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| IN RE: PETITIONS FOR SPECIAL HEARING | * | BEFORE THE |
| AND VARIANCE | | |
| SE corner of Harrison Avenue and | * | DEPUTY ZONING |
| Baker Avenue | | |
| 15 th Election District | * | COMMISSIONER |
| 6 th Councilmanic District | | |
| (21 Harrison Avenue) | * | FOR BALTIMORE COUNTY |
| | * | |
| Nathan Carter | | |
| <i>Legal Owner</i> | * | Case No. 2011-0103-SPHA |
| Oscar Cordova | | |
| <i>Contract Purchaser</i> | * | |

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner for consideration of Petitions for Special Hearing and Variance filed by Nathan Carter, the legal property owner. Petitioner is requesting Special Hearing relief in accordance with Section 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to confirm that the office use granted by special exception dated October 13, 1975 in zoning Case No. 76-0082-XA permitting 8 off street parking spaces in lieu of the required 13 parking spaces has been vacated and terminated. Petitioner is also requesting Variance relief as follows:

- From Section 1B01.2.C of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit a front yard property line setback of 2 feet 8 inches from the front property line in lieu of the required 40 feet, a north side corner property line setback of 7 feet 9 inches in lieu of the required 35 feet, and a rear yard property line setback of 17 feet 5 inches in lieu of the required 30 feet; and
- From Section 409.6.4 of the B.C.Z.R. to permit 8 parking spaces in lieu of the required 10; and
- From Section 1B01.1.B.1.e.(2) of the B.C.Z.R. to permit a building setback to the Residential Transition Area (RTA) of 2 feet 8 inches in lieu of the required 75 feet; and

- From Section 1B01.1.B.1.e.(3) of the B.C.Z.R. to permit a landscape buffer of 0 feet in lieu of the required 50 feet; and
- From Section 1B01.1.B.1.a(1) of the B.C.Z.R. to permit a RTA of 55 feet in lieu of the required 100 feet.

The subject property and requested relief are more fully described on the site plan that was marked and accepted into evidence as Petitioner's Exhibit 1.

Appearing at the requisite public hearing in support of the requested relief was Petitioner Oscar Cordova, the contract purchaser, and Edward C. Covahey, Jr., Esquire, attorney for Petitioner. Also appearing in support of the relief were Javier Contaro, and Jose Centeno, as well as Brian Dietz with Dietz Surveying Co, the firm that prepared the site plan. Appearing as Protestants were Wiley T. Richardson and his brother William Richardson, and Victor Carnaggio.

It should be noted that this matter came before me as a result of a complaint registered with the Code Enforcement Division of the Department of Permits and Development Management¹. A Code Inspections and Enforcement Correction Notice was issued to Petitioner on May 10, 2010 for failure to obtain a building permit for work being done to a commercial building including demolition on residential property. Petitioner continued to work despite the Stop Work Order and lack of permits. On March 6, 2010, Code Enforcement Hearing Officer issued Findings of Fact and Conclusions of Law sustaining the violation but reducing the civil penalty.

Testimony and evidence offered revealed that the subject property is rectangular shaped and contains approximately 0.225 acre or 9,810 square feet, more or less, zoned D.R.5.5. The property is located at the southeast corner of Baker Avenue and Harrison Avenue, just south of

¹ Case No: CO-0072287

the Amtrak railroad tracks and east of the Chesapeake Industrial Park, in the Middle River area of Baltimore County. The subject site is improved with an existing one-story building measuring approximately 59 feet wide by 61 feet deep.

According to Petitioner's attorney, Mr. Covahey, the building is currently vacant and in need of extensive repairs. The Middle River branch of the Post Office was once located there for many years, but vacated the property over 10 years ago. He also indicated there was a prior special exception granted for office use and a variance for parking. Petitioner runs a church known as Iglesia Evangelica "Principe De Paz" and wishes to conduct church services at the subject property. The church is a permitted use at the property by right, but in order to utilize the property and building for a church, Petitioner is in need of variance relief from certain front, side, and rear setback requirements, parking, and Residential Transition Area ("RTA") requirements by virtue of the fact that the property is located in a residential zone, to be used for uses other than residential.

Mr. Covahey also indicated that the church services would be conducted primarily on Saturdays and Sundays and two nights during the week. Currently, the church leases space from another church located in the Middle River area. In support of the relief, Mr. Covahey and Mr. Dietz both explained that it is the building's construction in approximately 1940 and its size relative to the lot size, as well as its prior use as a Post Office that renders the property unique and drives the need for the variance relief. Specifically, the building was built as a nonresidential structure in 1940, prior to the adoption of the Zoning Regulations, and was built rather large compared to the size of the property -- certainly too large to be able to comply with today's front, side and rear setback requirements. Indeed, the setback variances are to legitimize these existing conditions that were created 70 years ago. In addition, the parking variance is also

necessitated by the size of the building on the site and its potential use as a church. 10 parking spaces are required and 8 are proposed on site.

In addition, the variances related to the RTA building setback and landscape buffers are also generated by the building size and placement and its previous nonresidential uses. Although the property is located adjacent to residential transition, there is also adjacent business and commercial zoning, including B.R., B.M., and B.L. Mr. Dietz maintains that it would be impossible to achieve the required RTA setback and buffers without completely demolishing the building and starting over, or by not permitting a church here even though it is a permitted use.

