Fellowship Hall), 42 feet (SW side of Church Hall), 49 feet (W side of Hall), 47 feet (E side of Hall), 21 feet (N rear yard of Church) and 11 feet (E side of Church), in lieu of the required 50 foot minimum, in accordance with Petitioner's Exhibit 1, be and are hereby GRANTED.

Any appeal of this decision shall be made within 30 days of the date of this Order.

WJW:dlw

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