

|   |                                |
|---|--------------------------------|
| IN RE: <b>PETITIONS FOR SPECIAL HEARING</b> *           | BEFORE THE                     |
| <b>AND VARIANCE</b>                                     |                                |
| (401 Reisterstown Road) *                               | OFFICE OF                      |
| 3 <sup>rd</sup> Election District                       |                                |
| 2 <sup>nd</sup> Council District *                      | ADMINISTRATIVE HEARINGS        |
| Restoring Life International Church, <i>Legal Owner</i> |                                |
| Seasons Maryland LLC, <i>Contract Purchaser</i> *       | FOR BALTIMORE COUNTY           |
| Petitioners   |                                |
|   | <b>Case No. 2014-0116-SPHA</b> |

\* \* \* \* \*

**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (OAH) for consideration of Petitions for Special Hearing and Variance filed by Jeffrey Spatz, Esquire, of Gordon Feinblatt, LLC, on behalf of Restoring Life International Church, the legal owner and Seasons Maryland, LLC, contract purchaser. The Special Hearing was filed pursuant to §500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”): (1) to approve business parking in a residential zone; and (2) to approve a modified parking plan for existing parking. The Variance petition seeks relief from B.C.Z.R. § 409.6.A.2: (1) to permit 106 spaces in lieu of the required 138 spaces; (2) to permit surface parking spaces for a non-residential facility closer than 10 ft. to the right of way line of a public street; and (3) to permit a 0 ft. RTA setback in lieu of the required 50 ft. buffer and a 75 ft. setback, respectively, for an existing parking lot. The subject property and requested relief is more fully depicted on the site plan that was marked and accepted into evidence as Petitioners’ Exhibit 1.

Appearing at the public hearing in support of the requests were Mayer Gold (on behalf of the contract purchaser), Kenneth Robinson (on behalf of the owner), traffic engineer Mickey Cornelius, and Richard Matz, P.E., whose firm prepared the plans. William Shaughnessy, Esquire and Jeffrey Spatz, Esquire of Gordon Feinblatt, LLC appeared and represented the Petitioners. Numerous citizens (whose names are in the case file) appeared in opposition to the

requests. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations.

The subject property is 2.1 acres in size and is split-zoned BL and DR 5.5. The property is located in Pikesville, and for many years it was used as a catering operation. In recent years, a church has operated on site, and its pastor indicated that between 800-1,000 parishioners attend each Sunday during two services. The church proposes to sell the property to Seasons Maryland, LLC, which would operate a Kosher grocery store on the premises. Mayer Gold, principal of Seasons, testified it would be a gourmet, upscale grocery similar to Whole Foods. Mr. Gold testified he operates four other grocery stores in New York, and he believed that comparable locations (in Flushing and Lawrence) operated successfully with just 80 parking spaces, while 105 spaces are proposed here.

Mr. Matz (a licensed engineer who was accepted as an expert) testified that the property has no zoning history, and that the primary issue in the case was parking. He noted that the catering facility had used the parking lots shown on the plan since at least 1969, and that the church continued such use. Mr. Matz indicated that the bulk of the improvements will be to the interior of the structure, with only minor exterior changes (including signage) proposed. He believed that 106 parking spaces would be sufficient, especially considering Mr. Gold's experience with his four other stores.

In terms of the requested variance relief, Mr. Matz opined the property was unique given the unusual configuration of the parking lots and the split zoning. I concur, but also believe that this uniqueness gives rise to other concerns under the parking regulations, discussed below.

Mr. Cornelius (also accepted as an expert), described the site and indicated the store would generate approximately 1,100 daily vehicle trips, spread throughout the day. He contrasted this with the Church, where parishioners' ingress and egress occurs at the same time.

Mr. Cornelius opined that the existing roads could accommodate the anticipated traffic generated by the store, and he did not believe the community would be negatively impacted.

As noted, many area citizens attended the hearing and expressed strong opposition to the requests, citing concerns with parking, traffic, property values and similar issues. The Petitioners and Protestants submitted post hearing memoranda addressing legal issues in the case, and the Office of People's Counsel also submitted a review by Stephen Weber of the Department of Public Works (DPW) of the proposed parking at the subject site. Mr. Weber indicated there was a "reasonable concern" that the proposal could cause "parking issues within the adjacent community." Having considered the testimony, exhibits and submissions of the parties, I believe the petitions must be denied.

As shown on the plan, a large portion of the site is commercially zoned. But the "satellite" parking lots, and a portion of the parking in front of the proposed store, are located in a residential zone, outside of the Pikesville Revitalization District. This creates a legal obstacle to plan approval.

Specifically, B.C.Z.R. § 409.8.B makes clear that (upon issuance of a use permit) only passenger vehicles may use a commercial parking facility in a residential zone. But here, according to the testimony, trucks will also need to make use of these areas. According to Messrs. Matz and Cornelius, at least once daily a tractor-trailer would need to enter, and back-up through, these DR-zoned areas to reach the loading dock (which is located in the commercial zone). In addition, "box trucks" would also make daily deliveries to the store, again using these residentially-zoned parcels to gain access to the store and loading dock. In my opinion, this is prohibited by B.C.Z.R. §409.8, which provides that "only passenger vehicles . . . may use the parking facility." That same regulation also provides that no "loading, service or any use other than parking shall be permitted."

This regulation permits only a limited use (i.e., customer parking) of residential property to serve commercial ventures. The current proposal, given the unique configuration of the parcels and existing site constraints, would necessitate in the DR zone truck traffic and commercial activity associated with the shipping and unloading of inventory. In a similar setting, the court of appeals held that passage of “two to ten trucks daily” over residentially zoned property, to access a commercially-zoned parcel, would constitute the impermissible business use of land in a residential district. Leimbach Constr. Co. v. City of Baltimore, 257 Md. 635 (1970).

THEREFORE, IT IS ORDERED this 31<sup>st</sup> day of December 2013, by this Administrative Law Judge, that Petitioners’ request for Special Hearing pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”): (1) to approve business parking in a residential zone; and (2) to approve a modified parking plan for existing parking, be and is hereby DENIED.

IT IS FURTHER ORDERED that Petitioners’ request for Variance relief as follows: (1) to permit 106 parking spaces in lieu of the required 138 spaces; (2) to permit surface parking spaces for a non-residential facility closer than 10 ft. to the right of way line of a public street; and (3) to permit a 0 ft. RTA setback in lieu of the required 50 ft. buffer and a 75 ft. setback, respectively, for an existing parking lot, be and is hereby DENIED.

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

JEB/sln

Signed \_\_\_\_\_  
JOHN E. BEVERUNGEN  
Administrative Law Judge  
for Baltimore County