Testifying in opposition to the requested relief was Wiley Richardson. Mr. Richardson owns the property directly south of the subject site and operates a 2½-story apartment building there on this B.L. zoned property. He objects to the relief and the proposed church use because he is concerned about the traffic that would be generated and overflow parking that would be taken onto Harrison Avenue. His brother, William Richardson, expressed similar concerns, as did Mr. Carnaggio who lives in Mr. Richardson's apartment building.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. Comments were received from the Fire Department dated August 17, 2010 which indicates that the proposed building shall be designed and constructed so as to meet the applicable provisions of the Baltimore County Fire Prevention Code (July 19, 2010). The church will need to submit plans to the Baltimore County Office of Plans Review located at 111 West Chesapeake Avenue, Towson, Maryland for a review. The church will also need to apply for a change of occupancy to a place of assembly. A church is considered a place of assembly once the capacity reaches 50 or more people per the 2009 NFPA 101 Life Safety Code. After the renovations are completed, the church will need to contact the Baltimore County Fire Marshal's

Office during the hours of 8:00 AM to 4:00 PM to request a capacity survey. Comments were received from the Office of Planning dated October 26, 2010 which indicates that they do not object to the requests with the exception of the following:

- Include a decorative fence on the south side of the property line to screen the parking area from the adjacent residence located at 19 Harrison Avenue.
- Indicate those improvements that will be made to the exterior of the building, as it is currently abandoned and in disrepair.
- Indicate how/where over flow parking will be accommodated.

After due consideration of the testimony and evidence presented, I am persuaded to grant the relief requested. Although I can appreciate the concerns of the adjacent property owner, Mr. Richardson, and his tenant, Mr. Carnaggio, I believe the impact of the church services only a few days per week and with a relatively small congregation will be minimal. As to the variance requests in particular, I find special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance requests. The building was constructed prior to the imposition of zoning on the property without regard to the requirements of today's Regulations. In addition, it has always had a nonresidential use, starting with a Post Office, and I believe its use as a church, which is specifically permitted by the Regulations, will be more benign than the Post Office was in its heyday.

I further find that strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship. The building could very well lay vacant for the foreseeable future while a permitted use is not utilized. Finally, I find the variances can be granted in strict harmony with the spirit and intent of said regulations, and in such manner as to grant relief without injury to the public health, safety and general welfare. Because of my own concerns with the lack of RTA setback and buffers, I will condition the relief on compliance with the Office of Planning's comments.

Pursuant to the advertisement, posting of the property and public hearing held, and after considering the testimony and evidence offered, I find that Petitioner's special hearing and variance requests should be granted.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 8th day of December, 2010 that Petitioner's Special Hearing request in accordance with Section 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R.") to confirm that the office use granted by special exception dated October 13, 1975 in zoning Case No. 76-0082-XA permitting 8 off street parking spaces in lieu of the required 13 parking spaces has been vacated and terminated, be and is hereby **GRANTED**; and

IT IS FURTHER ORDERED that Petitioner's Variance requests as follows:

- From Section 1B01.2.C of the Baltimore County Zoning Regulations ("B.C.Z.R.") to permit a front yard property line setback of 2 feet 8 inches from the front property line in lieu of the required 40 feet, a north side corner property line setback of 7 feet 9 inches in lieu of the required 35 feet, and a rear yard property line setback of 17 feet 5 inches in lieu of the required 30 feet; and
- From Section 409.6.A of the B.C.Z.R. to permit 8 parking spaces in lieu of the required 10; and
- From Section 1B01.1.B.1.e.(2) of the B.C.Z.R. to permit a building setback to the Residential Transition Area (RTA) of 2 feet 8 inches in lieu of the required 75 feet; and
- From Section 1B01.1.B.1.e.(3) of the B.C.Z.R. to permit a landscape buffer of 0 feet in lieu of the required 50 feet; and
- From Section 1B01.1.B.1.a(1) of the B.C.Z.R. to permit a RTA of 55 feet in lieu of the required 100 feet,

be and are hereby **GRANTED**.

The relief granted herein is subject to the following conditions:

1. Petitioner is advised that he may apply for any required building permits and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at his own risk until the 30-day appeal period from the date of

2. The proposed building shall be designed and constructed so as to meet the applicable provisions of the Baltimore County Fire Prevention Code (July 19, 2010).
3. The church will also need to apply for a change of occupancy to a place of assembly. A church is considered a place of assembly once the capacity reaches 50 or more people per the 2009 NFPA 101 Life Safety Code.
4. After the renovations are completed, the church will need to contact the Baltimore County Fire Marshal's Office during the hours of 8:00 AM to 4:00 PM to request for a capacity survey.
5. Petitioner shall include a decorative fence on the south side of the property line to screen the parking area from the adjacent apartment building residence located at 19 Harrison Avenue.
6. Petitioner shall indicate the improvements that will be made to the exterior of the building, as it is currently abandoned and in disrepair.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

____SIGNED_____
THOMAS H. BOSTWICK
Deputy Zoning Commissioner
for Baltimore County

THB:pz